

CANADA'S POSITION IN THE BRITISH COMMONWEALTH OF NATIONS.*

We all recognise that the conditions of life and industry are steadily changing as the result of scientific discovery and modern invention. We possibly do not as clearly realise that great experiments are being made in the realm of government which may have a far-reaching effect on human life and welfare. Among these experiments, the three most notable are in Russia, Italy, and the British Empire.

The Political, Economic, and Social theories now being applied in Russia are repugnant, no doubt, to the principles and even the instincts of us all. And, yet, a great experiment is being tried in the governance of one hundred and fifty millions of people—its success or failure must have a far-reaching effect upon the life of the peoples of Europe and Asia, and to a lesser extent upon that of the other nations of the world.

The success or failure of the Facisti theory of government in Italy will undoubtedly have a marked effect upon the history and conditions of south-eastern Europe. Both these forms of government came into existence as the result of revolutions and each is the very negation of democracy as we understand it.

The third great experiment is the development of the British Empire into the British Commonwealth of Nations. This development has been so gradual that relatively few, even of the people of the Empire, have recognised its fundamental importance or its far-reaching effect. It is a new and great experiment in democratic government.

As the Commonwealth embraces about one-fourth of the earth's surface and contains one-fourth of the world's population representing many races, religions and degrees of civilization, the success or failure of this experiment must have a profound effect upon the history and welfare of the world.

All interested in human welfare, as well as students of the science of government must be interested in these three experiments: The first, a bureaucracy; the second, an autocracy; and the third, a democracy.

It is of this last experiment and Canada's part in it that I wish to speak.

* An address delivered by the Honourable N. W. Rowell, K.C., before The American Bar Association at Chicago, August 20th, 1930.

In the year 1914 the Right Honourable Sir Charles Fitzpatrick, Chief Justice of Canada, addressed your Association on the "Constitution of Canada." In this address he discussed the structure of our government and the distribution of powers between the Dominion and the Provinces under the British North America Act, which is our basic law. He did not deal at length with our relations within the Empire. These are not governed by a written or rigid constitution and in this sphere the past sixteen years have witnessed notable developments.

As part of this development our relations with your country have become more direct and intimate. In 1927 Canada established a Legation at Washington and you established a Legation in Ottawa, and the questions arising between our two governments, which, theretofore, were under the control of the British Ambassador at Washington, and the American Ambassador at London passed under the control of the Canadian Legation at Washington and the American Legation at Ottawa. The importance and necessity of this change are obvious when one remembers the increasing contacts of our two nations along a common frontier of over four thousand miles, unguarded save by the goodwill of our two peoples, and a rapidly expanding trade between our two countries, which last year amounted to \$1,452,000,000. or approximately \$150,000,000. more than your combined trade with all the countries of Central and South America. Our trade with you is now larger than with any other country and your trade with us is larger than with any other country.

My subject, naturally, divides into two aspects:

Firstly—Inter-Imperial Relations, and

Secondly—Foreign Relations.

At the Imperial Conference of 1926 the present constitutional position of the self-governing nations of the British Commonwealth was defined as follows:—

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.

It was also stated in the report of the conference that

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.

These declarations did not establish any new status for the Dominions or accord to them any new constitutional privileges.

They were but a record or statement of the result of the constitutional developments of the past twenty-five years; particularly of the past fifteen years.

A brief reference to the history of these constitutional developments will be an aid to an understanding and appreciation of our present position.

No student of your colonial period and of ours can fail to be struck with the marked similarity in the questions which came up for consideration between the colonies and the mother country, nor can he fail to be equally impressed with the difference in the way in which they were dealt with and in the solutions found. During the period which intervened between the discussion of these issues in your case and in ours, a great and far-reaching change had taken place in British constitutional practice, a change in which the executive government in Great Britain passed from the control of the Sovereign to the control of the House of Commons. Parliamentary Government had become firmly established.

A further and not less notable change had taken place in the conception of statesmen and jurists in Great Britain, of the relations which should subsist between the mother country and the colonies settled by European stock. At the time you were engaged in controversy with the mother country, the prevailing conception of colonial relationship was that the only alternative to complete dependence was complete independence. Seventy years later this conception had become fundamentally changed and far-seeing statesmen and political writers accepted the view that there might be a division of governmental authority over the colonies, as between domestic and foreign affairs, and that the colonies might be granted full self-government in domestic affairs while the parent state retained full authority over foreign affairs.

