

DOMINION STATUS.*

PART I.

SUMMARY OF LEGAL STATUS OF THE DOMINIONS.

The Constitutional Status of any Dominion is commonly considered to be something different from its strict Legal Status. So let us consider shortly, what is the law of the Empire concerning the Dominions.

The Crown is the "Fountain Head" of all power. In strict law not even the Imperial Parliament can legislate except in the name of His Majesty the King. The real power of course, has long since been vested in the Houses of Parliament.

Every Dominion had its being in an Act of the Imperial Parliament and the whole frame-work of the power to legislate for their own Peace, Order and Good Government, possessed by the Dominions, is possessed by them as creatures of the Imperial Parliament in specific terms. Of course exception may be taken to this statement in the case of Newfoundland and the Irish Free State, which derives its power from a so-called Treaty which is really in effect an Act of the Imperial Parliament because the relation of the Irish Free State to the Imperial Parliament, (except within the limit of the powers in the Treaty) cannot be changed except by Legislation of the Imperial Parliament.

The Dominions do not possess any powers not given to them by the Acts of the Imperial Parliament creating them and the powers given to them are limited in many ways. For instance, the Governors or Governors-General of the Dominions are and always have been appointed by the King on the advice of the Imperial Parliament, and the Governors or Governors-General have certain power over the Dominion Legislation.

They may refuse to assent to Legislation.

They may reserve Legislation to ascertain the consent of the Crown, and the Crown itself may disallow Legislation already consented to by the Governors or Governors-General. It may be stated here in passing however, that the control by disallowance does not apply to the Irish Free State.

*NOTE—This, and succeeding parts of the article to be published in the REVIEW, constituted a thesis for the degree of LL.B., at the University of Toronto.

The Imperial Parliament can, and has power to make Legislation applicable to the Dominions and such Legislation overrides the Legislation of the Dominions. For instance, the Colonial Courts of Admiralty Act, 1890, applies to the Dominions and under it, Dominion Legislation requires either a suspending clause or reservation or previous consent of the Admiralty, and the Dominions under a general Act—(Colonial Laws Validity Act, 1865)—even within the ambit of the power granted, cannot with validity, legislate in anyway that is repugnant to the Imperial Legislation. The Imperial Parliament has almost up to the present time, exercised real control over matters concerning Merchant Shipping, Copyright and matters of defence. The Dominions are bound by all Imperial Treaties or Conventions concluded by the Imperial Government with Foreign States.

Under Imperial Legislation of 1844, the rights of subjects to appeal to the Judicial Committee of the Privy Council is retained, and although this has, by Acts creating some of the Dominions, been partially changed still it is strictly true that subject to the willingness of the Judicial Committee to hear a Petition, a subject may take his case or his petition to the "Foot of the Throne." (Judicial Committee of the Privy Council).

The Dominions cannot legislate with extra-territorial effect. Their power is confined to within their own boundaries. The Dominions cannot of their own power, change their constitution except within the limits of the power given them to do so in the Imperial Acts creating them. The Imperial Parliament has control over honours given in the name of the Crown. This prerogative however, has really been exercised according to the wishes of the Colonies to a greater or lesser extent. Until recently Imperial Parliament has exercised close supervision over all external affairs and any dealings which the Dominions may have had with foreign countries, has been with the entire privity and consent of the Imperial Parliament, and Treaties formally concluded by representatives of the Imperial Parliament.

The Dominions have no power whatever to make war or peace and with the exception of certain recognition given to them by the League of Nations, they have no separate and independent recognised Status outside the British Empire. Of course these statements are very general and gradual development has greatly changed constitutional practice during the last forty years. So in contrast to this strict legal Status the British Dominions have even outside the British Empire achieved a certain Constitutional

Status and in the next chapter, we shall consider the growth of the Constitutional Status of the Dominions as revealed by the speeches by British Statesmen at the various Colonial and Imperial Conferences.

THE 1926 IMPERIAL CONFERENCE.

With the exception of certain introductory speeches, we have to content ourselves at finding the views of the British Statesmen at the 1926 Imperial Conference concerning the Constitutional Status of the Dominions, as they are epitomised in the summary of the proceedings of that body, but the opening speeches are of course important when read along with the conclusions.

