

# INSIDE CANADA

R. ROGERS SMITH

*John Macdonald*

Confidential.

Revised, 23 Jan. 1867.

British North America. 1

DRAFT

OF A

BILL

FOR

The Union of the British North American Colonies, and for the Government of the United Colony.

[*Qr. whether to say the Eastern B. N. A. Colonies.*]

**W**HEREAS <sup>such</sup> the Union of the British North American Colonies ~~for the purpose of Government and Legislation~~ would be attended with great Benefits to the Colonies and be conducive to the interests of the United Kingdom: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

*Whereas the Provinces of Canada N. S. & N. B. have expressed their desire to form a Federal Union for the purposes of Fort and Defense based on the Principles of the British Constitution and*

*Preliminary.*

1. This Act may be cited as The British North America Act, 1867.

[*Here would follow:*

1. Any Interpretation Clause that may be necessary.
2. Clause repealing Imperial and Colonial Acts,

(0.20.)

A

Union.

The previous page is the preliminary draft by the Colonial Office. This means the Domination of the Colony, or the uniting of the Colonies into One Dominion. This is the basis of the **British North American Act**.

On the right is the *desire* of the Provinces to unite into a Federal Union ; which means freedom.

Drafted by John A. Macdonald before he received his title. One draft is diametrically opposed to the other.

This document dates back to **1938** and concerns the way Canadians pretend to govern themselves. And the way it is going in 2006, they are neck deep into illusions.

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### **Is Shakespeare Dead ?, by Mark Twain, § XI, p. 1**

I am aware that when even the brightest mind in our world has been trained up from childhood in a superstition of any kind, it will never be possible for that mind, in its maturity, to examine sincerely, dispassionately, and conscientiously any evidence or any circumstance which shall seem to cast a doubt upon the validity of that superstition.

And whenever we have been furnished a fetish, and have been taught to believe in it, and love it and worship it, and refrain from examining it, *there is no evidence, howsoever clear and strong*, that can persuade us to withdraw from it our loyalty and our devotion.

# INSIDE CANADA

*R. Rogers SMITH*

Dedicated to

CANADA'S NEW DEMOCRACY

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Addressed to

CANADIANS

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This booklet *was* published for the sole purpose of giving to Canadians the true position of Canada's constitutionality. The writer *was* a Canadian of the third generation, *had* no political axe to grind as he *had* no party affiliations, nor *was* he an advocate of any "ism". His efforts *were* dedicated to the best interests of the Canadian people, and the complete and effective unity of all the Canadian Provinces, as a Commonwealth within the British Empire.

*50 page pamphlet*

*Written and published by,*

**R. Rogers SMITH**

*Ottawa, February 1, 1939*

*Digitized in Quebec City Jan. 2006, by jpii@aei.ca*

**C**ANADIANS — The purpose of this pamphlet is to call to your attention a condition in Provincial and Dominion relations, that has brought about an artificial impoverishment of our people.

This chaotic situation is the result of years of indecision on the part of our politicians and statesmen induced by the lack of authority of the Dominion Government over affairs which are vital to our economic welfare and essential to our entity as a nation.

Since 1867 we have been taught in our schools and every artifice has been used to make us believe that there was a Confederation of the Provinces; that our Dominion Government was a Federal Union, and that we were no longer a Colony.

This is an erroneous conception. We were and still are a Dominion, which is only another name for a Colony.

The British North America Act, a statute of the Imperial Parliament uniting the Provinces of Canada, Nova Scotia and New Brunswick into One *Dominion*, received the Royal assent on March 29, 1867. Since then, until the Statute of Westminster was enacted December 11th 1931, Canada was governed by circumstances over which she had no control. Due to the stories of *Confederation* which have no actual basis in fact, Canadians have been under the erroneous impression that Canada governed herself, through her elected representatives. Such is not the case.

Hunger and want in the midst of plenty have convinced Canadians that there is something radically wrong. What is it? Some think the monetary system. Are we not governed by the financial system? Others say: but the financial system could not function unless it had a charter from the Government. Some think **Social Credit** would solve all our ills. Would it? There is an element of truth in many of the suggested reforms. Canadians recognize this, but have a subcutaneous feeling that there are invisible threads controlling them which they are unable to define. **They elect members to Parliament instructed to institute reforms and when their representatives fail to carry out their will, they elect others with the same result.** Is the party system a failure? **YES!** If the party or Government is controlled

by forces over which the elected representatives have no control. Many Canadians would be shocked to think that they themselves are motivated by propaganda and prejudice. *What does prejudice mean?* It means to prejudge, to decide a question on insufficient evidence.

This article will have served its purpose if it causes Canadians to ask questions. An intelligent answer should be forthcoming for every intelligent question. This question is like a wheel and before we can fit a rim we must have a hub and spokes in their proper place. If we leave out some of the spokes we will have a lopsided answer. Not the least of the spokes to this question are the many excerpts taken from the British Hansard.

These excerpts tell us that when our delegates arrived in London with the Quebec Resolutions, December 4th 1866, that Great Britain and the United States were **on the brink of war**. The difficulty was finally settled by the Treaty of Washington in 1871. The Rt. Hon. Sir John A. Macdonald was sworn in as a member of the British Government and appointed a member of the Commission which drafted and signed this treaty. In order to have a clear conception of all the factors which affected the drafting of the British North America Act, we must take into consideration why the Charlottetown Conference was called, also the Quebec and Westminster Palace Hotel Conferences, as well as the vital effect of the *Fenian Raid*. To the casual observer it may appear that these happenings are unrelated, but by piecing them together we find we have a totally different picture than the one heretofore placed before us. Each of these is commented upon here under a separate heading.

By showing the coordination between these apparently unrelated events the writer trusts that he is providing an acceptable service to the Canadian people.

# HAS CANADA A CONSTITUTION ?

On Feb. 10<sup>th</sup>, last year, 1938, Walter F. Kuhl, Member of Parliament (Jasper-Edson, Alberta) in reply to the speech from the Throne, told the House that the British North America Act, supposed to be the Constitution of Canada, was fraudulent. He reiterated his charge on March 9<sup>th</sup>. Again on April 8<sup>th</sup>, he said in the debate on Appeals to the Privy Council : « Lord Carnarvon was chairman of the meeting held prior to the introduction of the B.N.A. Act in the House of Lords, on February 19<sup>th</sup>, 1867. Montague Bernard was recording secretary, and the bill was drafted by Lord Thring.

On the address in reply to the speech from the throne I stated on February 10 that the B.N.A. Act was an intentional misrepresentation of fact, and for that reason was null and void. I do not intend to repeat what I said at the time, but I would simply draw the attention of the House to the fact that no statement which then made has to this date been refuted.

Lord Thring drafted the Colonial Laws Validity Act of June 29, 1865, which act no longer applies to the Dominion of Canada. He having drafted the B.N.A. Act and the Interpretations Act of 1889, I have no hesitation in stating that in my opinion he knew whereof he wrote : and when he draws a distinction between the legislature of a colony and the parliament of Great Britain he means exactly what he says. As regards to those who do not understand the decisions of the privy council, their failure to do so is due, in my opinion, to the fact that they do not differentiate between a parliament and a central legislature of a colony. The main difference between them is that whereas the acts of a parliament cannot be disallowed, the acts of a central legislature can. I desire to draw the attention of the house to the fact that according to Lord Thring this parlia-

ment is a central legislature and nothing more, the members of which should be designated by the letters M.C.L. and not M.P. And this house never was and never can be a parliament of the Canadian people. In the judgement of the Privy Council this house has no treaty-making power, and can have this power only when the provinces confer it. In their judgment they say that Canada, the dominion and the provinces together, have a competency of all power, both legislative and executive. In other words, they tell us that we can govern ourselves ; that we are not subordinate to the imperial parliament. Now, Mr. Speaker, if Canada has a competency of all power to govern, and Canada is composed of nine provinces, there is nothing to prevent the nine provinces from creating a parliament of Canada whose acts would not be subject to the power of disallowance.

I am aware that the Statute of Westminster of December 11, 1931, does not apply to this house ; for nowhere does it apply to the central legislature of a colony. No Parliament of Canada can be created until there is an agreement. As no attempt to refute the statements made by myself in the debate on the address in reply to the speech from the throne on February 10 has been made ; it is conceded that what I said is true.

Some hon. MEMBERS : Oh, oh.

Mr. GRAYDON : May I ask the hon. member a question ? Do I understand him to suggest that this parliament has no status as a legislative body ?

Mr. BENNETT : That is what the hon. member says. [*Why did he answer for W. F. Kuhl ?*]

Mr. FINN : That is what he means.

Mr. KUHL : I believe the hon. Member is justified in drawing that conclusion.

Members of the Dominion House are limited in speaking to forty minutes. Naturally it

was not possible for Mr. Kuhl to cover the subject fully in the time at his disposal. Nevertheless the lasting impression remains in the minds of members present, and of the public who followed Hansard, that he knew whereof he spoke ; the more so as no member has replied to his impeachment, which must be remembered includes himself as well as other members of both Houses.

If self preservation is the first law of nature, Mr. Kuhl acted against his personal best interest in stating that the Dominion Parliament had no status as a legislative body. Having been convinced that the stories of Confederation are fabrications, suppose Mr. Kuhl had refrained ; instead of speaking had kept the knowledge to himself, would this not have been better insofar as he was personally concerned ? If what he said be true, will he not as well as all other members of both Houses in Ottawa be compelled to repay to the Treasury all monies received by them since Dec. 11<sup>th</sup> 1931, or have a judgment registered against them from ever running for office. It is evident that it required more than ordinary courage to present his evidence, to which his closing remarks were : « If the forgoing be true, then I submit the British North America Act is null and void...

In prefacing my remarks I stated that I was speaking not from a partisan point of view or as representing particularly my constituency in Alberta, but as a Canadian representing the people of Canada. I appeal particularly to hon. Members from Ontario and Quebec. From Ontario came William Lyon Mackenzie ; from Quebec, Papineau, who were exiled from Canada for their patriotism, and whose followers were imprisoned and hanged. But by their efforts from 1835 to 1837, Ontario and Quebec achieved the right to govern themselves, by the Act of Union of 1840.

The right of self-government was taken from Canadians by the B.N.A. Act. No longer do we elect our upper house, or the Speaker of the house, and to-day under this act our enactments are subject to the power

of disallowance. The prima facie evidence which I have presented to the house to-day stands upon the record **until it is refuted**. How, may I ask, is the government to proceed to amend an act the preamble of which cannot be proven ? This is manifestly impossible.

I take pleasure, therefore, in placing myself on record in favour of the amendment to the address in reply to the speech from the throne, so far at least as my reference in the speech from the throne concerns an amendment to the B.N.A. Act. The Minister of Labour (Mr. Rogers) and the Minister of Justice (Mr. Lapointe) will agree with me when I suggest an interprovincial conference as they suggested in 1935. That there was no confederation is attested by Doctor Ollivier, Doctor Kennedy, Doctor Skelton, and Doctor Beaudesne, also by the incontestable fact that there was no certified copy of the act in Canada, showing that the provinces of Canada were not consulted. In closing I desire to record my approval of the suggestion made by Doctor Beaudesne, that the provinces chose members for an assembly to construct a constitution, and that the country could be called *The Federated States of Canada* ».

## **INTENTIONALLY MENDACIOUS**

That the British North America Act is not what it pretends to be, and that the history of this circulating in our libraries and schools are intentional misrepresentations of fact, speaks well for the efficiency of the official paid £1200 a year by the British Government to delete from the record anything they think the people should not know.<sup>1</sup>

As this Act not only effects the living conditions of the Canadian people today, but also the destiny of Canada, the speeches of Mr. Kuhl, exposing a fraud which has kept Canadians in the thralldom for seventy years, contain more dynamite than anything likely to be exposed by the investigation of the "Bren Gun" contract.

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<sup>1</sup> See appendix 1.

People do not like to know they have been fooled, but when the eminent men listed below agree that Mr. Kuhl is correct, it is time action is taken to straighten out our affairs. Dr. W.P.M. Kennedy, professor of Law and Dean of Toronto University ; Dr. Arthur Beausnesne, K.C., C.M.G., LL.D., Clerk of the House of Commons ; Dr. Norman McL. Rogers, Professor of Political Science and Minister of Labour in the present Cabinet ; Dr. O.D. Skelton, Under-Secretary of State for External Affairs ; and Dr. Ollivier, Joint-Law Clerk of the House of Commons, all agree that no Confederation of the provinces has been consummated.

Before coming East, in a conversation with Chief Justice Auley Morrison of the Supreme Court of British Columbia, I requested to be shown a certified copy of the B.N.A. Act. "We have none in our library and I doubt that you will find one anywhere except of course at Ottawa", he informed me. "Very well ! I am going to Ottawa and will look it up". On my arrival, I went first to the Archives to examine the minutes of the meetings at which the "Quebec Resolutions" were drafted by our Canadian delegates and later redrafted by them in the Westminster Palace Hotel in London, into a "Bill" to be presented to the Imperial Parliament. After examining these, the Custodian of the Manuscripts (Colonel Hamilton) informed me that the late John S. Ewart, K.C., and myself were the only Canadians who had asked to see them, in the many years he had been in charge ; although two British Army officers had reviewed them with apparent interest.

Each Canadian delegate had written his name across the top of his papers, had appended his corrections — but there were none signed at the bottom, individually or collectively, which to say the least was odd. My next request was to be shown a certified copy of the Act.

"We would not have that here", he told me. "The Act is still in force, you had better apply to the Privy Council ; as I know Mr. Lemaire, clerk of the Privy Council, I will

arrange for an appointment by telephone ; what time would best suit you? About half-past one? Very good".

I was most courteously received by Mr. Lemaire, who regretted he was unable to oblige me, but delegated his secretary to conduct me to the office of the Governor General, where no doubt I would locate it. After introductions, no hesitation was shown by Mr. Periera, Chief-Secy.; he immediately wrote a note on Governor General stationery, handed it to me, to present to the Parliamentary Library.

