

*Newfoundland*

Lord Buckmaster stated further that the men who had made that country—and he was referring to Great Britain—had brought it to its present state by an unwritten constitution. He said that Great Britain had never had a written constitution of any kind, and that the consequence was not much, despite the serious mistakes which had been made. He pointed out that, so far as possible, they should avoid putting their constitution into the unyielding form of an act of parliament, such as the Statute of Westminster.

Then the Hon. W. L. M. Hughes, formerly prime minister of Australia, gave his views, as they were expressed at the imperial conference of 1921. He said it was unnecessary to lay down in black and white a constitution for the British empire, and pointed out that the United Kingdom has a constitutional structure based upon maxims of one kind or another. There are certain countries that have written constitutions, such as France, the United States, the U.S.S.R., Sweden and Switzerland. Some of the dominions have adopted the Statute of Westminster but for certain reasons New Zealand and Australia did not adopt sections 7 to 13 until recently and Canada also varied them.

I should like to quote an authority on the Statute of Westminster, Professor K. C. Wheare, who is quoted quite often in the House of Commons. In a chapter dealing with the statute and the legal status of Canada he says:

Thus dominion status, after the passing of the Statute of Westminster, as before, though its predominant characteristic is conventional equality of status, contains legal ingredients which are different and are unequal from one dominion to another. Apart from this common ingredient of conventional equality, the recipe differs in each case to a greater or less degree.

And again:

The fundamental fact in the case of the Dominion of Canada was that it was a federation. The powers and functions of the federal and provincial parliaments and governments were demarcated and their existing distribution was guaranteed by an act of the United Kingdom parliament, the British North America Act, 1867. This act was unalterable in essentials by the federal or provincial legislatures in Canada; it was completely alterable by the United Kingdom parliament only. From 1867 to 1930 inclusive, it had been amended seven times by that parliament. No clear rules regulated the procedure by which amendments of the British North America Act, desired by the provincial or federal parliaments in Canada, should be transmitted to and executed by the United Kingdom parliament.

There was one amendment in 1871, one in 1875 and then there were amendments in 1886, 1907, 1915, 1916 and 1930. A committee was appointed in 1935 by my former leader to consider the British North America Act in the light of the changes that had been made.

[Mr. Church.]

Many learned men gave evidence before that committee. I quote again:

But there was not only the question whether amendments should require the request and consent of the dominion parliament as well as of the dominion government. There was the further and more important question whether amendments should require the request and consent of all or of a majority of the provincial parliaments and/or governments. The usage here was that in six out of the seven amendments, action was taken by the United Kingdom parliament as a result of requests from the dominion government or parliament without consulting or seeking the consent of the provinces generally. The amendments of 1871, 1886, and 1915 affected either all or some of the provinces and none of them was consulted. The amendment of 1930 affected certain provinces and these alone were consulted and their consent obtained. The dominion government and parliament evidently did not consider themselves bound by a convention to consult all the provinces or to obtain their consent.

In 1907 they did not consult British Columbia. As I say, various professors gave evidence before Mr. Bennett's committee and they found that some very drastic changes had been made in the whole procedure from that date. I continue:

These possible consequences were taken into consideration by the O.D.L. conference of 1929. It was realized that the question of alternative methods of amending the British North America Act was a matter for future consideration by the appropriate Canadian authorities, and that, pending some agreed change in the process, the existing system should remain unaltered by the Statute of Westminster. It was thought necessary also to make an express declaration that the passing of the statute in no way increased the area of the powers possessed by the dominion parliament in such a way as to authorize the parliament "to make laws on any matter present within the authority of the provinces, not being a matter within the authority of the dominion."

The leader of the government at that time, the Right Hon. R. B. Bennett, was able to secure at the imperial conference in 1931 the inclusion of the following two sections in the statute:

(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 case 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.

I quote again:

The report of the O.D.L. conference was unanimously approved by the Canadian House of Commons in May, 1930, after some criticism by members of the Conservative party, then in opposition. At the general election of July, 1930, the Conservative party, under the leadership of Mr. R. B. Bennett, was returned to power. Before Mr. Bennett left for the