Speaking particularly of the Foreign Policy of the Empire, Premier Baldwin frankly recognises that the Dominions are no longer to be confined to self-government in Domestic Affairs and he said during the course of his remarks, at the opening of the Conference:

The problem before us is how to reconcile the principle of self-government in External as well as Domestic Affairs with the necessity for a policy in Foreign Affairs of general Imperial concern to a number of different Governments and Parliaments.

And further on in his opening remarks he recognises that the benefit of the Imperial Conferences lies in the fact that the members of the different Governments meet,

On such a footing as to be able to exchange our views on *the basis of absolute equality* without restraint, without resentment of criticism, in an atmosphere of common desire to reach agreement.

And Premier King of Canada, following Mr. Baldwin said:

Through this experiment in world organisation which we call the Commonwealth or Community of British Nations, one-fourth of the world's peoples are linked in friendship and in peace.

In contrast to Premier King's remarks, let us note the remarks of Mr. Munroe, Premier of Newfoundland, who preferred Newfoundland to be called, "Britains oldest Colony, rather than Britain's youngest Dominion," and his message to the Conference was:

We do not even require to be consulted as to questions of Foreign Policy, and that if the deliberations of Great Britain's ministers should ever bring the Empire to war, we are perfectly willing to come in, feeling satisfied we are fighting for a just cause.

General Hertzog, Premier of South Africa, on the other hand is the champion of Independent Status of the Dominions, and at

the Conference he expressed the willingness of South Africa to co-operate to make the foundations of our Commonwealth of Nations as durable as it can be as long as it is.

A commonwealth of Free and Independent Nations, each free and striving to attain what is best for itself yet in such a manner and in such a spirit as will conduce wherever and as much as possible to the well-being of all.

General Hertzog promised that the co-operation of South Africa based on good will and common interests, could be looked for and would be given, "the moment her independent national status has ceased to be a matter of dispute and has become internationally recognised."

President Cosgrave, of the Irish Free State, seems to have considered that this Independent Status was already a matter of fact for in his opening remarks, he said:

We come here from Governments representing countries widely scattered across the surface of the earth, but linked together in an association such as exists between no other body of Independent States.

So we see what representative men from the various Dominions have had to say on the Constitutional Status of the Dominions at the opening of the 1926 Imperial Conference. Now let us turn to the report made by the Committee on Inter-Imperial relations, which was unanimously adopted by the Conference. To quote from it:

There is however, one most important element in it (the British Empire) which from a strictly constitutional point of view has now, as regards all vital matters, reached its full development. We refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous communities within the British Empire, 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* Every self-governing member of the Empire is now the Master of its Destiny. In fact, if not always in form, it is subject to no compulsion whatever. . . . Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations. *But the principles of equality and similarity, appropriate to status, do not universally extend to function.*

We see in this report an attempt to reconcile the views of the various Prime Ministers. By some writers, the first part written above in italic letters is taken to mean a Declaration of Independence of the Dominions and it would seem that Mr. Hertzog regarded it as such.

We must remember that the Dominions are not only regarded as autonomous communities, but that Great Britain is considered to be one of these communities and the Dominions are stated to be her equal in Status. And, as if it were necessary to amplify this, a further statement is made that at least in fact no community is subject to the compulsion of another. That is a clear recognition that the communities are no longer colonies in the old sense of the word. But the dominating part of Great Britain in the partnership called the Commonwealth of Nations, is recognised by the statement that the principle of equality of Status does not universally extend to function. This part of the Statement possibly satisfied Newfoundland and would please New Zealand and not offend Australia. Equality in name was unanimously agreed upon. But there was a recognition that the burdens of State concerning the whole Empire were still mostly resting upon and being borne by Great Britain. We must bear in mind that this general statement as to Status is an attempt to define the relations of the different communities *within the British Empire* and because this is so, there is no departure from the principle that the various communities making up the Empire are regarded in the eyes of the rest of the world as one diplomatic unit.

The summary of the 1926 report goes on to state that the existing administrative, legislative and judicial forms are admittedly not wholly in accord with the Constitutional position that we have above discussed, and in pursuance of this, the Conference expresses itself as being of the opinion that the Governors-General are now wholly representatives of the King and not representatives of His Majesty's Government in Great Britain or any part of that Government, and that the official recognised channels of communication should be between Government and Government direct.

The Conference suggested that certain matters were to be referred to a special committee of experts. These were in short:

- (a) The power of disallowance of Dominion Legislation.
- (b) Reservation of Dominion Legislation for the signification of His Majesty's pleasure, which is signified on advice tendered by His Majesty's Government in Great Britain.
- (c) Legislative Competence of the Dominions to legislate extra-territorially.