Seventy years more have brought a further and not less fundamental change, and it is now recognised that the colonial status may be wholly abandoned and the colonies become equals of the mother country and still remain within the British Commonwealth of Nations. These changes in British constitutional practice, and in the conception of colonial relationship have made possible the solution at which we arrived. Without them your solution was well nigh inevitable.

In Canada there have been at least three great steps in our Constitutional development from the position of dependent colonies of Great Britain to full equality of status in the British Commonwealth.

(1) The grant of responsible Government in 1847.

- (2) The adoption of our present Federal Constitution in 1867, and
- (3) The recognition of full equality of status with Great Britain and the other self-governing Dominions of the Commonwealth.

As a result of these constitutional developments the people of Canada are now entitled to exercise authority over their own domestic and foreign affairs; they are able to satisfy all their national aspirations and still remain within the British Empire and enjoy the rights and privileges of British citizens.

You may ask, and very properly ask, by what constitutional process has such a development been possible, and Canada still remain a member of the British Empire? In answering this question we must keep before us the difference between your constitution and ours, particularly the difference in the character and powers of the executive authority and its relation to the legislative. With you, the President, as the head of the State and the possessor of the executive power, is a real governor, and under your constitution he exercises great and far-reaching powers in the government of the country. Under both the British and Canadian constitutions the executive power is vested in His Majesty, who as head of the State exercises no independent executive authority. He acts only on the advice of his constitutional advisors, called the Cabinet, and it is the Prime Minister and Leader of the Government who is the real head of the executive government of the country. Under this system it is possible for His Majesty to be the possessor of the executive power in all the self-governing nations of the Empire, and in no way to impair their powers of self-government. Your executive power is in no way dependent upon or controlled by the legislative. Your executive may be, and frequently is, out of sympathy with the legislative power; with us, the executive is wholly dependent upon and is controlled by the legislative power. The Prime Minister and his Cabinet are responsible to Parliament, and when they cease to command the confidence of Parliament they must make way for new advisors to His Majesty who do possess the confidence of Parliament. Under this constitutional practice the executive government derives its authority from and must possess the confidence of the House of Commons.

At the time of the American revolution this theory of Cabinet responsibility had not been fully established. There was no generally recognised obligation upon the King to choose only advisors who could command the confidence of Parliament, and he still was a very potent factor in the actual work of government not only

in Great Britain but in all the colonies. But, during the early part of the nineteenth century, the theory of cabinet responsibility to Parliament was firmly established, and executive authority finally passed from the control of the Crown to the control of Parliament.

By this change the Imperial Parliament obtained not only full control over the executive government of Great Britain, but also full control over the executive government of the Colonies. It was this fundamental change which made possible the present development and the continued unity of the British Empire. It thereafter became possible to extend gradually to all the colonies of the Empire possessing representative assemblies the rights of self-government by the simple process of instructing the governor who represented the Crown to act thereafter in all matters covered by his instructions upon the advice of advisors chosen from and possessing the confidence of the majority of the legislative assembly of the colony in question, instead of upon the advice and direction of the British Cabinet. The grant of responsible self-government to the Canadian colonies in 1847 did not involve any new legislative act, or any formal change in our constitution; it only involved a change in policy on the part of the British Government, and the Governor-General, as the representative of His Majesty, ceased to act upon instructions from London, or upon his own views of public policy, and thereafter in all matters of domestic concern affecting Canada, he acted only upon the advice of Advisors who commanded the confidence of the majority of Canadian Parliament. The form of change was simple, but the effect was profound. It meant that for the future the Government of Canada would be by Canadians chosen for the purpose by the people of Canada.

Canadian Confederation—the second great step in our constitutional development—was brought about by conditions not dissimilar from those which resulted in the adoption of your present Federal constitution, namely, the necessity of having some central authority exercising jurisdiction over the whole of Canada and clothed with the necessary legislative and executive power to deal with matters of common concern to all the colonies. Though the new Federal constitution was embodied in an Act of the British Parliament, its terms were settled just as the terms of your constitution were settled—by conference of the representatives of the different colonies and approved by the Parliaments of these colonies.