At the Library I was smilingly informed, I was searching for a most valuable document ; much too precious to be entrusted to their custody, but if I applied to the Secretary of State no doubt I would be permitted to examine it. Where would I find him ? In the West Block. Repairing thither, and presenting myself to Mr. Coleman, Under-Secretary, I repeated my request. "Not that I know of, and I think I know all the papers here ; we have the Great Seal of Canada if you would care to see that". Telling I was not particularly interested ; just wanted to see a certified copy of the "Constitution of Canada". "Just a moment", pushing a call-button Mr. Coleman summoned an assistant ; when he seemed nonplussed at the request, Mr. Coleman suggested that he see Mr. So-and-so and Mr. So-and-so, pointing upwards. Half an hour later he returned reporting no success. "I thought I knew all the papers here", remarked Mr. Coleman, "you better see Dr. Beausnesne, Clerk of the House of Commons, in the Centre Block ; he is an authority on the Act, and if he does not have it, will know where it is".

Feeling elated, I sought the Doctor. "Why would I have it? I have no important papers here. The man you should see is Mr. Blount, Clerk of the Senate. He has a fireproof vault where all such valuable documents are kept under lock-and-key", he informed me.

Ah! At last I would see the "Ten Commandments". I would be admitted to the inner sanctum ; see with my own eyes this precious paper, signed by the "Fathers of

Confederation” or at least a certified copy of the Act. As gently as possible Mr. Blount, (who knew all the time my search was useless) told me I had him very much interested, showed commendable surprise that I had not found it in all the places I had been, but if I would care to look, he would have the vault opened. Buttoning for an assistant who brought the keys, we descended, unlocked the vault and with the help of a step-ladder, lowered and searched first the case marked 1867, then 1868. Crestfallen I turned to leave. Sensing my disappointment Mr. Blount endeavoured to soften the blow by diverting my attention to the “certified” gallon measure in bronze, the “certified” platinum ounce and pound, and reposing in another case, the “certified” inch, foot and yard. Recovering somewhat from the shock of frustration, I suggested that the Act may have been burnt in the fire which destroyed the Parliament Buildings in 1916. “No” I was told, “We saved all important papers and documents. Nothing was lost except some paintings in the galleries. Some of these books and papers are discoloured by water as you notice, but we saved all documents, and of course the Library”.

“Was this Act ever placed before the Senate?” was my next question. “We would have to look up the Journal”. Returning to Mr. Blount’s office we examined this as well as some beautiful hand-illustrated volumes without success. “Is there a record of the Act having been placed before Parliament?” “You will have to ask Mr. Beauchesne”.

Retracing my steps, through corridors of lofty fluted columns, past the pictures of leaders long-since gone to their no-doubt just reward, past the plaques dedicated to our heroes and the busts or our great men ; again I sought the Doctor’s office. Together we searched the Journal, again without success. “Well ! Doctor, before coming to Ottawa, the Chief Justice of our province assured me that I would find a “certified” copy of the Act here. If it were in Canada, it would be here. Then Doctor, I think it is safe to assume for the purpose of my investigation,

that no “certified copy” of this Act was ever brought to Canada. Is that correct?” “I am very much afraid you are correct”; was the Doctor’s reply.

Later, having occasion to visit the Archives ; Dr. Kenny, Dominion Archivist, said, that as so many had written him if this were true, he was sending to London for a photostatic copy. Considerable space was devoted to this in the press when it arrived, although the main point was missed, which is ; that no copy, certified or otherwise had ever been placed before the legislature of the provinces, for their consideration or consent. If this had been done, there would have been no necessity for Dr. Kenny sending to London for a photo static copy. Everyone knows that the Constitution of a Confederation must obtain the signatures of all parties to the agreement. Another point which the photo static copy plainly proves, and one which has almost given many Judges nervous prostration, is that the wording in Section 12, is : “The *Queen’s Privy Council* for Canada” whereas the “authorized version of the King’s Printer for Canada, reads : “The *Queen’s Privy* for Canada”. Rather a typographical oddity, is it not? However the King’s Printer need not feel too mortified, he may be more correct than he is aware.

Any dignified student can tell you that an error excludes a statute from evidence that can be submitted to the Courts of Law. This disposes of the King’s Printers’ version, but not the original Act. This can only be proven fraudulent, “from the word themselves and the manner in which the words are used”. Can this be done? It can and it will be. First, let us examine history in connection with this Act.

The following story, which since has been completely verified by myself, was told me by the late **T.W. Jackson**, a former secretary to Sir John A. Macdonald. He had been commissioned by Sir John after the Riel Rebellion to settle the trouble with the Indians at Fort Qu’Appelle, in the North West Territories. The “Judge” as he was generally

known to the people of British Columbia, took a fatherly interest in me, as I happened to be one of the first white children born at Fort Qu'Appelle. This combined with the attributes of a good listener, having a retentive memory, induced the "Judge" to tell me many things about the circumstances surrounding the drafting of the B.N.A. Act which are not in the books. Not all at one time, but bit-by-bit as I sat in his office, he unfolded his story.

About 1864, when a boy of nineteen Jackson was hired as a secretary by Atty-Gen. John A. Macdonald, when the man who later became the Rt. Hon. Sir John, was the leader of the Tory Party in the United Legislature. Of Irish descent the judge was a born diplomat and as there was a dead-lock in the House at the time, John A. Macdonald instructed him to contact George Brown, leader of the Grits, to find out if Brown were willing to discuss with Galt and himself the creation of a Federal Union of the provinces. Brown consented and the next day walked half-way across the floor of the House, to meet him. It was agreed that Brown was to meet Galt and himself in conference in the St. Louis Hotel, Quebec City. To prevent any future misunderstanding, George Brown taking a pen, wrote across the bottom of their agreement: "Constituted on the well understood principles of Federal Union". This means that any agreement reached by the officials must be submitted to the electors for their consent, which when ratified by them becomes the "Constitution".

Later, when the Quebec Resolutions were being discussed in the House, Nov. 23<sup>rd</sup>, 1864, Galt said: "In any event the scheme will be submitted to the people for their consent".

### CREATING A FEDERAL UNION

(Why the principles of Federal Union were so well understood at the time, is because a *Civil War* was raging between the Confederacy and the Federal Union in the United States.) Confederation is usually the first step in the creation of a Federal Union.

*It is like forming a syndicate, before applying for a charter of a company. It is a convention which has not yet received the ratification of those who possess the sovereignty.*

After the people ratify the Constitution, the Public Debt, the defence of the realms, viz, the Army and Navy, devolve upon the Federal Government, which is granted certain means of collecting taxes to defray these expenses. Naturally if some States forming such a Union **secede**, their action leaves the others to **hold the bag**. The others have a right to object, and a right to enforce by a resort to arms the articles of the Constitution, resulting as it did in the United States to *Civil War*.

South Carolina was the first to declare secession, British Counsel Bruce, of Charleston was the go-between, between Great Britain and the Confederate States, being rewarded after the war was over by promotion to the post of Counsel General to Cuba.

### THE SOUTH'S BELLIGERENCY

Great Britain almost immediately recognized the belligerency of the Southern States, established a depot of supplies for them at Nassau, underwrote the bonds of the Confederacy, which were to be redeemed by cotton, the proceeds of which were used to build and equip a Navy, the headquarters of which was in Liverpool. Confederate bonds marked in England (never redeemed) paid for the building of the *Alabama, Georgia, Florida, Shenandoah, Tallahassee, Clustee, Chickamauga, Sea King, etc.*, and their auxiliaries, which were launched not to fight battles, but to sink unprotected American shipping. They were armed with Armstrong, Whitworth and Blakeley, heavy rifled cannon of the most improved patterns. All these ships were British from keel to mast-head, loaded with stores and ammunition and with a British crew. They hoisted the Confederate flag and during the Civil War, captured, plundered and burnt American vessels. Fourteen whalers were sunk in Bering Sea by the Shenandoah after the war was over.

Horace Greely records in his "Conflict of the Americas" that: "The first shot fired at

Fort Sumter was by an English gun". He says further, "Their devices for obstructing rivers and harbours were unsurpassed in efficiency, but more especially in constructing, charging and planting torpedoes, wherewith they did more damage to blockaders and besieging squadrons than had been effected in any former war".

### CONQUEST OF MEXICO

On Oct. 31, 1861, a convention was held in London attended by France, Spain, Austria and England, presumably to discuss the collecting from Mexico of a \$10,000,000 debt, but in reality to embarrass the United States, for when Lincoln offered to pay Mexico's debt they refused to accept.<sup>2</sup> The Spanish fleet at the time in Cuban waters invested Vera Cruz, Mexico, Dec. 18, joined by the British and French fleets Jan. 7 and 8, 1862. Napoleon III disembarked 30,000 troops at Vera Cruz and succeeded in placing Maximilian, half-brother of Franz Joseph of Austria, on the throne as Emperor of Mexico. This scheme, for which Disraeli is given the credit of being the originator, was, when the North under Lincoln was beaten, that the allies were to divide North America between them, except for the South which would be independent and retain their slaves; the trade in which at the time was most profitable to certain British shipping. The Czar of Russia who owned Alaska now took a hand. He was in sympathy with Lincoln, having himself freed the slaves of Russia two years previously. He sent his Baltic Squadron to New York City, and his Pacific Squadron to San Francisco Bay. It will be remembered that this was shortly after the Crimean War 1854 – 1856, when he had been attacked by Britain, France, Sardinia and Turkey, to prevent him from achieving his ambition of having a port on the Mediterranean.

Mr. Cobden in a speech in the House of Commons, May 4, 1864, Par. Debates, Vol. 175, p. 505, said: "What did Russia do? She sent her fleet immediately to America, and

knowing the astute and longheaded men who rule at St. Petersburg, does anybody doubt what the motive was? ... no doubt with the intention of putting those crews into the swiftest vessels that could be obtained both on the Atlantic and Pacific side, in order that they might be employed against our commerce".

The Czar's threat proved effective, the Spanish and British fleets withdrew from Mexico, leaving France alone to support Emperor Maximilian. When Lincoln after the war in 1865, ordered Napoleon to withdraw his troops as this conflicted with the Monroe Doctrine, and started an army for the Mexican border; Napoleon recalled his troops. Left without support Emperor Maximilian was captured and with two of his Generals executed in a park in Mexico City, June 19, 1867.

Naturally it was against the best interests of the Czar to permit his former enemies to control North America. This would be a perpetual threat to his possession Alaska; which by the way was sold to the United States for \$7,200,000, the day after Queen Victoria assented to the British North America Act. She signed the Act March 29, 1867. The sale of Alaska was made March 30, 1867.

### THE ALASKAN BOUNDARY

Diverting from the main subject for a moment; it is not generally known, that, once when Great Britain was at war, Canada was at peace with the enemy. During the Crimean War a peace treaty was signed between the Hudson's Bay Co., on the one hand and the Russians who governed Alaska on the other. A map was produced showing the boundary between Alaska and British Columbia (*New Caledonia at the time*). Henri Bourassa, who was appointed by Sir Wilfrid Laurier in 1911 with a « watching brief » to the Alaska Boundary Commission, told me that the « British Commissioners were not responsible for the Boundary being where it is », for this map showing the boundary as it is today was a part of the *Treaty of St. Petersburg, 1825* and was the

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<sup>2</sup> Appendix 2.

basis of the sale of Alaska to the United States. All that was decided in 1911 was the ownership of four small islands at the mouth of Portland Canal. Two going to the United States and the other two to Canada.

### **REASONS for the B.N.A. Act**

The British North America Act is more the product of the relationship between Great Britain and the United States, than it is the result of any deliberations or suggestions emanating from Canadian delegates. John Bright in discussing this relationship in the British House, March 13, 1865, *Parl. Debates*, 3 Series, Vol. 177, page 1616, said:

“Well now if there comes a war, in which Canada shall suffer and be made a victim, it will be a war got up between the Government in Washington and the Government in London... I say there is no generous and high-minded man who could look back upon the transactions of the past four years without a feeling of sorrow at the course we have pursued on some particular occasions. Going back nearly four years we recollect what occurred when the news arrived of the first shot having been fired at Fort Sumter. That I think was about April 12th. Immediately after that time it was announced that a new Minister was coming to this country. **Mr. Dallas** had intimated to the Government that he did not represent the new President; he would rather not undertake anything of importance; but that his successor was on his way and would arrive on such a day. When a man leaves New York on a given day you can calculate to about 12 hours when he will arrive in London. **Mr. Adams** I think arrived in London about May 13<sup>th</sup>, and when he opened his paper the next morning he found the proclamation of neutrality acknowledging the belligerent rights of the South. I say the proper course to have taken would have been to wait until Mr. Adams arrived here, and to have discussed the matter with him in a friendly manner.

Then I come to the last thing I shall mention... to the question of the ships which have been preying on the commerce of the United States. I shall confine myself to that one ship the *Alabama*. She was built in this country. All her munitions of war were from this country. Al-

most every man aboard her was a subject of His Majesty. She sailed from one of our chief ports. She is reported to have been built by a firm in whom the Member of this House was and I presume is interested ...that the Member for Birkenhead (Mr. Laird) looks admiringly upon the greatest example which men have ever seen of the **greatest crime** which men have ever committed...

*Par. Debates*, Feb. 23, 1866, 3 Series, Vol. 181, page 1001 : —

**Mr. Laing:** There could be no doubt that after what had passed during the late contest in America, we should be at the mercy of any maritime power with which we might enter into war, it would be impossible for us to engage in such a war without exposing our great mercantile fleet to destruction. The operation of the *Alabama* had caused one-third of the whole tonnage of New York to be transferred to foreign flags; and what he would ask would be our position with a hundred *Alabamas* issuing from a variety of ports to prey upon our commerce.

**Mr. Shaw Lefebvre :** (P. 1994) “The Confederate Government sent their agents over here early in the war and directed them to fit out privateers... The *Shenandoah* was fitted out in the port of London, and a vessel called the *Laurel* was sent out from another port to meet her on the high seas... When these two vessels got to Madeira they sailed to a desert island called Desertas, and there in Portuguese waters, but still he believed utterly unknown to the Portuguese, they transferred the armament from the *Laurel* to the *Shenandoah*. The men were mustered on deck and the Captain said to them: “I don’t intend to fight. Anyone can see this vessel was not made for fighting. I intend to run away rather than fight. My orders are to destroy the Federal commerce by destroying as far as I can the vessels that carry it”. In pursuance of those instructions the *Shenandoah* burnt all the vessels it could find on its way to Melbourne. When it got there it was hospitably received by the authorities, and remained for something like three weeks. Repairs were executed, and eventually it sailed thence, having been enabled in the meantime to enlist some fifty or sixty men in addition to the

crew it had already. Then it sailed to the Arctic seas, burning on its way all the whaling vessels which it found, and putting the crews on shore among the savages. It then proceeded to Bering Straits, where, long after the war was in point of fact over, it destroyed fourteen whaling vessels. The effect of that was to more than double the price of Sperm Oil... Half the whalers were destroyed, and the price of Sperm Oil more than doubled; the consequence of which was, as we were the chief consumers of Sperm Oil the loss fell on this country. The whalers having insured one another did not realize the loss. Those who had Sperm Oil got more than double price and those who had not were insured against loss...