(d) Operation of Legislation by Imperial Parliament in relation to the Dominions by Colonial Laws Validity Act. The Inter-Imperial relations committee recommended that a sub-Conference should be called to consider and report on the principles which

should govern in the general interest, the practice and legislation relating to Merchant Shipping in various parts of the Empire, having regard to the change in constitutional status and general relations which have occurred since existing laws were enacted. The committee on Imperial relations also discussed the principle which concerned the conditions governing appeals from judgments in the Dominions to the Judicial Committee of the Privy Council, and it was agreed that His Majesty's Government in Great Britain should only determine questions affecting appeals in accordance with the wishes of the Empire primarily affected, and that any change in the existing system which raised issues in other parts, should only be brought about after consultation and discussion.

Consideration of the report of the Committee of Experts dealing with the present anomalies in Dominion Status will no doubt form a large part of the agenda of the next Imperial Conference.

THE COLONIAL CONFERENCES FROM 1887 TO 1902 INCLUSIVE.

In order to see in some satisfactory manner how the "Equality of Status" with all its amplifications as laid down by the 1926 Conference, has grown up, we will refer to various Conferences which took place, commencing with the first Colonial Conference which met in London in the Spring of 1887. This Conference was summoned by Mr. Edward Stanhope, Secretary of State for the Colonies and the subjects which were suggested for discussion were, "Defence and Postal and Telegraphic Communication."¹ The Prime Ministers of the various Colonies were not particularly invited. The invitation was just extended to leading public men who would be qualified to take part in the deliberations.

As it turned out three Prime Ministers did attend, but the vastly superior Status of Great Britain was at this Conference taken for granted. Mr. Deakin did propound the idea that whatever was in the best interests of the Colony was in the best interests of Great Britain and with it the assumption that the Colonies knew what was in their own best interests, but this assumption was made it seems, more with the intention of Great Britain allowing the Colonies certain trade privileges, than it was of stating any particular claims to Status on behalf of the Colonies.

However, there was some discussion about the right of the Colonies to promote trade treaties and Mr. Hofmeyr said:

¹ Cd. 2785, Brit.

If you refuse the right (to negotiate and make arrangements concerning trade treaties) you create very great dissatisfaction and people begin to ask: "What is the use of belonging to the British Empire" . . . If you grant the right you just as effectively promote disintegration.

Mr. Hofmeyr would find it difficult to understand the way in which trade treaties are negotiated and completed nowadays! However, it is quite clear that Mr. Hofmeyr never had in mind the negotiations of treaties by the Dominions without the British Diplomats taking part in the negotiations and in the signature of treaties but he had in mind a Commercial Union which might be followed by Imperial Federation and he was using an argument in order to give an idea of what might be expected to happen to the Empire, if some Commercial Union was not agreed upon by all parties.

Apart from the fact that the Colonies found that their opinions in matters of trade and communication were of some importance, the first Colonial Conference had very little effect on the Constitutional Status of the self-governing colonies. No definite arrangements for future Conferences were made, but at the close of the proceedings the Secretary of State for the Colonies "looked forward hopefully to future Conferences."

The next Conference met in Ottawa in the year 1894. This Conference can hardly be called a Colonial Conference in the true sense of the word, although it is often so termed and we will make a few observations upon its proceedings. It met in Ottawa in June and July, 1894, and was called together by Canada for the purposes of discussing the Pacific Cable question, but trade matters were also discussed. The Canadian Government invited Great Britain, New South Wales, Tasmania, Cape of Good Hope, South Australia, New Zealand and Victoria. Mr. McKenzie-Bowell,² Minister of Trade and Commerce in Canada was the president of the Conference and during the course of his opening remarks, made the following observation:

The present Conference does not meet, as has been stated in some of the public journals, for the purpose of Imperial Politics or Imperial Foreign Policies, further than they affect the material welfare and well-being of the different British Colonies in general, in matters of trade, and that which is incidental thereto, cable connection between all parts of the British Empire without touching on Foreign soil.

The Earl of Jersey was the representative sent by Great Britain, and he said he was there to "hear what passes, give information, but

² Ottawa papers, 5B, 1894.

not to express views on their behalf (Government of Great Britain)." The other representatives were there in like capacity and the Governments were not as such represented, nor were the representatives speaking for the various Governments.