The third great step whereby the Dominions attained the equality of status with the mother country was the result not of a specific legislative Act, but of a gradual development extending over more than thirty years. The past thirty years has witnessed a trans-

ference of authority from the British to the Canadian government by the same simple process by which the Colonies obtained self-government in domestic affairs. In one important matter after another affecting Canada's external relations Canada has requested and the British Government has conceded that His Majesty should cease to act upon the advice of his British Advisors and should act upon the advice of his Canadian Advisors. And this process has continued until now the whole executive authority in and over Canada has passed from the British Government to the Government of Canada. It is of interest to note that the first international agreement to recognize the right of His Majesty's Canadian Advisors to advise him on foreign affairs is the Boundary Waters Treaty of 1909 between His Majesty and the United States. Article VII provides for the establishment of an International Joint Commission of the United States and Canada composed of six commissioners. The three to represent Canada are to be appointed by His Majesty on the recommendation of the Governor-in-Council of the Dominion of Canada.

It may, I think, be fairly stated that the Commonwealth now consists of a group of self-governing nations of equal status though not of equal power, and India, in which self-government is in process of development, together with many Colonies possessing a greater or less degree of self-government according to their capacity to exercise it, and insofar as not self-governing, or to the extent to which they are not self-governing, the British Parliament makes provision for their government. The unity in vital matters essential to the strength, the security and the peace of the whole depends not upon a central government exercising jurisdiction over the whole, like your National government at Washington, but upon a common spirit and common ideals. The unity is symbolized and expressed through a common Sovereign, a common citizenship, and a common judicial tribunal of final resort for the Dominions, India and the Crown Colonies—the Judicial Committee of the Privy Council.

The absence of a central government, exercising jurisdiction over the whole Commonwealth, is the most fundamental and far-reaching difference between the constitutions of the Britannic and American Commonwealths. It not only vitally affects the Commonwealth, but it affects the relation of the Commonwealth and its members to all other nations.

Co-operation between the self-governing members of the Commonwealth is secured,

Firstly, through the Imperial Conference composed of representatives of the governments of the self-governing members and India,

with consultative but without legislative or executive powers:

Secondly, by cable communications and dispatches between the governments concerned, and

Thirdly, by an exchange of representatives between Great Britain and the Dominions.

The Imperial Conference had its origin in the Colonial Conference in 1887 at the time of Queen Victoria's Diamond Jubilee, but it did not assume its present form until 1907, when the Conference was constituted under a resolution adopted by the then Colonial Conference. The important part of the resolution declares:

That it will be to the advantage of the Empire if a conference to be called the "Imperial Conference" is held every four years, at which questions of common interest may be discussed and considered as between His Majesty's Government and His Governments of the self-governing Dominions beyond the seas. The Prime Minister of the United Kingdom will be ex-officio President and the Prime Ministers of the self-governing Dominions ex-officio members of the Conference . . . that it is desirable to establish a system by which the several governments represented shall be kept informed during periods between the conferences in regard to matters which have been or may be subjects for discussion by means of a permanent secretarial staff charged under the direction of the Secretary of State for the Colonies with the duty of obtaining information for the use of the Conference, of attending to its resolutions, and of conducting correspondence on matters relating to its affairs.

By the approval of this resolution by all the Governments concerned the Conference ceased to be a conference between the Colonial office and the Governments of the self-governing Colonies with the Colonial Secretaries presiding, and became a real Imperial Conference—a conference between His Majesty's Government and the Governments of the self-governing Dominions, presided over by the Prime Minister of the United Kingdom.

It was the Imperial Conference of 1926, so constituted under the resolution of 1907, which made the declaration of the present constitutional status of the Dominions and the Mother Country, with which I opened my address.