### DEBATE ON COL. JERVOIS' REPORT

Colonel Jervis had been sent to Canada to report on defence, which was discussed March 13, 1865, p. 1539-1635. Nearly 100 pages are devoted to this of which the following is typical and expresses the consensus of opinion :

**Mr. Lowe** (p. 1582) :— I cannot conceive why we should enter into arrangements to keep these troops in Canada. There is another consideration which to me seems a most powerful one. When we once go to war with America it may be about Canada; will Canada be the best place to carry on the war? In such a struggle we must consider not merely local but Imperial interests; we must wage war in the mode least likely to injure the forces of the Empire, and strike at points which are vital to the interest of our antagonist. If we allow the Americans to lead us, if we follow them to the points they choose to attack; points after all only of local and subordinate interest leaving unguarded other places which are of Imperial importance, such a policy would end in certain failure and disaster... As far as military considerations go, therefore, my conclusion is that it would be unwise and indeed impossible for us to retain any force worth speaking of in Canada, in the event of so great and awful a struggle as that between this country and America, that we should want all our troops for the defence of these Islands, or for

other points more essential to us, and partaking more of the “*arx imperii*” than Canada... I should think that Bermuda and Halifax were much more important than any point in Canada, not for the sake of the places themselves, but because the whole safety of our fleets in North American waters would depend on these two places. In the same way it would be necessary to defend certain points in the West Indies for the protection of our ships. I apprehend, therefore, that we should act imprudently in case of war in keeping our troops in Canada. But if we would not be prudent to keep our troops there in time of war, is it right or is it wise to keep them there in time of peace, thereby encouraging the Canadians to believe that they will have these troops if war should break out, though we know, at least those who take my view know, that the necessary result of a war, which begins with the invasion of Canada, must, if we are true to Imperial interests, be the speedy withdrawal of these troops. I say, that unless you are prepared to maintain that the same force should be kept in Canada in war as in peace. It is wrong to retain our troops there now because we are thereby urging the Canadians under false pretences. Better they should know the truth at once, know that they and not we are to fight the Americans; that, with our small army, we should, as we did in the Crimean campaign, soon feel the wear and tear to be so severe that we should be compelled to withdraw our troops from Canada for our own protection.<sup>3</sup>

**Mr. White:** ... The Rt. Hon. Gentleman for Calne (Mr. Lowe) represented the opinion of every one whose opinion was worth having, when he spoke of the utter impossibility of holding Canada without an expenditure of money and blood on the part of Great Britain fearful to contemplate.<sup>4</sup>

**Lord Robert Cecil:** In discussing this question it seems to me we have not thought of the interests of the people of Canada.

Now, the people of Canada have a solid and real danger before them. What presses on them is not the question of the British Empire, whether British honour shall be maintained or

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<sup>3</sup>. *Ibid.* p. 1582.

<sup>4</sup>. *Ibid.* p. 1589.

not, but the question of their own lives, their own homesteads, their own property; and what they want to know is whether England is prepared to back them up, or whether she is not prepared to do so. And what answer do they receive? The Secretary for the Colonies gives generous and large spoken promises, destitute as it seems to me of any definite value, but still showing most amiable intentions... The Hon. Member for Stockport (Watkin) says: "You are bound to defend the frontier of Canada." Another Hon. Member says: "The Government are merely bound to protect a few fortified points." The Rt. Hon. for Calne (Mr. Lowe) says: "Canada will best be defended by abandoning her altogether and attacking the Americans somewhere else, or defending the British Empire somewhere else; so that if we amassed a force to defend the Isle of Wight we should be defending Canada". But the Hon. Member for the Tower Hamlets (Mr. Ayerton) says: "The best way to defend Canada is never to quarrel with the United States." But what the people of Canada want to know is, suppose we do quarrel with the United States, what will happen to them? They know that the House of Commons is the source of all political power, that it directs the policy of this country, and they will study the records of this debate with the anxious interest of men whose lives and interests are at stake.

5

**Mr. Bright:** ("Let us take care of ourselves.") That is a fifth suggestion. The Hon. Member for Birmingham says: "The best course for this country would be to take care of ourselves." What I desire to impress upon the House is that ambiguity and uncertainty is more dangerous to the interests, more fatal to the honour of England than any other course you could adopt. You are bound to let the Canadians know, not by any vague generalities, not by mere generous and amiable sentiments, but in a business-like manner, and in accurate debate, what is the precise assistance they may expect from you, so that they may know how to conduct themselves accordingly. If you say you will defend them abandoning them altogether, perhaps they may think the best means of defending themselves is by abandoning you. If you tell them you will defend them on con-

dition of their giving you the power to call out auxiliary forces from amongst them, they will know exactly what you require and what they must do to earn your aid. But, as the matter now stands, as far as I understand from the Secretary for the Colonies, we are not going to defend Canada as we should defend Scotland, as being an integral part of the British Empire, but with the admission to Canada that her defences must depend mainly upon herself. That seems to me an indefinite liability contingent on a perfectly indefinite condition.

If Canada now trusts to the vague promises of the Secretary of the Colonies, and allows herself to be drawn into a quarrel with the United States... and I agree with the Hon. Member for Horsham, the quarrel will not be with Canada but with England, I fear that the disastrous scenes of last year will be repeated over again. We shall see the enormous danger; we shall have 300,000 men at the frontier, with a nucleus of 10,000 to oppose them, and 20,000 volunteers.

And when we are face to face with the difficulty we shall inquire what amount of obligation we have to Canada and what we have promised; the Secretary for the Colonies will then open *Hansard*, and find his speech delightfully vague, and then we shall look back to our dispatches on the subject, and find there is no definite promise that can be diplomatically enforced; and then perhaps shall persuade ourselves that Canada is best defended by abandoning Canada altogether, and the best is to leave her inhabitants to the mild and paternal rule of the United States. Whatever you do, let Canada know distinctly the conditions under which you are prepared to aid her, the extent to which you will go, and how far you do not regard her as an integral portion of the British Empire.

When you have made up your minds on that point and recorded your determination in some formal document, you will be able to look forward without fear to any change the future may bring, you will be prepared to do your duty as you have defined it, and act up to the pledges you have given. ...

Mr. Thomas Hughes, (p. 1053) : — "He did not wonder at the soreness of the Americans or at their saying that the lion's paw was the only

<sup>5</sup>. *Ibid.* p. 1611.

law with John Bull That whether right or wrong we would have our way, and would not submit to an impartial tribunal. It has been said that the American Government had treated France and Spain in a very different manner to that in which they have treated this country, and he believed that to have been the case, but France and Spain have treated America in a different manner from that pursued by this country, and had allowed no *Alabama* to leave their shores ; (Cries of Oh! Oh!).

Hon. Gentlemen might say Oh! Oh! But had he believed taken more trouble to understand America than most Gentlemen in that House.

He could not see what reason we had to refuse to go to arbitration, though he refrained from expressing an opinion as to whether that tribunal would decide we were right or wrong. The complaint of America was simply this, that we somehow or other, whether rightly or wrongly, allowed certain vessels to escape from our ports, and to prey upon their commerce, and when they asked for an impartial tribunal of arbitration we refused it”.

[British Commons Parliamentary Debates 1871, 3<sup>rd</sup> Series, Vol. 215. p. 332 :](#)

Question of the Prime Minister by Lord Houghton : — “He would ask his noble friend, whether he is aware of the rumour that the present Russian Minister to the United States of America has stated that the British Government was only prevented from recognizing the independence of the Southern Confederacy by the influence and mediation of Russia”.

Earl Granville:— “The rumour to which my noble friend (Lord Houghton) has alluded has certainly reached me but I trust, that like many other rumours it is unfounded — for any such statement would be founded on a complete misapprehension of the facts...”

The apparent weakness of the above interrogation and reply are evidence that both the question and the answer were inspired.

There can be little doubt that before the Russian Ambassador to the United States volunteered this astounding information, that he had in his possession the evidence to support his statement.

An explanation, if one be necessary for the extensive quotations from British Hansard, is, that it is essential to show the relationship between Great Britain, the United States and Russia ; further to show that this was recognized by the British Parliament.

# THE CHARLOTTETOWN CONFERENCE

Sept. 1<sup>st</sup> 1864

The provinces of Nova Scotia, Prince Edward Island and New Brunswick were watching events with more than ordinary interest. The policy pursued by Great Britain in building ships, on which the confederate flag was flown, but armed by British guns and manned by British subjects, was deprecated in the Maritime provinces. This policy had resulted in the United States having abrogated the Reciprocity Treaty which had been in effect since 1854. The loss of free-trade which had been so beneficial to them was deplored ; the more so as it was through no fault of their own. The next important events were a deciding factor. In August 1864, the *Tallahassee* sailed up the coast and in ten days sank 33 vessels off the shores of Maine and Nova Scotia, while the *Chickamauga* in a short cruise burned small trading vessels to a value of \$500,000. These vessels traded between the West Indies and the Northern States ; calling at Halifax, Charlottetown and St. John.

The captains had many influential friends in the Maritimes, where the crews were familiar figures on the streets of the provincial ports.

This was a heavy blow to the Maritimes, as much so as if the ships were their own. No time was lost. Although Joseph Howe, the recognized leader of the movement for a Federal Union was on a tour of inspection of the fisheries of Newfoundland, a conference was called to be held September 1, at Charlottetown, Prince Edward Island. Nearly every delegate attending this conference had a friend who had lost a ship.

Upper and Lower Canada (now Ontario and Quebec), hearing that a conference was to be held, sent a delegation which, when they were heard, prevailed upon those assembled to adjourn their meeting and to re-assemble again for a conference at which all provinces should be represented, to be held in Quebec City, Oct. 10, 1864.

# THE QUEBEC CONFERENCE

Oct. 10, 1864

All Canadian provinces as well as Newfoundland were represented at this conference. Thirty-three delegates sat around a massive oak table, now to be found in the Legislative Library at Regina, and drafted what is known as the Quebec Resolutions.

After debating the merits of a Legislative Union, a Confederacy, and a Federal Union, the matter was decided upon as being most conducive to harmony, as in such a Union all diversified interests of the Provinces could be properly represented. This principle therefore was carried unanimously.

It was resolved that: —

“The best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown of Great Britain, provided such Union can be effected on principles just to the several Provinces”.

As a Federal Union can be created only by the people adopting a Constitution: Section 70 provided that:—

“The *Sanction* of the Imperial and Local Parliaments shall be sought for the Union of the Provinces, on the principles adopted by the Conference.”.

It will be noted that it was the “*sanction*” which was to be sought; it was not intimated that it was within the power of either the Imperial or Local Parliaments to create such a Union.

Having unanimously adopted the Resolutions the delegates toured the provinces and everywhere were enthusiastically received by the Universities, the people and the Press.

The United Legislature of Ontario and Quebec “sanctioned” the Resolutions, March 13, 1865 — but it was not until 1866 that they were accepted by the Maritimes.

The next step was to request the “sanction” of the Imperial Parliament; to this end the delegates were to journey to London. It was

arranged that they should leave Canada the latter part of July. The Maritime delegates, with Tilly as leader kept to this schedule, but as the Fenian Raids occurred June 1<sup>st</sup> 1866, the delegates from Upper and Lower Canada were detained.

Apparently it was held that, it would not be necessary for all the delegates to attend in London, for Atty.-Gen. John A. Macdonald wrote to Tilly on the eve of departure of the Maritime delegates:...

“On no account change any of the provisions of the Resolutions; for if you do it may mean the reopening of the negotiations with the provinces and the consequent disruption of our plans”.

This, however, was not to be: Lord Carnarvon, Secy. for the Colonies thought that Atty. Gen. John A. Macdonald should attend and the consequence was that the delegates from the Maritimes “cooled their heels” in London until his arrival Dec. 3, 1866. The next day, Dec. 4, 1866, he convened the delegates in the Westminster Palace Hotel for the purpose of incorporating the Resolutions into a draft “Bill” to be presented to Parliament requesting their *sanction* for a Federal Union of the Provinces of Canada, Nova Scotia and New Brunswick.

The first draft in the hand-writing of John A. Macdonald is on view in a glass case in the Dominion Archives. This is substantially the same as that which was later revised Jan. 23, 1866, of which the first page is reproduced on the outside cover and on page 22 of this pamphlet.

# THE FENIAN RAID

June 1<sup>st</sup> 1866

As the grey dawn of day was breaking on the morning of the 1<sup>st</sup> of June the Fenian Transports started across the river. The troops consisted of one Brigade of the Irish Republican Army, under the command of Gen. John O'Neil, a veteran soldier who had seen much service and hard fighting in the Civil War... It was asserted in the press of the United States and proclaimed by the Fenians themselves at the time, that Andrew Jackson, (President of the United States) and Secy. of State Seward openly encouraged the invasion for the purpose of turning it to political account in the settlement of the Alabama Claims with Great Britain.

This raid by Gen. O'Neil was no surprise to Great Britain, as for over two years Members of the House of Commons had brought this matter before the Government urging them to arbitrate.

The record from British Hansard shows that Great Britain was fully informed that Canada was in jeopardy — that in no way was Canada at fault — that she did not consider Canada as an integral part of the British Empire and that she would defend Canada only if it were to her Imperial interests to do so ; but when it was realized by the Government that in losing Canada she herself would be in the greatest jeopardy they hasten to agree to the demands of the Federal Union of the United States for an impartial tribunal of arbitration.

Following are a few of the many references to this taken from Hansard :— [May 4, 1864](#) ([Par. Debates, p. 474](#)) **Mr. Baring** urged Great Britain to settle the dispute with the States. He said:—

“We could do it now without giving rise to any idea that we have been threatened. If we do it now we may save ourselves, while if it is delayed we cannot avoid retribution hereafter. If we miss this opportunity, what we do in time of peace will not be accepted when war comes.