Great Britain during the course of years had negotiated and entered into numbers of trade treaties and when the Colonies came to the point in their development where they decided to grant preferences in trade matters to each other and to Great Britain, they found that they were tied by the terms of old treaties and so one of the Resolutions which was put on the agenda for discussion was:

That provision should be made by Imperial Legislation enabling the dependencies of the Empire to enter into Commercial reciprocity with Great Britain and one another without Foreign Nations being entitled to share therein.

The debate on this resolution was long and exhaustive but it is interesting in our study mainly because we have the view of Mr. Foster (now Sir George Foster), concerning Status of Self-Governing Colonies, expressed in part of his opening speech on this resolution. He spoke in part as follows:

I am of the opinion that so long as the colonial relation exists, the power to negotiate our own treaties while we are a part of the Empire is undesirable and impossible. I think it would be a death blow to Unity.

Possibly Sir George Foster holds the same view to-day as to the undesirability of the Dominions having power to make their own trade treaties, but he would of course have to admit that his conception of things has turned out wrongly and that as yet at least, freedom in negotiating and making treaties given to the Dominions has not destroyed the Empire. Mr. Foster was clearly against the idea of Colonies entering into separate trade treaties with foreign countries and always has been an ardent Imperialist. This speech plainly shows that his conception of the Status of Great Britain and the Dominions was at that time clearly the old colonial one of Colonies and the Mother Country.

Nor was the theory of Empire held by British public men much different from that of Mr. Foster. The question of commercial treaties between Her Majesty's Government (always considered as the Government of Great Britain alone) and foreign powers in regard to their trade with the Colonies after the Conference of 1894, was to Great Britain a matter of some concern, and it became the subject of a lengthy despatch from the Marquis of Ripon to the Governor-General of Canada, the Governors of the Australian States

and the Governor of the Cape of Good Hope.³ Section 34 of that Despatch explains very well the view-point held by Great Britain:

While however, Parliament has removed all legislative restrictions on the Colonies so far as Imperial Legislation is concerned, it will be necessary in order that Her Majesty's Government may be in a position to give effect to their responsibility for the International obligations of the Empire, and further protection of its general interests, that any Bill passed by a Colonial Legislature providing for the imposition of differential duties should be reserved for the signification of Her Majesty's pleasure, so as to allow full opportunity for its consideration from these points of view.

It is not hard to see that this falls short of regarding the Dominions as having a Status which the Imperial Conference of 1926 gives them and in fact the Governor-General of Canada would hardly dare run the risk at the present time of reserving a Bill passed by the Dominion House of Parliament, say for instance concerning Tariff arrangements made between Canada and France.

In the second Despatch the British Government says that it desires to make clear the International position of such agreements (trade agreements between different self-governing parts of the Empire and foreign countries) and their position is declared to be well set out in a speech of Sir Henry Wrixon's at the 1894 Imperial Conference where a discussion took place upon the resolution above mentioned. His speech was in part as follows:

Each nation is an entity as regards every other nation and I have no knowledge of how you could recognise a part of an Empire making arrangements for itself (trade arrangements with foreign countries). Everything must be done through the Head of the Empire (in this case, Great Britain alone) when we are dealing with foreign nations.

Later on in Section 7, the Despatch goes on to say:

To give the Colonies the power of negotiating treaties for themselves without reference to Her Majesty's Government would be to give them an international status and would be equivalent to breaking up the Empire into a number of Independent States.

It would now hardly be conceded that this statement is now a correct one and the fact that this was given as the official view in 1894 shows just how great development has taken place in constitutional matters in a period of only thirty years, because as we shall later see, the 1923 Imperial Conference laid down a method by which the various Dominions could negotiate treaties for themselves without reference to His Majesty's Government in Great Britain, and no one there conceded that such power would have the

³C. 7824. Br.

effect of breaking up the Empire into a number of separate and sovereign states. The conception of sovereignty has undergone tremendous changes and it is no small part of the genius of British statesmen that they have been able thus far to maintain the diplomatic unity of the Empire by developing and expanding their conception of sovereignty.

In 1897 Joseph Chamberlain was Secretary of State for the Colonies and he embraced the occasion of the Queen's Jubilee, to invite the Premiers of the self-governing colonies to take part in an "informal discussion of many subjects of great interest to the Empire."⁴ At the commencement of our discussion of this Conference, it is well to note that this is the first Conference at which the Premiers of all the self-governing colonies are invited to be present. This then can be said to be the beginning of what afterwards came to be Conferences expressed as being between Governments.