It is obvious that Imperial Conferences at which the Prime Ministers of Great Britain and the Dominions meet to discuss matters of common Imperial interest can only be held periodically, and that constant communication and consultation is essential to preserve the unity and security of the whole Commonwealth. Two methods have been agreed upon in principle to achieve this end:

First, frequent communication and exchange of views between the Governments of Great Britain and the Dominions by cable and despatch in reference to matters of common Imperial concern:

Second, the establishment of personal contact between the Governments concerned by the exchange of representatives of a diplomatic character. It is pursuant to this policy that the British Government in 1928 appointed a High Commissioner to Canada, who has taken up his residence in Ottawa, and represents the Government of Great Britain in the Canadian capital in much the same capacity as your Minister represents your Government at Ottawa. In the past the Canadian High Commissioner in London has been principally concerned with questions affecting the business and trade interests of Canada in Great Britain. In future the work of the High Commissioner must take on more and more a diplomatic character, and as the development of our Inter-Imperial relations continues, it will be found that the High Commissioners of the Dominions in London will, in the nature and character of their work, be diplomats to the Court of St. James, though, because of our relationship much more than diplomats, and the Government of Great Britain will be represented in the Dominions by High Commissioners discharging similar functions.

It is admitted by all that existing administrative, legislative and judicial forms are not wholly in accord with the constitutional practice and status as declared by the Imperial Conference in 1926. By gradual development extending over a long period of years legal rights have been regulated and controlled by constitutional practice. At the conference of 1926, however, it was decided that an investigation should be made of the existing administrative, legislative and judicial forms, with a view of considering the changes (if any) which should be made to express more adequately the existing constitutional position and practice. The Conference recognised that the existing status required a modification in the position of the Governor-General.

Until 1926 the Governors-General exercised dual functions. They were representatives of His Majesty in the executive government of the country and they were also the official channel of communication between His Majesty's Government in Great Britain and His Majesty's Government in the Dominions. It was agreed that where any of the Dominions so desired, the Governor-General should cease to be a channel of communication between the governments concerned, and communication between these governments should be direct. Canada desired this change, and the Governor-General of Canada no longer represents the British Government in Canada, but is virtually His Majesty's viceroy in the executive government of Canada, and occupies the same relation to his advisors as His

Majesty does to his advisors in England. As already intimated, the British Government has appointed a High Commissioner to Ottawa, and the Canadian Government has had a High Commissioner in London for years. These constitute the official channel of communication between the two Governments.

Pursuant to the decision of the Imperial Conference of 1926 that an investigation should be made of the administrative legislative and judicial forms which might require modification, a Committee of the Imperial Conference was constituted, which met in London in 1929,

To enquire into, report upon, and make recommendations concerning—

(I.) Existing statutory provisions requiring reservation of Dominion Legislation for the assent of His Majesty or authorizing the disallowance of such legislation.

(II.) a—The present position as to the competence of Dominion Parliament to give their legislation extra-territorial operation.

b—The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order and good government of the Dominion.

(III.) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report.

The Conference also dealt with the question of merchant shipping legislation as affecting merchant shipping in the various parts of the Empire.

In reference to the power of reservation of the Constitutional Committee declared that it would not be in accordance with the constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned.

In other words, the views of the Government of the Dominion concerned should govern in all such matters, and the power of reservation ceases to be operative.

In reference to the power of disallowance of the legislation of the Parliament of Canada, while conferred upon His Majesty under the British North America Act, it has fallen into complete desuetude, and has not been exercised for over half a century. The Constitutional Committee of 1929 has reported in favour of legislation abolishing the right whenever the Dominion so requests.

In view of the conflict in legal opinion as to the extent of the

extra-territorial operation of Dominion legislation, it did not seem possible for the Conference to reach definite conclusions concerning the competence of Dominion Parliaments to give their legislation extra-territorial operation. The Conference therefore agreed .

That the most suitable method of placing the matter beyond the possibility of doubt would be by means of a declaratory enactment by the Parliament of the United Kingdom made with the consent of all the Dominions, in the following terms: "It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

In reference to the Colonial Laws Validity Act (which declared void any Colonial Law which was repugnant to any Act of the Imperial Parliament extending to the Colony to which such law may relate), it was recommended that an Act be passed by the Parliament of the United Kingdom containing the following provision:

"The Colonial Laws Validity Act, 1865, shall cease to apply to any law made by the Parliament of a Dominion."

The Conference also considered the problem which arises from the legal power in the Parliament of the United Kingdom to legislate for the Dominions and the proper method of reconciling the existence of this power with the established constitutional position, and they concluded that the best method of dealing with the matter was to place on record a statement embodying the conventional usage. They therefore recommended that a statement in the following form should be placed on record in the proceedings of the next Imperial Conference:

It would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that no law hereafter made by the Parliament of the United Kingdom shall extend to any Dominion otherwise than at the request and with the consent of that Dominion.