**Mr. Cobden**, ([p.500](#)) drew the attention of the House to the situation :—

“Recollect her geographical position. She has one sea coast on the Atlantic and another on the Pacific, and her Pacific coast is within about a fortnight's steaming of the China trade. Let any man read the shipping list from Shanghai : it is almost like reading the Liverpool shipping list. Suppose then, you were at war with any other power, and you have laid down this doctrine, for other countries to imitate : why, let the American be as true and loyal to its principle of neutrality as it has been, can you doubt, if American nature is English nature, that out of their innumerable creeks and harbours, there will not be persons to send forth fleet steamers to prey upon our commerce ? Why, many Americans will think it an act of absolute patriotism to do this. They will say : “We have lost our mercantile marine through your doing this, and by doing the same thing toward you we will recover it again, and you will be placed in the same position as we were”. “You will have a high rate of insurance; you will be obliged to sell your ships : you had the profits before, now we shall have it, for this game is one that two can play at”.

**Mr. Seymour-Fitzgerald** :— “I shall read an extract from a letter dated New York, Feb. 1865 :— “An American firm of boat builders in London have received an order from the Federal Government for the construction of forty steam launches or gun-boats, to be forty-five feet in length, fifteen feet deep, on the double-screw principle, with high pressure engines, to carry one gun each, and to move in a small draught of water, it is unnecessary to point out how mischievous such gun-boats may be, with great speed, and will be capable of acting vigorously in shallows and creeks. Already five of these formidable wasps as they are called, have arrived out in the States, and the remainder is to follow when they are completed. If my information be correct, and I have no doubt it is ; they are packed in cases in

London, and will arrive here in such condition as to render it a matter of no difficulty to transfer them by means of a double truck to Buffalo”.

**Mr. W.E. Foster** (p. 1556):— “We all know that a statesman who is not only respected by his own party, but by members sitting on this side of the House, has taken occasion to express fears of an immediate war with the United States in a more urgent manner and with a much less conciliatory spirit than the Hon. Gentleman, the Earl of Derby, in the House of Lords (“Order”) Well! When eminent statesmen in the position of Lord Derby come forward and express their fears in such language as this, can we wonder that they are felt throughout the country”.

**Mr. Seymour-Fitzgerald**, (p. 1554):— “I ask the House what has been our position during the last three years... During that time at any moment, in consequence of intemperate order of an injudicious commander, or of some event striking alarm into the minds of the American people, war might have at any time broken out between this country and the United States. And once such a war commenced, who could say where it would end? You have in Canada the Guards, the flower of our Army; you have there troops not only bearing the prestige of the Royal name, attached personally to the Sovereign, but counting amongst their members the scions of the nobles and the best blood, and, what is nobler and better still, the annals of these regiments are illustrated by deed of glory and heroism achieved at Waterloo and the Crimea. But what was the position of these men during all this time? If war had unexpectedly broken out, Colonel Jervis tells you, the only counsel you could have given to them, would have been to fly as fast as possible to their ships; to leave Canada and take refuge in this country”.

**Mr. Watkin**, (p. 1027, Feb. 23, 1866):— “He had recently been in the United States. He was in Philadelphia when the Fenian Congress was sitting there in October last. He was in New York when the Headquarters of the Fenian Organization were removed from Duane St. to one of the largest houses in Union Square, which was set up as what they called the “Fenian Capitol” and surmounted by

what they called their adopted Flag. He was also in Canada when rumours more or less serious arrived of intended Fenian Raids into British Territory, and knew preparations had been made to resist attack... No one in the United States could plead that he did not know that there existed a vast ramifications all over the States having war with a peaceful ally for its avowed object. With regard to the Congress at Philadelphia he might mention one peculiar feature was the presence of a large number of officers in the employment and pay of the Government of the United States (p. 1028). He had in his hands a list of a very small committee of the Congress, and yet it contained the names of no less than ten volunteer officers belonging to the United States. Three of these were Generals, five were Colonels, one was a Captain and the last one was a Lieutenant”.

Colonel Wm. R. Roberts, was chosen as President of the Organization, and General T.W. Sweeney (who was then commanding officer of the 16<sup>th</sup> United States Infantry) as Secretary of War. His staff was composed of the following officers, all of whom had seen service in the Civil War:—

Chief of Staff — Brig. Gen. C. Carroll Tavish,  
Chief of Eng. Corps — Col. John Meehan,  
Chief of Ordnance — Col. C.H. Rundell,  
Engineer Corps — Lieut. Col. C.H. Treslier,  
Asst. Adj.-General — Major E.J. Courtney,  
Ordnance Dept. — Major M. O’Reilly,  
Quartermaster — Major M.H. Van Brunt,  
Aides-de-Camp — Captain D.W. Greely and  
Captain Daniel O’Connell.

“He found by certain documents in his possession, that the organization had risen in the last seven years \$5,000,000 and that from Sept. 10, to Oct. 29, 1865, their receipts amounted to \$120,650.22 and that expenditures to over \$100,000. On Oct. 28, there were in the United States 613 circles with an average membership of 300 persons each, or about 184,000 in all”.

**Mr. Oliphant**, Feb. 23, 1866 (p. 1049):— It was perfectly true that Fenianism had its origin in America, but then it should be born in mind that it originated out of the policy pursued by this country toward America. In other words if there were no outstanding claims be-

tween England and America, Fenianism would cease to exist”.

Note:— Mr. Oliphant had been in Canada in 1854 as a member of a Royal Commission to investigate Indian Affairs...

The Chancellor of the Exchequer (p.1040):—

“It may be properly true — and is unhappily too true — that Fenianism in the main is a thing imported from America”.

### **FENIANS WITHDRAW**

Not having received the reinforcement he expected (for at the time there were 10,000 Fenians encamped at Buffalo) General O’Neil withdrew his troops. The Fenian Raid had served the purpose of the United States, *which was to compel Great Britain to submit their differences to an impartial tribunal of arbitration*, where the responsibility for the sinking of 226 merchant vessels by ships built in Great Britain and the acknowledgement of the part played by Great Britain in the Civil War would be discussed.

On this day Great Britain belatedly agreed to arbitration. She had previously thought the United States were bluffing but when it came to the point where she knew she was to lose Canada, and in losing

Canada would have the entire North American continent against her with which she would have to cope, and to which she would still owe (or at least to which the Federal Government claimed that she owed) an indemnity, that she well knew she would be compelled to pay in any case even after losing Canada.

These claims were eventually settled in full by the Treaty of Washington. Great Britain gave an apology to the United States, an indemnity amounting to over \$150,000,000, the disputed boundaries in perpetuity, right of navigation of the St. Lawrence, and equal rights in the fisheries of Nova Scotia and Newfoundland, as well as taking the responsibility for the damages due to the Provinces of Ontario for the Fenian Raids of \$8,000,000 : which to date has not been paid by Great Britain.

These itemized terms and the indemnity will be further discusses on a chapter on the Treaty of Washington.

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The United States of America anticipated no difficulty in annexing Canada. The following Bill was submitted to the United States Congress by representative Banks, and re-committed to the Committee of Foreign Affairs, on the 2<sup>nd</sup> of July, 1866.

**A Bill for the admission of the States of Nova Scotia,  
New Brunswick, Canada East and Canada West,  
and the reorganization of the Territories  
of Selkirk, Saskatchewan  
and Columbia.**

**Sec. 1.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the President of the United States is hereby authorized and directed, whenever notice shall be deposited in the Department of State, that the Governments of Great Britain and the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Canada, British Columbia, and Vancouver's Island, have accepted the proposition hereinafter made by the United States, to publish by **proclamation** that, from the date thereof, the States of Nova Scotia, New Brunswick, Canada East and Canada West, and the Territories of Selkirk, Saskatchewan, and Columbia, with limits and rights as by this Act defined are constituted and admitted as States and Territories of the United States of America.

**Sec. 2.**

Be it further enacted... That the following articles are hereby proposed, and from the date of the **proclamation** of the President of the United States shall take effect, as irrevocable conditions of the admission of the States of Nova Scotia, New Brunswick, Canada East and Canada West, and the future States of Selkirk, Saskatchewan and Columbia, to-wit:

**Article I.**

All public lands not sold or granted; canals, public harbours, lighthouses and piers; river and lake improvements; railways, mortgages and other debts due by railway companies to the Provinces; custom houses and post offices shall vest in the United States; but all other public works and property shall belong to the State Governments respectively, hereby constituted, together with all sums due from purchasers or lessees of lands, mines, or mineral at the time of the union.

**Article II.**

In consideration of public lands, works, and

property vested as aforesaid in the United States, the United States will assume and discharge the funded debt and contingent liabilities of the late Provinces at rates of interest not exceeding five per centum, to the amount of \$85,800,000; apportioned as follows: To Canada West, \$36,500,00; to Canada East, \$29,000,000; to Nova Scotia, \$8,000,000; to New Brunswick, \$7,000,000; to Newfoundland, \$3,300,000; and to Prince Edward Island, \$2,000,000; and in further consideration of the transfer by said Provinces to the United States of the power to levy import and export duties, the United States will make an annual grant of \$1,646,000 in aid of local expenditures, to be apportioned as follows: To Canada West, \$700,00; to Canada East, \$550,000; to Nova Scotia, \$165,000; to Newfoundland, \$65,000; to Prince Edward Island, \$40,000.

**Article III.**

For all purposes of State organisation and representation in the Congress of the United States, Newfoundland shall be a part of Canada East, and Prince Edward Island shall be a part of Nova Scotia, except that each shall always be a separate representative district and entitled to elect at least one member of the House of Representatives, and except also that the municipal authorities of Newfoundland and Prince Edward Island shall receive the indemnities agreed to be paid by the United States in Article II.

**Article IV.**

Territorial divisions are established as follows: (1) New Brunswick, with its present limits; (2) Nova Scotia, with the addition of Prince Edward Island; (3) Canada East, with the addition of Newfoundland and all territory east of longitude 80 deg. and south of Hudson Straits; (4) Canada West, with the addition of territory south of Hudson's Bay, and between longitude 80 deg. and 90 deg.; (5) Selkirk Territory bounded east by longitude 90 deg., south by the late boundary of the

United States, west by longitude 105 deg., and north by the Arctic Circle; (6) Saskatchewan Territory, bounded east by longitude 105 deg., south by latitude 49 degrees, west by the Rocky Mountains, and north by latitude 70 deg.; (7) Columbia Territory, including Vancouver Island and Rocky Mountains, south by latitude 40 deg., and west by the Pacific Ocean and Russian America. But Congress reserves the right of changing the limits and subdividing the areas of the western territories at discretion.

**Article V.**

Until the next decennial revision, representation in the House of Representatives shall be as follows: Canada West, 12 members; Canada East, including Newfoundland, 11 members; New Brunswick, 2 members; Nova Scotia, including Prince Edward Island, 4 members.

**Article VI.**

The Congress of the United States shall enact, in favour of the proposed Territories of Selkirk, Saskatchewan and Columbia, all the provisions of the Act organizing the Territory of Montana, so far as they can be made applicable.

**Article VII.**

The United States, by the construction of new canals, the enlargement of existing canals, and by the improvement of shoals, will so aid the navigation of the St. Lawrence River and the Great Lakes that vessels of fifteen hundred tons' burden shall pass from the Gulf of St. Lawrence to Lakes Superior and Michigan; provided that the expenditure under this Article shall not exceed \$50,000,000.

**Article VIII.**

The United States will appropriate and pay to "The European and North American **Railway** Company of Maine" the sum of \$2,000,000 upon the construction of a continuous line of railroad from Bangor, in Maine, to St. John, in New Brunswick; provided said "The European and North American **Railroad** Company of Maine" shall release the Government of United States from all claims held by its assignees of the States of Maine and Massachusetts.

**Article IX.**

To aid the construction of a **railway** from Truro,

in Nova Scotia, to Rivière du Loup, in Canada East, and a railway from the City of Ottawa, Pembina and Fort Gary, on the Red River of the North, and the Valley of North Saskatchewan River, to some point on the Pacific Ocean north of latitude 49 deg., the United States will grant lands along the lines of said roads to the amount of twenty sections, or 12,800 acres, per mile, to be selected and sold in the manner prescribed in the Act to aid the construction of the Northern Pacific **Railroad**, approved July 2, 1862, and Acts amendatory thereof; and, in addition to said grants of land, the United States will further guarantee dividends of five per centum upon the stock of the company or companies which may be authorized by Congress to undertake the construction of said **railways**; provided that such guarantee of stock shall not exceed the sum of \$30,000 per mile, and Congress shall regulate the securities for advances on account thereof.

**Article X.**

The public lands in the late Provinces, as far as practicable, shall be surveyed according to the rectangular system of the General Land Office of the United States; and in the territories west of longitude 90 degrees, or western boundary of Canada West, Sections sixteen and thirty-six shall be granted for the encouragement of schools, and after the organisation of the territories into the States, 5 per centum of the net proceeds of sales of public lands shall be paid into their treasuries as a fund for the improvement of roads and rivers.

**Article XI.**

The United States will pay \$10,000,000 to the Hudson Bay Company in full discharge of all claims to territory or jurisdiction in North America, whether founded on the charter of the company or any treaty, law or usage.

**Article XII.**

It shall be developed upon the Legislatures of New Brunswick, Nova Scotia, Canada East and Canada West, to conjoin the tenure of the office and the local institutions of said States to the Constitution, and laws of the United States, subject to revision by Congress.

**Section 3.**

**Be it further enacted...** If Prince Edward Island or Newfoundland, or either of those Provinces, shall decline union with the United States,

and the remaining Provinces, with the consent of Great Britain, shall accept the proposition of the United States, the foregoing stipulations in favour of Prince Edward Island and Newfoundland, or either of them, will be omitted; but in all other respects the United States will give full effect to the plan of union. If Prince Edward Island, Newfoundland, Nova Scotia and New Brunswick shall decline the proposition, but Canada, British Columbia and Vancouver Island shall, with the consent of Great Britain, accept the same, the construction of a **railway** from Truro to Rivière du Loup, with all stipulations relating to the Maritime Provinces, will form no part of the proposed plan of union, but the same will be consummated in all other respects. If Canada shall decline

the proposition, then the stipulations in regard to the St. Lawrence canals and a railway from Ottawa to Sault St. Marie, with the Canadian clause of debt and revenue indemnity, will be relinquished. If the plan of union shall only be accepted in regard to the North-western territory and the Pacific Provinces, the United States will aid the construction on the terms named, of a **railway** from the western extremity of Lake Superior in the State of Minnesota, by way of Pembina, Fort Garry and the Valley of Saskatchewan, to the Pacific Coast, north of latitude 49 deg., besides securing all the rights and privileges of an American territory to the proposed Territories of Selkirk, Saskatchewan and Columbia.