However, it is still summoned by the Secretary of State for the Colonies and for this Conference the agenda had already been compiled by Mr. Chamberlain. During the course of the Conference however, matters suggested by the various Prime Ministers were made subjects of discussion. Mr. Chamberlain, who of course was Chairman of the Conference, could see no other solution to the task of holding the Empire together but that it should be an Imperial Federation and so with great care he broached the subject. In his opening remarks he speaks in part as follows:

I offer it now merely as a personal suggestion that it might be feasible to create a great council of the Empire to which the colonies would send representative plenipotentiaries not mere delegates who were unable to speak in their name without further references to their respective Governments.

In all, this Conference had only five meetings and there is nothing we can glean from the report that would lead us to believe that the suggestion of Joseph Chamberlain regarding the formation of a Great Council of Empire was considered.

Joseph Chamberlain made the announcement that arrangements had been made whereby colonial judges could sit on equal terms with other members of the Judicial Committee of the Privy Council, but this has never been really so, because for instance, no Canadian Privy Councillor has along with the other members of the Privy Council sat on an appeal from Australia. Joseph Chamberlain's conception of the work of the Judicial Committee is that it had a great work to perform in "settling once and for all

⁴ C. 8596, Br.

the law for all parts of the British Empire" and this was a conception which if carried out would tend to make law uniform throughout the Empire. It must however have been recognised as it now is, that when different parts of the Empire have law that is so different in its fundamental conception as the Dutch Law of South Africa is from the English Common Law, and the Civil Code of Quebec is from the English Common Law, that the law of the Empire could never have any great degree of uniformity.

The Conference passed certain resolutions, the most important of which from our point of view was that,

The present political relations between the United Kingdom and the self-governing Colonies are generally satisfactory under the existing condition of things.

It must be noted that from this view Mr. Seddon and E. N. C. Braddon dissented because:

They were of opinion that the time had already come when an effort should be made to render more formal the political ties between the United Kingdom and the Colonies.

This is evidence that at least some of the Colonies were beginning to feel the cramping results of strong Imperial Control. And another important resolution was as follows:

The Premiers are of the opinion that it would be desirable to hold periodical conferences of representatives of the Colonies and Great Britain for the discussion of matters of common interest.

From this date it can then be considered that Conferences were to be more or less the established thing although their frequency and form had not been definitely laid down and settled.

The occasion of the King's Coronation in 1902, seemed to be a fitting time to call the next Colonial Conference and accordingly it was summoned at this time. The report of this Conference⁵ calls it a Conference between the Secretary of State for the Colonies and the Prime Ministers of the Self-governing Colonies. This was the first Colonial Conference at which the Prime Ministers were in some instances assisted by their colleagues. It may be recalled that the Conference of 1887 was an Assembly of distinguished citizens, that of 1894 a meeting of delegates for a particular purpose, and that of 1897 a meeting of Prime Ministers alone, but at this Conference some of the Prime Ministers bring their colleagues who are in charge of the departments of government most likely to be interested in the discussions. The self-governing colonies were for the

⁵ Cd. 1299.

first time before the Conference was called, invited to suggest subjects which might usefully be discussed.

Joseph Chamberlain was still Secretary of State for the Colonies and his opening remarks show his great desire for the Colonies to take a larger part in the affairs of the Empire. He was sure the Conferences were of great value. He said:

I am convinced that they are of infinite value and a great gain to the whole Empire in as much as they afford an opportunity for a review of the policy of the Empire by the representatives of the self-governing colonies.

He still had on his mind and held to the idea of a federated Empire, for although he knew he was risking being called a "dreamer" nevertheless, he said:

I do not hesitate to say that the political federation of the Empire is within the limits of possibility.

But he was too much of a realist to know that the Colonies would stand for a Council of Empire with any executive power and suggested that the Council might be advisory at first at least. But again his dreams of a federated Empire made very little impression on the Conferences and it turned its attention to the discussion of topics which were more interesting to all the Colonies.

There was considerable discussion about the desirability of communication with the Colonies prior to entering into trade treaties, which might affect constitutional interests and a resolution was thereupon passed in the following form:

That so far as it may be consistent with the confidential negotiation of treaties with foreign powers, the views of the Colonies should be obtained in order that they might be in a better position to give adherence to such treaties.