They further recommended that this constitutional convention itself should appear as a formal recital or preamble in the proposed Act of the Parliament of the United Kingdom, and that it should also appear in the enacting part.

The question of the succession to the Throne was also considered by the Conference.

All the members of the Commonwealth are united by common allegiance to the Crown. The Crown is undoubtedly the keystone of the arch of Empire. May one repeat, in it is centered all executive authority, but this authority is only exercised on the advice of Constitutional Advisors possessing the confidence and responsible

to their respective Parliaments. In the self-governing portions of the Empire the Crown is at once the bond of unity and guarantee of freedom and self-government.

It is therefore clear that the succession to the Throne and the Royal Style and Titles are matters of equal concern to all.

The Conference recommended that a constitutional convention should be formally put on record in the following terms:

Inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as for the Parliament of the United Kingdom.

The Conference further recommended that the statement of principles to which I have referred be placed on record in the proceedings of the next Imperial Conference, and that the reference to the succession of the Throne should appear as a formal recital or preamble in the proposed Act to be passed by the Parliament of the United Kingdom.

The report also provides that the proposed Act should contain a declaration to the following effect:

(1) Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand, otherwise than in accordance with the law and constitutional usage and practice heretofore existing.

(2) Nothing in this Act shall be deemed to authorize the Parliaments of the Dominion of Canada and the Commonwealth of Australia to make laws on any matter at present within the authority of the Provinces of Canada or the States of Australia, as the same may be, not being a matter within the authority of the Parliaments or Governments of the Dominion of Canada and of the Commonwealth of Australia respectively.

The Constitutions of the Union of South Africa and the Irish Free State include complete legal powers of constitutional amendment.

In reference to appeals to the Privy Council the report of 1926 stated:

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. It was, however, generally recognized that, where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after consultation and discussion.

The Conference of 1929 considered the question of establishing a tribunal for determining differences between members of the British Commonwealth and reported they were impressed with the advantages which might accrue from the establishment of such a tribunal. They reported:

It was clearly impossible in the time at our disposal to do more than collate various suggestions with regard first to the constitution of such a tribunal; and, secondly, to the jurisdiction which it might exercise. With regard to the former, the prevailing view was that any such tribunal should take the form of an ad hoc body selected from standing panels nominated by the several members of the British Commonwealth. With regard to the latter, there was general agreement that the jurisdiction should be limited to justiciable issues arising between governments. We recommend that the whole subject should be further examined by all the governments.

It is to be hoped that the Governments concerned will give this subject early and favourable consideration.

The report of this Committee has now been submitted to His Majesty's Governments in Great Britain and the self-governing Dominions, and will be considered at an Imperial Conference to be held in London in October next. The report was approved by the Parliament of Canada at its session during the present summer. While no one has the right to anticipate or forecast the conclusions which the Imperial Conference will reach in reference to this most important report dealing with the inter-imperial relations of Great Britain and the Dominions, it is safe to say that no change will be considered that would minimise or weaken the position of Canada under present constitutional practice as declared by the Imperial Conference of 1926.

In these constitutional changes Canada, the oldest and most populous of the Dominions has taken a leading part. The task of the statesmen of the Empire is now so to work out the plans for consultation and co-operation as to ensure the continued unity and security of the Empire as a whole. May one express the hope that as Canada led in the movement for autonomy and equality, she will now lead in the movement for more effective consultation and co-operation.

May I now briefly refer to the second aspect of my subject, namely, Canada's relations with Foreign Countries?

The participation by Canada and the other Dominions in the consideration of questions of foreign policy, particularly those affecting the Dominion itself, has also been a gradual development extending over the past fifty years, but more particularly the past twenty years. The most marked development took place during

the Great War. It was inevitable that as the Dominions grew in population, in trade and in national sentiment, their inhabitants should demand, and in the end should exercise, as large and complete control over their own destinies in their relation to foreign countries as those who resided in the Motherland. It was therefore natural that the control of the Government and Parliament of the United Kingdom over the external relations of the Dominions should come to an end, with the full approval of the Mother Country.