# THE WESTMINSTER PALACE HOTEL CONFERENCE, DEC. 4<sup>TH</sup> to DEC. 24<sup>TH</sup>, 1866

On convening Dec. 4, with Atty-Gen. John A. Macdonald as chairman the delegates were presented with a preliminary form or draft to guide them, this had been prepared by the instruction of Lord Carnarvon, Secretary of State for the colonies, and drafted by Lord Thring, Parliamentary Counsel to the Treasury.

Granted that the delegates were unfamiliar with Imperial parliamentary procedure the providing of such a draft could be considered as a courtesy, as long as this could not be taken as means of influencing the result.

This printed preliminary "Bill" however stated that the purpose of the legislation would be :

"The Union of the Colonies and for the Government of the United Colony" ...

"Whereas the Union of the British North American Colonies for purposes of Government and Legislation would be attended with great Benefits to the Colonies and be conducive to the Interests of the United Kingdom".

Each delegate received a copy on the top of which he inscribed his name. These are now in the Archives at Ottawa.

In the wide margin of the paper on which we find at the top the name of John A. Macdonald are these words, in his handwriting, as a protest against uniting the Colonies into one Colony.

"Whereas the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire *to form a Federal Union*, for the purposes of Government and Legislation based on the principles of the British Constitution".

*See cover*

This desire was denied them, was also the following :—

"The word Parliament shall mean the Legislature or Parliament of the Kingdom of Canada".

The third section of this draft is a repealing clause which provides that any Acts of the United Kingdom or of the Colonies

"which are repugnant to or inconsistent with the provisions of this Act the same shall be, and are herewith repealed".

No ambiguity is found in the wording of the desire of the Provinces as expressed by the delegates, they were insistent that the desire expressed was not to be merely united, but to be permitted *to form a Federal Union*.

The completed draft accompanied by a letter was submitted by John A. Macdonald to the Rt. Hon. Earl of Carnarvon, Secy. for the Colonies, Dec. 26, 1866 and an acknowledgement stating that Lord Carnarvon was sending the draft to London to be put into type was received by John A. Macdonald Dec. 28.

After the death of Sir John this "Bill" was published by his secretary Joseph Pope in "Confederation Documents" (hitherto unpublished) which may be found in most public Archives.

Subsequently other meetings were held at which the Earl of Carnarvon was chairman, Montague Bernard, Secy., and Lord Thring was appointed to draft a "Bill" to be presented to Parliament.

Sir Frederic Rogers, Under-Secretary for the Colonies says of this :—

"They held many meetings at which I was always present, Lord Carnarvon was in the chair and I was rather disappointed in his power of presidency. I had always believed — and the belief has so firmly convinced itself in my mind that I cannot conceive of

anyone thinking the contrary — that the destiny of the Colonies is independence...”

As the completed draft by Lord Thring is in the nature of a private “bill” it was introduced first in the House of Lords by Lord Carnarvon. It passed this House where the preamble of the Quebec Resolutions was debated (not the preamble that subsequently was submitted) without being printed; in fact it was not in print until Feb. 27, at the sec-

ond reading of the “Bill” in the House of Commons, when this procedure is protested, by Mr. Hadfield.

Mr. Walter F. Kuhl (Jasper-Edson) mentioned this in his speech in the Dominion House, Feb 10, 1938. This “Bill” an Imperial Statute entitled **The British North America Act** will be discussed in the final chapter.

## THE TREATY OF WASHINGTON

### TERMS OF TREATY

1. **Great Britain agreed to pay a direct indemnity of £ 3,500,000.**
2. **To tender a national expression of regret.**

**Viscount Bury**, M.P. says of this :— “A national expression of regret is an act of the gravest importance. If England has been clearly in the wrong, an expression of regret would be consistent with her dignity, but it has not hitherto been usual for Nations of the highest rank to apologize for acts which they never committed. The same Englishmen who offered the apology framed the British case. The case is an elaborate statement that Britain is in the right. It is hard to escape from this dilemma ; either the apology was unnecessary, or the English case is a tissue of misstatements”.

3. **Settlement of claims arising out of the war.**

**Lord Oranmore and Brown**, commenting on this in the [House of Lords, Vol.207, June 1871](#), said :— “The taxpayers of this country would have to buy the good-will of our American cousins at a cost at least of £ 10,000,000. Which might probably amount to nearer £ 13,000,000 owing to the engagement to pay the expenses of American cruisers ; and he believed there was no precedent for any such payment except after a disastrous war...”

4. **To cession of territorial rights in perpetuity.**

In commenting on this the Earl of Lauderdale said :— “It was a treaty evidently framed to meet the views of the people of the United States. He would not however complain of them ; on the contrary he gave them great credit for the clever way they had outwitted us. They had weathered us on every tack ; they had to use an Eastern expression — made us eat dirt, and pay the bill into the bargain. He regretted that the question of the line which should have been drawn down the centre of the Strait of Rosario had not been referred to the Emperor of Germany, and a fertile cause of disputes thus settled. Our negotiators had not had the chart before them when they drew the existing line — they went to sea without a chart, and the consequence was our interests had suffered. He regarded the Treaty as a one sided arrangement and as one unbecoming the honour and dignity of the country”.

5. **To cession in perpetuity of joint navigation of the St. Lawrence :**

**Earl de Grey and Ripon**, [Vol. 206, June 12 1871, p. 1870](#) :— “Of course the parts relating to the fisheries and navigation are in one sense those more immediately effecting the Canadian people ; but as Canada is part of the British Empire and the part most immediately threatened by any difference between this country and the United States, it has the clearest interest in the settlement of

all differences with the great Republic across the Atlantic”.

**The Earl of Kimberley** (p. 1880) “No doubt it may seem to them (Canadians) that we have not obtained all that they had a right to expect ; but while I do not think we should make the interests of the Colonies merely subordinate to the interests of this country, I am sure we are not unreasonable in expecting that the interest of the Whole Empire should not be made subordinate to those of any particular Colony”.

Canadians should ask themselves this question if a treaty were to be signed between Canada and France (who by the way is an ally of England) permitting France the right of navigation of the Thames up to the port of London ; what would England think ? Would Englishmen think we were right to do this ? Would they think we were very loyal to them ?

**6. To cession of claims for Fenian Raids (\$8,000,000) :— Earl Granville, p. 1846 :—** “There is one question connected with Canada in regard to which I must express my regret. I regret we were not able to obtain recognition of the claims of the Canadians on the American Government arising out of the Fenian Raids. *Her Majesty’ Government, however, take upon themselves the whole responsibility for this...* it would be impossible to obtain from the United States a recognition of these claims, we had to consider whether we ought to destroy all the fruits of the High Commission, and allow a third failure to be the result of the negotiation”.

The two previous attempts to settle this question which had failed were the Stanley-Johnson and the Clarendon-Johnson conventions, the results of which were rejected by the Senate of the United States.

**The Earl of Carnarvon, p. 1973 :—** “It is with dismay that I find that it does not contain any allusion to the Fenian Raids into Canada. For several years Canada has been exposed to these lawless incursions, which if not fostered by the United States, have as a matter of fact originated on its soil. On two

occasions they have involved serious loss to the Canadians and on one of them a serious loss of life...”

“The noble Earl opposite (Earl Granville) did not touch upon the question and he went so far as to express regret there was a total omission of the Fenian Raids from the Treaty ; but when he came to justify the omission I was astonished. He said that the Government did not press the matter, because they had regard to discretion as well as truth, but there is an old saying that discretion is the better part of valour ; and that is an explanation which appears to me the more plausible... That really is an illustration of the manner in which this business has been conducted. But now, little as I admire the terms of the Treaty, or the manner in which these terms are arrived at, I still must ask myself this question. Were I a Canadian what view would I take of this subject ?”...

We Canadians are told that Great Britain takes full responsibility for the damage done by the Fenian Raids. If that is the case it would appear that Great Britain still owes Ontario \$8,000,000. It would also appear that Canada has misjudged these Fenian gentlemen, apparently they were men of considerable dignity as some of them refused a first class cabin passage back to America, until they had received an additional pardon from the Government of Great Britain.

**Lord Oranmore and Browne, p. 734 :—** “But the other day when Her Majesty’s Government sent the Fenian convicts in State cabins to America, the Congress passed an address of sympathy, and congratulations to them and the President gave them a public reception... He feared that the people of United States might consider that the public reception of the Fenian convicts had no slight influence in producing the large concessions contained in that Treaty. But great benefits were to accrue to our commerce in the future. *Unable to protect our own commerce, we had bribed the Americans not to molest us*”.

When the indemnity was finally paid at Geneva in 1871, certain amounts were de-

ducted on account of territorial concessions. Great Britain had agreed to pay a direct indemnity of £3,500,000 as well as settle all claims arising out of the war; this was reduced to £3,229,000. The claims subsequently paid, arising out of the war are estimated at £11,500,000. As the rate of exchange in 1871 was \$10.25 to the British

pound, the actual indemnity amounted to over \$150,000,000.

The reason we know so little about this in Canada, and the slight reference made to the Fenian Raids in Canadian Histories, is that Great Britain does not like to mention it.

## THE GOVERNMENT OF CANADA

Casting back over the accumulated data we find British Hansard replete with a wealth of most valuable material on this subject. We may deplore the absence or lack of dependable historical evidence from the curriculum of our schools and colleges, but we are compelled to admit that there is no valid reason why any Canadian with the time, energy, perseverance and intelligence cannot find out all there is to be known about this question.

One of our most sincere students was the Hon. W.H.P. Clements, B.A., LL.B, judge of the Supreme Court of British Columbia, whose considered opinion may be found on page one of his third edition of "Canadian Constitution", 1915. He says :— "It was no part of the scheme of Confederation to alter in any essential respect the Colonial relationship or to weaken the Crown Headship ; and there is nothing in the Act to indicate a surrender in any degree by the British Parliament of that cardinal principle of the British Constitution, the supreme legislative authority of the British Parliament over and throughout the British Empire..."

Judge Clements adheres to the sound rule, that a statute must first be read and construed as a whole, though one section should bear a wider, another a more limited meaning".

Constitutional law is considered by some the driest subject in the world, so it will I think be conceded that if Judge Clements should have made the statement more clear he would have been a wizard.

The principle of a Statute is set forth in the preamble which is an enunciation of the purpose, the object to be obtained and the scope of the enactment. In parliamentary practice the allegation contained in the preamble must first be proven to be a statement of the truth before subsequent sections of the enactment are open to debate.

The Rt. Hon. R.B. Bennett in discussing the paramount importance of a preamble in connection with legislation on April 1, 1936, (The Wheat Bill) said in the House :—

"In private Bills it is essential to establish by competent testimony every fact inserted in the preamble and when a motion is made and passed that the preamble has not been proven, the Committee rises and the Bill fails".

The Rt. Hon. W.L. MacKenzie King, quoting from Sir Courteney Ilbert, Parliamentary Counsel to the Treasury, said :—

"A local Bill must always have a preamble, the recitals in which must be proved, and when a public Bill resembles in character a local Bill a preamble will usually be necessary. Where, for instance, an enactment deals with a specific set of facts, it will usually be convenient to state the facts in a preamble".

The Hon. C.H. Cahan :— "And they must be proved".

The Rt. Hon. Mackenzie King :— "My Hon. Friend says they must be proved. That is correct... If we are in agreement on the fact that a preamble in connection with this

particular Bill, is in accordance with proper legislative methods, then the only remaining point at issue is whether or not the preamble contains an exact recital of facts”.

The Rt. Hon. R.B. Bennett :— “And whether it has been proven”.

If a preamble is supposed to express the truth then it can be said without equivocation that the preamble of the British North America Act is an unequalled example of unqualified official mendacity. Because of this ; the Act has been the source of peregrinations by pedantic professors and party politicians, with no greater result than an exposition of their ignorance, except in the minds of an uneducated audience.

## DOMINION DEFINED

The word Dominion meant Colony. Before America was discovered, the word Dominion is used in the Acts of Henry VIII. “Our Dominion of Wales”. Wales is still a Dominion in Article 25 of the Treaty of Union, 1707 ; she has no say in the creation of Great Britain. Two hundred years before Canada was united into on Dominion the Isle of Man ; Newfoundland ; Virginia ; and each of the New England States were known as Dominions.

Lord Thring who drafted the British North America Act and also the Interpretations Act gives us the definition as he used it, and is the authority for its use in Courts of Law. He says :— Sec. 18, Par. 3, “Interpretations Act”.

“The expression “Colony” shall mean any of Her Majesty’s Dominions exclusive of the British Islands and of British India, and where parts of such Dominions are under both a Central Legislature and a Local Legislatures all parts under the Central Legislature shall for the purpose of this definition be deemed to be “One Colony”.

Bourinot says in his work on “Confederation” that Sir John personally assured him that the word “Dominion” was not suggested by any Canadian delegate.

In any case suppose it was possible to be “Federally United into One Dominion” an agreement would have to be signed, would it not ? They could be united into one Colony by an Act of the Imperial Parliament, but not “Federally United”. The word “Federal” means to have free-choice ; the word “Dominion” means to be dominated.

If they were united into “One Colony” “Right Honourable” members of the British Government could then sit in the Canadian House, where none had seats before. This evidently was the purpose.

## FEDERATION REQUESTED

Did the Provinces express the desire to be united into One Colony ? Most emphatically they did not. The desire expressed by the Provinces and reiterated by the delegates was, that having now received the *sanction* of the Provincial Legislatures to create a Federal Union, they were instructed to request the *sanction* if the Imperial Parliament to this end.

Queen Victoria signed the B.N.A. Act March 29, 1867. On March 28, Mr. Gladstone, in the debate on the Canada Railway Loan Bill, (when the House was requested to guarantee the bonds for the Intercolonial Railway [ ICR ] ) said :—

“A guarantee in respect to this proposal which undoubtedly is brought forward in immediate connection with the great scheme already *sanctioned* by Parliament...” “It is a scheme which has had the *sanction* of a series of free Governments...” “We have for a full quarter of a century acknowledged absolutely the right of self-government in the Colonies...”

Mr. Gladstone knew that the most the Imperial Parliament could do would be to *sanction* the scheme. He knew they could not create a Confederation of the Provinces nor a Federal Union.