We notice here that there is no change in the conception of the Status which even the Colonies themselves had because it is recognised that treaties must be negotiated by Great Britain in a confidential manner but that the colonies wished at least to be sure that Great Britain knew their point of view before she concluded treaties which would bind them.

In looking back for a moment over what the various Colonial Conferences up to this time had meant in the main, we may agree with Jebbs who says that the Colonial Conference was for the enlightenment of Imperial authorities in regard to Colonial opinion. Of course they came to mean more than this and one of the resolutions which was passed at the 1902 Conference seems to express what the Conferences were at least intending to do. It was there

agreed that it was desirable to convene Conferences not exceeding four years apart at which questions of common interest affecting the relations of the Mother Country and His Majesty's Dominions over the Seas, could be discussed and considered as between the Secretary of State for the Colonies and the Prime Ministers of the self-governing Colonies. It was still quite true however that these Conferences up to this time were in no way considered to be Conferences between Government and Government.

Before the Conference of 1907 was called, despatches were sent to the various self-governing colonies reciting the natural growth of the Colonial Conferences and suggesting that the term "Colonial Conference" was no longer suitable and that future meetings might well be styled "Meetings of the Imperial Council."⁶ Some of the replies were immediate and agreeable, but Canada thought this was a matter which should be left to the Conferences themselves and she was of the opinion that the term "Council" indicated a more formal assemblage possessing an advisory and deliberative character and in conjunction with the word "Imperial" suggested a permanent institution which endowed with a continuous life might eventually come to be regarded as an encroachment upon the full measure of autonomous legislative and administrative power now enjoyed by all the self-governing Dominions. This was the view of Sir Wilfred Laurier, as we shall see later, and the view he advocated so successfully at the 1907 Conference. The result was that the whole matter was left to the Conference itself to discuss and decide upon.

Previous to the calling of the 1907 Conference, protests came in from all the Australian States demanding that they be invited to the forthcoming Conference. They were indignant at not being invited to the 1902 Conference saying that before the Commonwealth Act had been passed they had been represented and that subjects affecting their interests would naturally be discussed, but the British Government steadily refused on the ground that the subjects in the main to be discussed would affect the Commonwealth alone. This point, no doubt the correct one, was a real blow to the Status of the Australian States and a recognition that the power of Commonwealth Government was really paramount.

THE COLONIAL CONFERENCE OF 1907.

The 1907 Conference was held in April of that year. The Conference was convened in the Colonial office under the chairmanship

⁶ Cd. 2785, Br. Parl. Paper.

of the Earl of Elgin, Secretary of State for the Colonies. The Colonies represented were Canada, Australia, New Zealand, Cape Colony, Natal, and Transvaal. This Conference was the first Conference called specially as a Colonial Conference and not at a time when some important ceremonial event was transpiring in London, with which they were more or less identified. The Prime Minister of Great Britain opened the Conference and certain of his opening remarks were very important.

He said:

This is not a Conference of the Premiers and the Colonial Secretary, but between Premiers and members of the Imperial Government under the Presidency of the Secretary of State for the Colonies which is a different matter.

Mr. Deakin of Australia said that the presence of the Prime Minister of Great Britain was a recognition of the principle that:

This is a Conference between Governments and Governments, due recognition of course being had to the seniority and scope of these Governments.

Sir Wilfred Laurier in his remarks also referred to the fact that this was a Conference between Governments and Governments and the idea is carried into the resolutions for we find in one of the resolutions that the Conference is described as being, "between His Majesty's Government and His Governments of the Self-Governing Dominions."⁷

The question was discussed at some length whether the Prime Ministers should have other members of their governments with them. At the last Conference some Ministers had been present, but this had been really a Conference of the Prime Ministers with the Colonial Secretaries but now for the first time the Conference being one between Governments, other members of these Governments were officially recognised, it being understood that in most cases not more than the Prime Minister and one other Minister should speak on any question.

The 1907 Conference is important in that its name was changed at this time. The discussion concerning the name of the Conference, at the suggestion of Sir Wilfred Laurier was left to be settled by the Conference itself. When the subject came up for discussion, Sir Wilfred Laurier strongly objected to the name "Imperial Council" but suggested that the name "Imperial Conference" be substituted for "Colonial Conference." He feared that it might become more than a consulting body if it took the name of "Imperial Council"

⁷ Br. Parl. Papers, Cd. 3523.

with a permanent secretariat. Sir Joseph Ward, too, held similar fears for he said:

I lay it down as one of the cardinal principles of such an organisation that there should be no interference with the present rights and powers of the Governments of those self-governing countries.