Time will not permit of a review of these developments. I shall deal only with the war period and the following years.

The Imperial Conference due in 1915 was postponed on account of the War, and was not held until 1917. In the meantime, the part which the Dominions had played in the War had changed the whole Imperial situation. In 1917 Mr. Lloyd George, the Prime Minister of the United Kingdom, invited the Prime Minister of the Dominions to full and equal participation with him in the discussion of foreign policy and of plans for the conduct of the War, and for this purpose constituted an Imperial War Cabinet, the functions of which he thus described (17th May, 1917):

. . . that the responsible heads of the governments of the Empire, with those ministers who are specially entrusted with the conduct of imperial policy, should meet together at regular intervals to confer about foreign policy and matters connected therewith, and come to decisions with regard to them which, subject to the control of their own Parliaments, they will then severally execute. By this means they will be able to obtain full information about all aspects of imperial affairs, and to determine by consultation together the policy of the Empire in its most vital aspects, without infringing in any degree the autonomy which its parts at present enjoy.

While the right of the Dominions to participate in the control of foreign policy was thus specifically recognised within the Imperial family, it was not until the Peace Conference that this right was recognised by foreign nations. In view of Canada's part in the World War, the Government and the people of Canada felt that Canada was entitled to direct representation in the Conference which would settle the terms of peace. This representation was duly accorded at the Versailles Conference and Canada and the other Dominions were represented by their Prime Ministers.

Under the Treaty of Versailles, Canada became one of the original members of the League of Nations, and in the year 1927 was elected a member of the Council. Her representative attends the meetings of the Council and participates in the consideration and settlement of all matters that come before the Council.

Canada also became a member of the International Labour Con-

ference constituted under the League of Nations, and at the first Conference held in Washington in 1919, Canada was elected a member of the governing body of the International Labour organization. She subsequently became a permanent member as one of the seven nations of principal industrial importance, and Canada has been a member of the governing body ever since.

Canada has been a member of the Permanent Court of International Justice at its organization, and she took the lead among the nations of the British Commonwealth in promoting adherence to the Protocol, which provides for the compulsory judicial settlement of all juridical questions, between the nations signatories to the Protocol, and Great Britain, the Dominions and India signed the Protocol in the year 1929.

May I pause to pay a tribute to the notable part which your Association and the lawyers of the United States have taken in promoting and supporting the constitution of a Permanent Court of International Justice. We recognise that it was Mr. Elihu Root, your most distinguished and honoured jurist, who, as Secretary of State, instructed Mr. Choate (another distinguished member of your Bar) to present to the second Hague Peace Conference in 1907 the proposal of your Government that a Permanent Court of International Justice should be established, and that your representatives took the lead in settling the lines upon which such a Court should be established. It was Mr. Root, who, as a member of the Commission appointed by the League of Nations in the year 1920, made an invaluable contribution toward framing the statute of the Permanent Court, and it was Mr. Root, who, notwithstanding his advanced years and impaired health, in 1929 journeyed to Europe to consider the amendments to the Statute, and to settle with the representatives of the other powers, a formula under which your Government could protect American interests, and at the same time become a member of the Court. Mr. Root succeeded in his mission and I believe your Government has approved and signed the protocols agreed upon by Mr. Root.

May one express the hope that Mr. Root will live to see, as the crowning triumph of his life's work, your country become a member of the permanent Court, and resume its place of leadership in promoting the Judicial Settlement of International disputes.

To return to my subject: A very significant phase of this constitutional development has been the establishment of Legations and the exchange of ministers between Canada and three foreign powers—the United States, France and Japan.

These legations were established by Canada after consultation with His Majesty's Government in Great Britain, and the Governments of the countries concerned, to meet particular Canadian needs. The Irish Free State and the Union of South Africa have also established legations in several foreign countries.

The Canadian ministers are accredited directly by His Majesty to the heads of foreign states upon the advice of his Canadian constitutional advisors. The Hon. Vincent Massey, as the Canadian Minister to Washington, was accredited by His Majesty to your President, "with the especial object of representing in the United States of America the interests of our Dominion of Canada." As already stated, upon his appointment all Canadian matters which had theretofore been attended to by the British Embassy, passed under the control of the Canadian Legation.