## WHY FEDERATION REFUSED

A federation is formed by a plebiscite of the people adopting a Constitution. Why was this request refused by the Imperial Government? The excerpts from the British Hansard previously quoted illustrate the reason. We find Great Britain is held responsible by the United States for shipping sunk during the Civil War, and accountable for the assistance she rendered the Confederacy.

We find she eventually acknowledge this, by the granting of an apology. We find that the United States determined to play the same game, and secretly if not openly assisted the Fenians. We find that no settlement had been made at the time our delegates requested to be permitted to form a Federal Union. We find cold chills running up and down the backs of British statesmen at the prospect of going to war with the Federal Union of the United States. Is it reasonable to expect that the Imperial Parliament would consent to a *Federal Union* of the Provinces of Canada? Perish the thought. If Great Britain were compelled to fight the United States, whom Canada help in that event? Would she be neutral? Would she help the United States? Would this not be a Federal Union similar to that of the United States? The decision was vital to the existence of Great Britain herself. Her statesmen solved it by elevating Atty. Gen. John A. Macdonald to the knighthood and appointing him a member of the British Government. As a member of His Majesty's Most Honourable Privy Council, he was obliged to take orders from them. (See appended documents)<sup>6</sup>. As such a member he was given the greater part in the Government of Canada. He was appointed a member of the High Commission empowered to sign the Treaty of Washington<sup>7</sup>. Not on behalf of Canada as a sovereign state, but by virtue of the power conferred upon him by being elevated to a seat in the Privy Council of Great Britain. He was now the Rt. Hon. Sir John A. Macdonald. Later it was a comparatively simple matter to substitute the preamble in

that of the Quebec Resolutions for that which today is the principles of the British North America Act. This was done after the preamble had been debated in the House of Lords and before the second reading of the Act in the House of Commons.

Self-preservation is the first law of any State, it transcends mere party affiliations. It was vital to the very existence of Great Britain that Canada be retained as a Colony, and to be compelled to give up such forms of self-government as that to which she had attained.

John Bright speaking in the House of Commons in the debate on the British North America Act said :— "Nobody pretends that the Colonies prefer an appointed Senate to an elective one".

Nevertheless this is a provision of the British North America Act and that which Canada was compelled to accept.

Did not Canada elect both Houses in the United Legislature? Did not the Senate or Legislative Council elect Sir Alan McNab as their leader? Is it not a matter of record that no laws were disallowed between 1840 and 1867? Is it not true that Canadians have repeatedly objected to the Senate being appointed? Is it not true that over 100 Acts of the Dominion Government have been disallowed since 1867? This does not take into consideration the numerous Provincial Acts which have met a like fate.

Does not the Governor-General who is the agent of the British Government in Canada have the custody of the Great Seal, the appointment and removal of members of the Privy council of Canada, the appointment of Judges, Harbour Commissioners, Army and Navy Officers, and the removal of any person exercising any office in our said Dominion.

### **THE FIRST RIGHT HONOURABLE**

The preposterous contention or assertion that Canada is gradually attaining the right to govern itself is refuted by the official record.

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<sup>6</sup> - Appendix 3

<sup>7</sup> - Appendix 4

Prior to 1867, no **Right Honourable**<sup>8</sup> could sit in the Legislative Assembly ; Council ; nor on the Executive Council, which held the position that is today occupied by the **Right Honourables** of the Privy Council. After the British North America Act 1867 ; the Right Honourable Sir John A. Macdonald was the sole representative of the British Government sitting in Canada. Gradually since then others have been added and sworn in at the Court of St. James, until today we have the **Premier of Canada** ; the **Leader of the Opposition** ; the **Minister of Justice** ; the **Speaker of the Senate** ; two other **Senators** ; the **Chief Justice** of the Supreme Court and the **Governor-General** of Canada. To this list we must append the names of the Rt. Hon. Lord Beaverbrook and the Rt. Hon. Lord Greenwood sworn 1918 and 1920 respectively, who reside in London and attend to the Foreign affairs of Canada. The latter two take precedence over the others in point of seniority. Precedence has been defined as priority of place. Further information may be obtained by consulting the Dominion of Canada Parliamentary Guide.

The question may well be asked : Is there no limit to the number that can be appointed as **Right Honourables** ? Certainly there is ; for if there were no limit, eventually Canada would have more members of the British Government sitting in Ottawa than in London. In that event it could well be a case of the *tail wagging the dog*. This would never do.

Let us pause here for a moment to retrospectively examine the entire situation.

What was the question exercising the minds of the **Right Honourables** of Great Britain when the delegates from Canada presented their request ? It was this ; how to extricate themselves from their position and prevent war with the Federal Union of United States.

They knew that three days after the first shot was fired in the Civil War, that the Legislature of Nova Scotia passed the following Resolution, April 15, 1861 :—

“Whereas the subject of the Union of the North American Provinces, or the Maritime Provinces of British America has been from time to time mooted and discussed in all the Colonies ; therefore be it resolved :— etc.

“This was enough to show them [Rt. Hon. Britons] *The way the wind was blowing*. They knew that three days later, April 18m 1861, a similar Resolution passed the Legislature of Prince Edward Island. They knew a Conference was called at Charlottetown Sept. 1, 1864, immediately after the *Tallahassee* in August had destroyed thirty-three vessels, and the *Chickamauga* vessels valued at \$500,000. They knew delegates from Canada had attended the Charlottetown Conference and had adjourned only to meet again at Quebec Oct. 10, 1864 ; and that the first Resolution passed unanimously was :— “Whereas the best interests and present and future prosperity of British North America will be promoted by a Federal Union under the Crown...”

(See Quebec Resolutions).

“They knew that a “Bill” had been submitted by representative Banks July 2<sup>nd</sup>, 1866, to the Congress of the Federal Union, to accept the Provinces of Canada as full-fledged States in the Federal Union.

They knew the President and Cabinet were in sympathy with and secretly abetting the Fenians ; that the leaders were former U.S.A. Army Officers.

They knew the Fenian Raid in Ontario was only a prelude to what was to come, unless they settled the claims of the United States of America.

They knew that they had belatedly and reluctantly agreed to arbitration only after war which imperilled them was threatened.

They knew that with the entire North American continent arrayed against them, Britain would lose the West Indies ; her

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<sup>8</sup> [ © since the XV<sup>th</sup> Century. ]

world trade in shipping and even jeopardise her very existence as a nation.

Although they had reluctantly agreed to arbitrate ; the terms and the amount of indemnity were a matter of negotiation, which had had two set-backs, the Stanley-Johnson, and the Clarendon-Johnson conventions having been refused by the U.S. Senate.

## FEDERATION REFUSED

The Canadian delegates now arrive with the request for their *sanction* of a Federal Union of the Provinces. The answer of the Rt. Hon. Britons was, No ! Just as long as Great Britain retained the provinces as Colonies she was in a position to negotiate in terms favourable to herself. If she consented to the request of the Colonies she would lose all hold on them. Later this was borne out by the fact that Canada objected and would never willingly have consented to the raping of her best interests by agreeing to the terms agreed by them in the Treaty of Washington 1871 ; which Treaty the Right Honourable Sir John A. Macdonald was compelled to sign by the order of **Earl de Grey**.

(see appendix 3).

It is easy to criticize the actions of the Right Honourable Secretary of the Colonies and his colleagues in the light of later events ; but most statesmen with a love for their country, would have done as he did. He waited five months after the delegates presented the Quebec Resolutions, insisting that the Atty. Gen. John A. Macdonald be present ; then after the **Kingdom of Canada** papers were drafted, instead of bluntly refusing the *sanction* of the Imperial authorities, he invested the Atty. Gen. with the title of Right Honourable and he was “**sworn at the Court of St. James, taking his place at the table accordingly**” — next he had the title **Sir** conferred by the Queen.

We may be sure that the utmost courtesy was displayed toward the Right Honourable Sir John recently arrived from Canada with the effect of the Fenian Raid still in his

mind. He could now well be shown the horrors of a war with the United States — that as a free country Canada would be too weak to cope with the strength of the larger Republic to the south.

Will it not be more reasonable to unite the provinces into One Dominion with a strong man like the now Right Hon. Sir John A. Macdonald at the helm of the Ship of State ?

Would not the United Empire Loyalists rally to the support of such a course ? He would have the support of the British Government, be elevated above his fellow delegates and triumph over his political opponents George Brown and Joseph Howe. Such blandishments and allurements were too much to be resisted by the Atty. Gen. John A. Macdonald. He alone among the Canadian delegates was on the inside.

On Feb.16, 1867 he was married to **Susan Agnes Bernard** a sister of the Right Honourable Colonel Montague Bernard who had been appointed by Lord Carnarvon as the Secretary to the delegates from British North America and who later was appointed with the Right Hon. Sir John A. Macdonald by Queen Victoria as Ministers Plenipotentiary to the United States to settle the terms of the Treaty of Washington (see appendix 4).

Canadian delegates were under the impression that the British North America Act was an implementing measure. That they were permitted to form a Federal Union, and that the Imperial Parliament was to guarantee the bonds of the Intercolonial Railway. They did not know that John A. Macdonald had been appointed a member of the Privy Council of Great Britain or that a title had been conferred upon him. This was kept secret. Never gazetted in either Great Britain or Canada, and first announced when the Governor General convened the Dominion Parliament July 1<sup>st</sup> 1867.

Taking into consideration the pressure being exerted by the United States for the settlement of their claims ; in his position now of Right Honourable, Sir John could argue and persuade his fellows to accept what he

termed a compromise, but which was in reality a capitulation.

Had Great Britain been a foreign nation with which our delegates from Canada were negotiating, and as chairman of such delegation, Atty. Gen. John A. Macdonald had become a member of the Government of such foreign nation and had been sworn at the court of St. James and had taken his seat accordingly ; thus becoming the Right Hon. Sir John A. Macdonald ; (as I said previously) if Great Britain had been a foreign nation, then the Right Hon. Sir John A. Macdonald would have deserved to be stigmatised by his brother delegates and the people of Canada as a **traitor**. [Cf. Appendix 3]

By becoming a member of His Majesty's Most Honourable Privy Council, Sir John was compelled to take orders from them. As such he was appointed a member of the High Commission to the United States to settle the terms of the Treaty of Washington.

A **Right Honourable** is all right in his place, but his place is in England not in Canada.

Today both major parties : the Senate ; the House and the Supreme Court are led by **Right Honourables**.

“Right Honourable” is the *carrot* held before the noses of the members who would sell their birth-right and scuttle the best interests of Canada without hesitation for party policy ; their own self-aggrandizement and the *thirty pieces of silver* granted them by the British Government ; to accept in return the dishonour of being called Right Honourable.

If they would not, why has no voice been raised against this raping of Canadian interests ?

Ample opportunity has not been lacking ; therefore they stand convicted of this charge before the bar of the Canadian people, who elected them ; who pay them, and whose interests they have devoutly sworn to uphold.

It is commonly supposed that the Premier and Cabinet instruct the Governor General.<sup>9</sup> These are courtesy titles only. There is no provision in the British North America Act, nor in any other law to provide for a Premier and Cabinet ; consequently they have no power as such. The PC which tenders advice to the Governor General is a committee of twelve **Right Honourables** appointed by and as part of the Government of Great Britain, they are “sworn at the Court of St. James and take their places at the table accordingly”. The title of **Right Honourable** can only be conferred by the British Government ; not the Queen. The titles which are the Queen's prerogative are such as Sir ; Lord ; Earl ; etc.

These twelve **Right Honourables** with the Governor General compose the Government of Canada. Any member of the Dominion Parliament, elected and paid by the Canadian people, who accepts the designation of **Right Honourable** can not be said to represent the Canadian people. When he has accepted this title from the British Government and takes the oath administered by them, he is their servant. No man can serve two masters. He voluntarily relinquished the right to represent the merchant, manufacturer, farmer, or the Canadian people, although elected by them. This question has nothing to do with our relationship to the Empire as the **Right Honourables** would have us believe. There are no **Right Honourables** sitting in Eire, although Eire is as much a part of the Empire as is Canada. As a representative of the British Government in Canada a **Right Honourable** can sign a trade agreement for Canada without consulting Parliament. It is superfluous to comment on the result imposed on the trade of Canada by any such agreement. These twelve acting with the Governor General of Canada can without consulting Parliament enforce conscription of men, money, materials, or resources in case of war ; or if they choose to declare a state of emergency.

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<sup>9</sup> Appendix 5

Insofar as elected members are concerned they follow the bell-wethers, and the British Government see-to-it that both leaders are **Right Honourables**.

Is it not reasonable that we should expect our elected members to know that to be Federally united the provinces must be free? We would expect them to know that to be **Federally United** into **One Dominion** was an impossibility. How could the provinces be free and at the same time subservient?

We should expect our elected representatives to know that it was alleged by the British Government that this impossibility was the desire expressed by the Provinces of Canada, Nova Scotia and New Brunswick, and that the allegation was an unqualified example of perfidious mendacity, a premeditated, intentional misrepresentation of fact; an allegation which is not only not supported but definitely refuted by all recorded documents.

Fraud is defined:— “Any intentional misrepresentation by word of any material fact either past or present or any intentional omission to disclose any such fact”.

We could expect them to know that the **British North America Act is fraudulent**.

[http://en.wikipedia.org/wiki/Privy\\_Council\\_of\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Privy_Council_of_the_United_Kingdom)

[Canada](#) has had its own Privy Council—the [Queen's Privy Council for Canada](#)—since [1867](#). (Note that whilst the Canadian Privy Council is specifically "for Canada", the Privy Council discussed above is not "for the United Kingdom".) The equivalent organ of state in the other [Commonwealth Realms](#) and some [Commonwealth Republics](#) is called the [Executive Council](#).

[http://en.wikipedia.org/wiki/Queen%27s\\_Privy\\_Council\\_for\\_Canada](http://en.wikipedia.org/wiki/Queen%27s_Privy_Council_for_Canada)

<http://www.parl.gc.ca/information/about/people/key/PrivyCouncil.asp?lang=F>

2005 French Listing

Understandably, these references could not appear in the 1939 edition of **Inside Canada**.

# THE CONSTITUTION OF THE DOMINION OF CANADA

## EARLY CHARTERS TO PROVINCES

Before the reign of Queen Elizabeth all public lands were in the name of the Crown, but as it was then cognized that the people as a whole also were interested, the Government decided to incorporate a **Dept. of Lands**.