And he also was of the opinion that the word "Colonies" was no longer suitable to use in connection with self-governing portions of the Empire.

With the British Governments suggestion of an Imperial Council went the suggestion that a permanent secretariat be formed. Sir Wilfred Laurier feared the formation of any permanent secretariat and Sir Joseph Ward did not want to see any new office in England but thought that there should be some connecting link between the Conferences. Possibly the general consensus of opinion regarding the Council was best expressed by Dr. Jamieson who said:

I think we are all unanimous in this room and I know how strong the feeling is that we ought not to delegate any possibility of any power away from the self-governing Colonies, but we ought to increase their powers. What we are anxious to do is of course to get each individually into constitutional equality with the Motherland, it may be disproportionate equality, but that is our idea really, that we are going to be nations not separate from the United Kingdom, but nations within the United Empire.

This conception of Empire expressed by Dr. Jamieson in 1907 has come very close to realisation in the terms of the 1926 Conference, but the immediate importance of the speech and opinion of the other representatives was that there should not be a secretariat with power delegated to it from the Colonies.

While there was general consensus of opinion that there should be no general secretariat, yet it was agreed that there should be a system by which the several governments should be kept informed during the periods between the Conferences in regard to matters which have been or may be, subjects for discussion, by means of a permanent secretarial staff, under the direction of the Secretary of State for the Colonies, but it was well understood that this staff was never to be any more than an information bureau. So hesitant were the self-governing Colonies to allow anything in the nature of a secretariat to be established, that even this proposed information bureau never took on any form of permanence.

There arose out of other discussions at this Conference, a feeling that the Colonial Office should no longer preside over the relations between the self-governing Colonies, because as long as it had

charge of affairs of all the Colonies, it would be prone to treat all Colonies as "Crown Colonies." It was advocated that a separate department for Dominion Affairs be set up under the Prime Minister. The importance of this discussion is that it is becoming noticeable that the Colonies are beginning to feel that they are really reaching a position of nationhood. Sir Joseph Ward explained it well when he said:

There is a natural desire in the part of the self-governing Colonies to have what one may term, a more distinct recognition of what we are trying to carry on in our respective spheres, to a very large extent what I want would be met if we were to get out of the position of self-governing Colonies of being regarded as in a par with Crown Colonies.

But the British Ministers said that with all his other duties the Prime Minister could not look after a separate department for the self-governing Colonies. This at least was the explanation given, but it seems quite clear and Jebbs⁸ also was of the opinion that while not wishing to openly oppose the views of the Dominions the Imperial Government had no intention of changing the organisation of the Department of Secretary of State for Colonial Affairs. As we shall see this matter was proposed again at a later Conference, but it was not until 1923 that a separate Department of Government for Dominion affairs was set up. Both Crown Colonies and Self-governing Dominions have thus far been under the Head of one Minister.

The Judicial Committee of the Privy Council came under discussion at this Conference. Mr. Deakin of Australia introduced a resolution calling for an Imperial Court of Appeal. The Lord Chancellor during the discussion of this topic, intimated that he would not like to see the Privy Council Appeal severed:

But every self-governing portion of His Majesty's Dominions has its own right to regulate its own affairs and to do as it thinks fit in regard to that, (appeals to Privy Council).

It is hard to understand just what the Lord Chancellor had in mind here because it could hardly be taken that he meant that the Colonies could prevent the Privy Council from exercising their prerogative right to hear appeals and he must have known that under the constitution of self-governing colonies, appeals as of right in some instances at least, went to the Privy Council and could not be barred by the Colonies, but at least it was a recognition that if the Dominions pressed the matter strongly enough, Great Britain would have to concede to them the right to have appeals as of right, done

⁸ The Imperial Conference.

away with. However, the only result of this discussion was that a resolution was passed asking that the rules of procedure be clarified. The Imperial Government had no intention of changing the organisation of the House of Lords and making one Court of Appeal for the whole Empire, and as a matter of fact, Mr. Deakin had little support outside of his own representatives for his Empire Appeal Court.

(To be continued)

Oshawa.

J. C. ANDERSON.