Another change not less significant is in the negotiation, signature and ratification of treaties. This matter was very fully dealt with by the Imperial Conference of 1923, and the action of that Conference was ratified and supplemented by the Conference of 1926.

It was agreed that any Government of the Empire contemplating the negotiation of a treaty with a foreign power should advise the other Governments of the Empire of its intention, so that these Governments might consider and decide whether they were likely to be interested and desired to participate in the negotiations. Procedure was also agreed upon to cover the negotiation and ratification of treaties.

In connection with the "Form of Treaties," a very important change was recommended by the Conference of 1926. The Peace Treaties were signed by plenipotentiaries on behalf of the British Empire, and also by separate plenipotentiaries appointed by His Majesty in respect of the several self-governing Dominions. The effect of the execution of a treaty in this form has been the subject of some considerable discussion. Personally, I have always been of the opinion that in view of the form of the powers given by His Majesty to the representatives of Great Britain and the Dominions respectively, the result of the signature was that the British plenipotentiaries signed for Great Britain and all those portions of the British Empire which did not sign separately.

The Imperial Conference of 1926, however, felt that this form of signature of a treaty was open to misconstructions, and that it was better to bring the form into greater harmony with the practice and the facts. The Conference of 1926 therefore recommended that all treaties

should be made in the names of the Heads of States, and, if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order:—Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India.

One of the first treaties executed in the new form was the Kellogg Peace Pact of 1927.

The Imperial Conference of 1926 also dealt with the representation of Great Britain and the Dominions at International Conferences. No question arises as to Conferences held under the auspices of the League of Nations, because all members are invited to such Conferences. Canada, as a member, attends pursuant to the invitation.

As regards International Conferences summoned by foreign Governments, it was agreed that no rule of general application could be laid down since the nature of the representation must in part, at least, depend on the form of invitation issued by the convening Governments. It was agreed that it was for each part of the Empire to decide whether its particular interests were so involved, having regard to the active obligations which might be imposed by resultant treaties, that they desired to be represented at the Conference, or whether it was content to leave the negotiations in the hands of the part, or parts of the Empire more directly concerned, and to accept the result.

It must be recognised as the Conference of 1926 recognised, that in the sphere of foreign affairs, and also in the sphere of defence, "the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain," the governing consideration being that "neither Great Britain nor the Dominions should be committed to the acceptance of active obligations, except with the definite assent of their own Governments."

You ask, is it possible that an Empire or Commonwealth, the parts of which are so widely separated, and in which the conditions of life are so diverse, and where the several Governments have such complete control over their own destinies, can continue to hold together and to maintain the unity so important to the strength and security of the whole? It is the greatest experiment in democratic co-operative government which this world has ever seen. It bears no real resemblance to any other political organization which has

ever existed or exists to-day. It is not a creation, it is a natural development, a natural growth. As the Imperial Conference declared:

it depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security and progress are among its objects. And though every Dominion now and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Can an Empire or Commonwealth survive with no central government possessing legislative and executive power over the whole? It is of record that the German Emperor and his advisors thought that the Empire was so loosely knit together that at the first shock of war it would dissolve, but the shock of war only bound the constituent nations more closely together, and from the very outbreak of the War until the closing engagement on the morning of the 11th of November, 1918, when Canadian troops recaptured Mons from the German forces, the nations of the Empire acted together as one, for the attainment of the great objectives and ideals for which the Allied and Associated Powers fought in the War. What it was possible to achieve under the stress and sacrifices of war, it should be possible to maintain in the days of peace.

In this great experiment, we know we may be assured of the interest and sympathy, and, I trust, the generous co-operation of the members of your Association. Your Constitution differs fundamentally from ours, but whatever may be the differences in the form of your Constitution and ours, or in the powers and functions of the organs of government which each has established, in real spirit and outlook our two nations should be essentially the same. We share the same historical background, we draw our inspiration from the same sources of law, in literature, and in political experience, and we both stand for justice, ordered liberty and peace.

These are also the great objectives of the British Commonwealth of Nations, and one cannot doubt that in the maintenance of a good understanding and most cordial relations between the peoples of the British Commonwealth and of the United States lies one of the great hopes for the establishment and maintenance of peace, justice and ordered liberty in the world.