“The **Crown in Chancery** was conceived and established by members of Her Majesty’s Most Learned and Honourable Privy Council, to administer affairs in connection with and to exercise authority over the waste lands or commons or England”.

Both the Charter granted to Sir Humphrey Gilbert to colonize Newfoundland by Queen Elizabeth alone, and that granted to his half-brother Sir Walter Raleigh by Parliament and who inherited his brother’s patents, were issued before the creation of this Department of Government.

Sir Walter Raleigh’s patent had the distinction of being ratified by Parliament, thus attaining an added validity which was lacking in that which had been granted by Queen Elizabeth to Sir Humphrey.

These “Letters Patent” were the first “Constitutions”. Sir Walter’s contained the following clause :—

“That he was to colonize any remote and barbarous lands which he might find within the next six years which are not possessed by a Christian Prince or inhabited by Christian people ; the colonists to have all the privileges of Englishmen and be governed by laws of their own making...”

All early Charters were granted to companies of adventurers similar to that of the Hudson’s Bay Company. Chartered by the Government, each had a Constitution of the Company in which the Governor and Councillors were the President and the Board of Directors ; they had no connection directly

with Parliament any more than any chartered company would have today. They made reports to the Lords of Trade and Plantations, afterwards altered to the Board of Trade. The lands were granted by what is known as a “pepper-corn” lease, that they were required to pay something periodically, such as 5% of the Gold and Silver mined, two Indian arrowheads yearly, or a Black Elk and three Black Beavers. The purpose of which was to show that the actual ownership of the land had not changed hands.

Eventually these barbarous lands were recognized as being part of the Public Estate, and the Governors of these Companies were ordered to make returns to the Right Honourables of the PC, so that abuses could be rectified. Governors were appointed by the Crown in Chancery and a Constitution was drafted for the Colony in which he and a Committee of Twelve Right Honourables were to comprise the Government. Nine of these he was to take with him or appoint after arriving in the Colony. He alone however was responsible to the Crown in Chancery for the affairs of the Colony, for its defence, the appointment of Judges, Commissioners, Deputies of himself, etc., and was granted the Custody of the Great Seal of the Colony. He was a corporation sole. He was constituted the Government, and the “Letters Patent and Commission” issued to him was the “Constitution” of the Colony.

In 1660 it was found expedient in order to cope with the additional work and responsibility to have a separate office for the Crown Lands. The Colonial Office, a branch of the Crown in Chancery, was formed to administer their affairs, but the Constitution of the Colonies and appointment of the Governor was supervised by the Clerk of the Crown in Chancery. The last Constitution issued by

this office to Canada was that of March 23, 1931. This **Constitutes** Earl Bessborough a Corporation-sole, and is signed by Sir Claude Schuster, Clerk of the Crown in Chancery.

The first Canadian Constitution is that issued to Governor Murray after the capitulation of Quebec and Montreal in 1763. In all essential respects this is identical with the Letters Patent issued to Lord Cornwallis of Nova Scotia in 1749. "Mutatis Mutandis" both of these as well as that which was issued in 1769 to Governor Paterson of PEI are the same as that issued to Earl Bessborough, March 23, 1931.

## PRINCE EDWARD ISLAND'S CONSTITUTION

Governor Paterson's "Constitution" signed Yorke & Yorke, (law officers of the Crown in Chancery) will be found "*in extenso*" in the Dominion Sessional Papers, Vol. XVI, No. 70. It is there stated:—

"This is the only Constitutional Document on file amongst the records of Prince Edward Island". "As soon as possible after his arrival the Governor convened some of the principal inhabitants at Charlottetown and causes the Constitution to be read".

## GOVERNOR GENERAL ALONE RESPONSIBLE

It should be quite obvious that we cannot constitute a Government without creating a Constitution.

As the Constitution of the present Government of Canada is reproduced here, it is unnecessary for the purpose of this article to reiterate those which created the former Governments of the Colonies.

As we examine these papers we find that the Government is created by "Constituting" the Governor General a "Corporation-sole". He occupies a place analogous to that of a Field-Marshal; the twelve Right Honourable members of the Imperial PC are his

Generals, the lieutenant-Governors of the Provinces his Colonels, the Members of the King's PC for Canada his Captains, the Speakers of the House his Lieutenants, the Whips, his Sergeants; the Members of Parliament his Corporals and the people of Canada his Colonial forces.

Canadians have been **taught to believe** that the British North America Act was a Confederation Agreement; that it was the Constitution of the Government of Canada, and that the Governor General acts upon the advice tendered to him by his Canadian Ministers.

These are mendacious statements and erroneous beliefs. It is quite true that the British North America Act *constitutes a Parliament*, but this *is not* the Government. The Parliament is subordinate (or ancillary is the better word) as it is constituted to **Aid and Advise** the Government, *but not a part of the Government*. This distinction should be kept in mind; if it is not, the student of this question will miss the implications and the intention of the B.N.A. Act. If this is clearly understood the statute shrinks in importance and then holds its proper place in relation to the Constitution of the Government of Canada.

It may appear odd to those not on the inside; but who follow the agenda of the House of Commons, that all reference to the British North America Act or its amendment has been unceremoniously dropped. This would appear to be by mutual consent of both major parties, and no reference is made to its amendment in the recent speech from the Throne.

This is the more surprising, in that it was the major topic of the last session, until Mr. denounced the Act and adduced the evidence that the Act itself was fraudulent.

By their silence the Right Honourables of both parties admit there is no answer and that no refutation can be made to the impeachment made by Mr. Kuhl.

By admitting the Act to be fraudulent, they ignore its amendment; for it is manifestly impossible to amend a fraudulent Act.

Discretion therefore dictates that no further reference be made to this in the House.

It would be reasonable to contend that the corporals advise Marshall Foch as to say that the Governor General acts upon the advice of anyone who today can be said to represent the Canadian people. The Right Honourables do not, for they have transferred their allegiance and lesser officials follow them or by a word to the Governor General they are removed from office.

It can be said without fear of contradiction that no dictator has any greater power than that which is exercisable by the Governor General of Canada. He could order two destroyers from the British Admiralty without the advice or consent or even without the knowledge of even the Right Honourables of the Imperial PC.

By the exercise of his prerogatives he could accept the abdication of the King without calling Parliament even against the advice of his Ministers. From time to time since 1760 the Constitution of the Government of Canada has been slightly changed in wording, by the Crown in Chancery, but never to detract from the great power conferred upon him, and the British North America Act was drafted by Lord Thring to simplify but not to interfere with the administration of the powers.

Some idea of the control the Government has exercised over the Schools, the published histories of Canada and the Press, may be gained by comparing the general conception of the Government of Canada.

**For it may be said here without fear of contradiction that the British North America Act is not, nor ever was the Constitution of the Government of the Dominion of Canada.**

No dictator, including Mussolini or Hitler has as great or all inclusive a power over their respective countries, as that which is exercisable by the Governor General of Canada.

It will be noted that the Constitution of the Government reproduced here was issued to Earl Bessborough, March 23, 1931, and signed by Sir Claude Schuster, Clerk of the Crown in Chancery. *It is neither from the King nor from Parliament.*

Neither Parliament nor the King has any direct connection with Canada since Canada has been a possession of the British Empire. Why? Because the administration of the affairs and the exercise of authority over the Colonies have been granted to the Crown in Chancery. After receiving his **Commission** which entitled the Governor to exercise the authority granted in the *Constitution* he is introduced to the King at the Court of St. James where he receives his **Instructions**. These are granted by His Majesty personally under his **Sign, Manual and Signet**, and are limited to include only those things which may be necessary for the purpose of Government. In other words he is not a Vice-Roy in toto. He could not confer the title of Sir, or Lord etc. Further, the Governor General of any Colony may be sued in Court, the King or Vice-Roy cannot be sued.

Following is the **Constitution** which today is in effect in Canada. When this is recognized it will be realized that to prove the British North America Act fraudulent does not destroy this Constitution; but as this Constitution was issued before Canada was elevated from Colonial status it is no longer legally enforceable.

# THE GOVERNOR GENERAL OF CANADA

Letters Patent CONSTITUTING the office and instructions  
CANADA

Letters Patent under the Great Seal of the Realm, **constituting** the Office of Governor General and Commander in Chief of the Dominion of Canada.

Dated 23<sup>rd</sup> March, 1931.

GEORGE THE FIFTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith, Emperor of India ;

To all to whom these Presents shall come,  
Greetings :

**Preamble — Recites Letters Patent of 15<sup>th</sup> June, 1905.**

Whereas by certain Letters Patent under the Great Seal bearing date at Westminster the Fifteenth day of June, 1905, His late Majesty King Edward the Seventh did **constitute**, order and declare that there should be a Governor General and Commander-in-Chief in and over Canada, and that the person filling the office of Governor General should be from time to time appointed by Commission under the Royal Sign Manual and Signet:

And whereas it is Our Will and pleasure to revoke the Letters Patent and Instructions and to substitute other provisions in place thereof:

**Revoke Letters Patent of 15<sup>th</sup> June, 1905**

Now therefore We do by these presents revoke and determine the said recited Letters Patent, and everything therein contained, but without prejudice to anything lawfully done there under :

And We do declare Our Will and pleasure as follows:

**Office of GOVERNOR GENERAL and Commander in Chief CONSTITUTED**

**I.** We do hereby **constitute**, order and declare that there shall be a Governor General and Commander-in-Chief in and over Canada, (hereinafter called Our said Dominion), and appointments to the said office shall be made by Commission under Our Sign Manual and Signet.

**II.** And We do hereby authorise and empower Our said Governor General to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

**Appointment of Judges, Justices, etc.**

**III.** And We do further authorise and empower Our Governor General to **constitute** and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers (including diplomatic and consular officers) and Ministers of Canada, as may be lawfully **constituted** or appointed by Us.

**Suspension or removal from office.**

**IV.** And We do further authorise and empower Our Governor General, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Canada, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

**Summoning, proroguing, or dissolving of the Dominion Parliament**

**V.** And We do further authorise and empower Our said Governor General to exercise all powers lawfully belonging to Us in respect of summoning, proroguing or dissolving the Parliament of Our said Dominion.

**Power to appoint Deputies**

**VI.** And whereas by the “British North America Act, 1867”, it is amongst other things enacted that it shall be lawful for Us, if We think fit, to authorise the Governor General of Our Dominion of Canada to appoint any persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our

said Dominion, and in that capacity to exercise, during the pleasure of Our said Governor General, such of the powers, authorities and functions of Our said Governor General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us ; Now We do hereby authorise and empower Our said Governor General, subject to such limitations and directions, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions and authorities as he may deem it necessary or expedient to assign him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our said Governor General in person.

#### **Succession to the Government**

**VII.** And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor General out of **Our said Dominion**, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in **such person as may be appointed by Us under Sign Manual and Signet to the Lieutenant-Governor in Our said Dominion**, then in **such person or persons as may be appointed by Us under Our Sign Manual and Signet to administer the Government of the same ;** and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in Our Chief Justice for the time being of **the Supreme Court or Our said Dominion**, (hereinafter called Our Chief Justice) or, in case of the death, incapacity, removal or absence out of **Our said Dominion** of Our Chief Justice **for the time being**, then in the Senior Judge for the time being of **Our said Supreme Court**, then residing in **Our said Dominion** and not being under incapacity.

Provided always, that the said Senior Judge shall act in the administration of the Government only if and when Our **said Chief Justice** shall not be present within **Our said Dominion** and capable of administering the

Government.

Provided further that no such **powers** or authorities shall vest in such **Lieutenant-Governor, or such other person or persons**, until he or they shall have taken the Oaths appointed to be taken by the **Governor General of Our said Dominion, and in the manner provided by the Instructions accompanying these Our Letters Patent.**

#### **Officers and others to obey and assist the Governor General**

**VIII.** And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all the other inhabitants of **Our said Dominion**, to be obedient, **aiding and assisting** unto Our said Governor General, or, in the event of his death, incapacity or absence, to such person as may, from time to time, under the provisions of these Our Letters Patent administer the Government of **Our said Dominion.**

#### **Power reserved to His Majesty to Revoke, alter or amend the present Letters Patent**

**IX.** And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

#### **Publication of Letters Patent**

**X.** And We do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places **as Our said Governor General shall think fit within Our said Dominion of Canada.**

**In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the twenty-third day of March, in the Twenty-first year of Our Reign.**  
By warrant under the King's Sign Manual.

SCHUSTER

Letters Patent **Constituting**  
the Office of Governor General and  
Commander in Chief of the Dominion of Canada

This Constitution of the Government of Canada was not issued by the British Parliament, nor is it signed by the King ; but by Sir Claude Schuster, Clerk of the Crown in Chancery, which is the Dept. of Lands of Great Britain of which the Colonial Office is a branch. [ 1763 – 1931 ]

It will be comprehended therefore that it was not, nor is it compatible with the responsibility entrusted to the Governor General by this Department, that his actions or his discretion be circumscribed in any way by the advice of his Canadian Ministry. <sup>10</sup>

## RESPONSIBILITY DEFINED

All this is perfectly in order, but imperfectly understood. The Crown in Chancery, of which both the Colonial Office and the Dominion House are branches, was a duly incorporated body such as our Department of Lands, the officers of which were in complete charge of the possessions of the British people. A Member of Parliament would have no more right to interfere with the working of the machinery of this office than he would have the right to go aboard a British Battleship to operate one of its guns. He would doubtless be taken in charge as a lunatic.

Collectively however, members of Parliament could sell, or cede any of these possessions. Until Dec. 11, 1931, Canada was a possession of the British people, and its affairs were administered by the Colonial Office. Since the enactment of the Statute of Westminster, Canada was elevated to a position of equality with the United Kingdom and by so doing a transfer was made of the title to the property from the Crown in Chancery or Department of Lands of Great Britain to Canadian people.

It is not to the interest of the Crown in Chancery to know what Department of the Government of Canada would have charge of this matter. All they can do is to say quite truthfully, they are no longer interested, as they have said on several occasions, and

which statements have been reiterated by the Prime Minister of Great Britain.

Our laws provide that the **Property** is solely the possession of the Provinces, and where formerly the Constitution of Canada was drafted by the Crown in Chancery and a *Government for Canada Constituted* ; it is now the duty of the Provinces who are in charge of the **Property** of Canada to provide a Constitution in the same way as was previously provided by the Crown in Chancery. Until this occurs each Province of Canada is a duly incorporated body which has charge of the **Property** for the Canadian people. It is for this reason that the writer has previously stated that each Province of Canada is a political unit without a political superior. They can, acting for the Canadian people, transfer their powers to a central body if they choose.

A clear deed and title to Canada has been transferred from the British share-holder to the Canadian people by the enactment of the Statute of Westminster, Dec. 11, 1931. Among other things this Statute enacts that a **Dominion** or any Province or State forming part of a Dominion shall after the commencement of this Act, no longer be deemed to be a **Colony**. The Statute is also definite in that it states that in the event of the abdication of the King that it is the *established Constitutional position* that hereafter *this* shall require the assent of the Parliament of all the Dominions as well as the assent of the Parliament of the United Kingdom. By abrogating the Colonial Validity Act of June 29, 1865, it deletes from the laws the competency of the British Parliament or the power previously held by the Governor General to disallow Dominion or Provincial legislation.

### *Sec.2, Par. 2.*

“No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the Law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any

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<sup>10</sup> . Appendix 5.

such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in-so-far as the same is part of the law of a Dominion.”

Canada receives special attention in that Canada is placed first in the list of the Dominions to which this shall apply and further the provision quoted is extended to apply “to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces”.

The question may be well asked : Why does the Statute of Westminster state that the Provinces of Canada are entitled to this autonomy and no mention is made of the States of Australia or South Africa ? Because the States of Australia and South Africa had previously constructed Constitutions granting their authority to a Central Government to represent the Commonwealth or Union as a unit.

The Provinces of Canada retain the ownership of the **Land** until they take this step. Property is the possession of the Province. Ontario owns the land whereon the House of Parliament stands in Ottawa.

## GOVERNOR WITHOUT AUTHORITY

The twelve Right Honourables and the Governor General were nothing more than an agency of the Crown in Chancery in Canada. When the title of ownership was transferred the Crown in Chancery no longer could give instructions or grant any authority to any one over this land ; Canada.

Nothing has occurred that would intimate they would attempt to do this, but simply as a precautionary measure I myself cabled the Colonial Office when it was mooted that Lord Tweedsmuir was coming to Canada and protested that any Constitution be issued to him. It is apparent that this is an entirely impersonal matter to them. Naturally Lord Tweedsmuir received no authority or instructions. As has been previously explained,

it is only after receiving authority from the Crown in Chancery that Lord Tweedsmuir could present himself at the Court of St. James to have the right to represent His Majesty conferred upon him.

No papers of any kind were issued to Lord Tweedsmuir in Great Britain. He has a Commission which may be found in the Office of the Secretary of State for Canada signed R.B. Bennett.<sup>11</sup> This Commission dated Aug. 10, 1935, *has never been published in the Canada Gazette* as is the common practice ; this is evidently through fear of the consequent repercussions. Questions would undoubtedly be asked and some people would think that Mr. Bennett had no authority to issue such a paper. At least he had no competency as Premier of Canada.

When Lord Tweedsmuir arrived in Canada Nov. 2, 1935, he was sworn in at Quebec by the Rt. Hon. Sir Lyman P. Duff, who stated in the Canada Gazette that he was swearing him in by authority of Letters Patent of June 15, 1905. By referring to the Constitution published here you will find that these had been revoked on March 23, 1931. The proclamation issued by Sir Lyman Duff will be found in the Canada Gazette for Sept. 30, Oct. 5, Oct. 12, and Oct. 19, 1935.

Upon being sworn Lord Tweedsmuir issued a proclamation in the Canada Gazette Nov. 2, 1935 ; stating he was exercising the powers and authorities which had been issued to Earl Bessborough, March 23, 1931. This proclamation is too ridiculous to receive any serious consideration. Nevertheless it is the only authority by which Lord Tweedsmuir carries on the Government of Canada.

He was not appointed nor did he receive any **Instructions** from George the Fifth or Edward the Eighth. These Monarchs knew their duty to Canada and their Constitutional position, and they did not appoint him their representative.

## EDWARD'S ABDICATION

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<sup>11</sup> See Appendix 6.

When King Edward VIII tendered his abdication on Dec. 11, 1936, and it was accepted by the Parliaments of Great Britain, Australia, New Zealand, and South Africa; and on the next day by the Parliament of the Irish Free State. Lord Tweedsmuir accepted this abdication on behalf of Canada without calling Parliament which I am reliably informed was against the advice tendered to him. What does one more constitutional infraction amount to, when he himself has no authority.

The Proclamation dated Dec. 12, 1936, accepting the abdication is reproduced in "The Official Handbook of Present Conditions and Recent Progress" 1937, a supplement to the "Canada Year Book". This contains the private seal of John Buchan, Baron Tweedsmuir of Elsfield. Not the Seal of Canada or by the authority of the Canadian people. Without renouncing their allegiance to Edward VIII, a Parliament is convened by Lord Tweedsmuir on January 14, 1937, and all members are **sworn in** by oath to George VI.

If any of the members had known their constitutional position they would know that they could refuse to be sworn ; for a member *is only sworn once* as long as the present Parliament is sitting.

## PARLIAMENT IS NOT GOVERNMENT

It will be evident that Government is an entirely separate matter from that of Parliament. It is true that the British North America Act constitute a Parliament, but it does not provide for a Premier, Prime Minister or Cabinet, the present incumbent and all previous Premiers receive or have received their indemnity of \$15,000 per year as **The Member of the King's Privy Council holding the recognized position of First Minister.** (Salaries Act, C. 182).

The "King's Privy Council for Canada" is constituted to "aid and advise" the Government. It is not a part of the Government. The Premier of Canada and the Cabinet are the

active members of this Council, all members of which are appointed by and removable at the discretion of the Governor General personally.

The wording of this clause in the "Salaries Act" is most important. It does not state the "First Minister" but only so long as he is recognized at the discretion of the Governor General as the Member of the King's Privy Council holding this position.

Notwithstanding the "Member" should be at the time a Right Honourable member of the **Imperial Privy Council** the members of which are "supposed" to "advise" the Governor General ; the "Member" may be no longer *recognized* as such by him.

Both William Lyon Mackenzie King and Arthur Meighen were Right Honourables in 1926, when the former was removed by Lord Byng and the latter *recognized* by him as "The Member of the King's Privy Council holding the recognized position of First Minister".

The present incumbent, William Lyon Mackenzie King receives an indemnity of \$4,000 per year as the representative of his constituency of Prince Albert and \$15,000 **Salary** as Civil Servant of the Governor General, plus the amount of **Salary** to which he is entitled from the British Government as a Right Honourable Member of the Imperial Privy Council.

No one can be held accountable who is not responsible. He is in no degree more accountable to the Canadian people as a whole than is any other private member and receives his **indemnity** accordingly; further monies received as **Salary** are due only for the reason he is retained by the Governor General.

Once only has the term **Prime Minister** been used in a Statute (See debates in House April 10, 1935, p. 2599).

The British North America Act was never intended to be more than a supplementary Constitution creating a Parliament to be ancillary to the Government, which Government today has no Constitution.

Lord Tweedsmuir when in England this summer was appointed by George VI as his representative in Canada (See Canada Gazette, July 9, 1938).

Naturally if the people of Canada have accepted Lord Tweedsmuir as their Governor General for the past three years, the King is justified in designating him his representative.

What the writer would like to know is, has he proven the British North America Act

fraudulent to the satisfaction of the reader ? If so, it is unnecessary for the writer to tear the B.N.A. Act into fragments to weave the shreds into this tapestry. Let the reader assist. Nothing is a better antidote for the poison of party politics than a careful reading of the **B.N.A. Act**. It was intended to be and is a convenient and efficient screen to mask the activities of the invisible Government. To say more would be to deprecate the intelligence of the reader.

## EPILOGUE

Canada's loyalty to the Empire has nothing to do with the self-government of Canada. Canada's loyalty is written in crimson deeds more effective than words. Since 1812, Canada sent her sons to Waterloo ; to Crimea ; (Colonel A.R. Dunn of Toronto won the V.C. in the Charge of the Light Brigade) with Kitchener at Kartoom ; with Bobs in South Africa ; at Ypres ; at Vimy. In the air, what Empire hero can vie with Colonel W.A. Bishop of Toronto, who all Canadians delight to honour ?

Consider the following. Is Australia less a part of the Empire because she constructed a Constitution, purchased the District of Canberra, and deeded this to the Federal Union of the Commonwealth created by a signed agreement between the States of Australia ? Is Ireland less part of the Empire because no Right Honourable can sit in her Parliament, or because she has resolved that the Supreme Court of Ireland should be the Court of last resort ; or because Ireland sends a duly accredited Ambassador to the United States ? Is South Africa less a part of the Empire because they created a Union of South Africa ; or because the Union Jack may not be flown higher than the flag of South Africa ?

Let us not be diverted from creating a Federal Union of the Provinces of Canada by any cry of disloyalty emanating from some Right Honourable. It is because Right Hon-

ourables sit in our Parliament and lead our political parties, that denization has circumvented birth-right ; that no provision is made to enumerate Canadians on the census of Canada ; that no means is provided for a Canadian to exercise his franchise at the polls as a Canadian ; that we have no Canadian flag ; that our so-called trade agreements are not Canadian, but signed for us by a Right Honourable member of the British Government ; that Canada has no representative in Washington, Tokyo or Paris. Our so-called representatives receive no papers from Canada, as can readily be ascertained by an enquiry to the Secretary of State for Canada.

### NO CANADIAN VOTES

How can we have a Canadian Government if no Canadian is permitted to vote ? If we had a Canadian Government would we not have a Canadian flag ? How can our representative in a foreign country represent Canada unless appointed by the Canadian Government ? How can we expect to have a united Canada unless an agreement is signed between the Provinces ?

Recently an eminent Attorney General, in discussing this question with me said : "If the Provinces choose to sign an agreement, I cannot conceive of the Imperial authorities having any objections".



Laws cannot be made to govern the land unless it is by and with the consent of those who own the land (not those who occupy the land).

As long as Canada was a possession of the British people, the British Parliament enacted that the administration of affairs and the exercise of authority over this *possession* be entrusted to the Crown in Chancery. It, therefore, was the duty of this office to grant all power to govern to a Governor General, who was responsible (not to those who occupied the land) but to this office of the British Government.

On December 11<sup>th</sup>, 1931, Great Britain relinquished the right to make laws for Canada, Australia, South Africa, New Zealand and the Irish Free State ; elevating them to the state of equality with herself. No authority to govern or no constitution has been issued by the Crown in Chancery to anyone to govern Canada since this date.

#### **Section 109 of the B.N.A. Act**

“All Lands, Mines, Minerals and Royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such Lands, Mines, Minerals or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same”.

Briefly the situation is that *property* is the *possession* of the Provinces, as those Provinces created after the original Dominion was formed came in as if the Province had been one of the Provinces originally united.

It is admitted that the *Land* belongs to the Provinces, and today there is no Interest other than that of the Province in the same.

The dominion Government was the creation of the British Parliament (at the instigation of the Colonial Office) to govern their *possession*, Canada. This Government was the agent of the Crown in Chancery as long as Canada was *possession*.

Since December 11<sup>th</sup>, 1931, the Secretary of State for the Dominions and the Prime Minister of Great Britain have stated on several occasions that Canada governs herself. There is but one way in which Canada can govern herself and this is by an agreement between the component parts, the Provinces.

Canadians should forget their party affiliations and be Canadians first. There may be nothing wrong with the member you elect, but there is something radically wrong with the charter of the Government. Great Britain relinquished the right to legislate for Canada, Australia, South Africa, New Zealand and the Irish Free State on Dec. 11<sup>th</sup>, 1931, and elevated them to a status of equality with herself. Since then neither the Governor General nor the Right Honourables have received instructions from either the Crown in Chancery or the British Parliament, nor have they received any power from any of the Provinces of Canada. When Canada was a *possession* of the British people it was a duty of the Crown in Chancery to grant the power to govern. Today the Lands of Canada are the *possession* of the Provinces, and whereas prior to 1931 the power to govern was granted by the Crown in Chancery, this power must now be conferred upon a central government by the Provinces collectively signing an agreement.

## THE BANKER AND THE BONDS

Among Canadians the Banker and the Investor stand to lose the most. It is safe to say that if they knew that the *Story of Confederation* was a fake, they would insist that an agreement be signed between the Provinces before they would permit the Dominion to vote a bond, collect an income-tax or issue a postage stamp.

Before investing in a municipal bond, the wise investor will satisfy himself that the investment is sound ; that the Mayor and Council have the power by their charter to issue the bonds. It is just possible that the issue would have to be sanctioned by the property owners.

Property is the possession of the Province.

Stripped of all irrelevant, immaterial and inconsequential legal phrases and fictional history, which has enshrouded the **Union of the Provinces into one Dominion**, divorcing from this question the interest of politicians, whose only concern is to perpetuate themselves in a lucrative position ; analysing the rhapsodising of pseudo-constitutionalists ; what do we find ?

We, here in the East, find that it is incompatible with the legal set-up for us to attempt to hold the Western Provinces liable for Dominion debts, in case they choose to create an autonomous Western State.

We could say quite truthfully that the Western Provinces were united into one Dominion by an Act of the Imperial Parliament, *in the same way and to the like extent as apply to the Provinces heretofore comprised in the Dominion*. They would say : *right you are*, but as we are not under the Imperial Parliament now, *show us your agreement*.

We would then turn to the Maritimes," surely you are not going to desert us ?

They would say, Well ! This question is a matter of Dollars and cents, not patriotism, and so far as we have not authorized the Dominion Government to issue bonds ; we

think the debts belong to Ontario and Quebec.

Bluntly ; is there any way in which we could compel these Provinces to shoulder their just proportion of the Public Debt ?

Only when an agreement has been signed jointly by the Provinces will the Banker and Investor have a sure, solid sense of security in his investment.

The gross debt of the Dominion, given in the **1938 Canada Year Book**, P. 840, is :— \$3,542,521,139. On March 31, 1938, \$2,478,491,235, or 76 percent of this debt was held in Canada. To this may be added loans floated May 5, and Nov. 5, 1938 for \$113,500,000 and \$100,000,000 respectively. Notice has been given that a loan of \$750,000,000 will be contracted for this year. The latter to be used mainly for retiring certain issues.

Regardless of whether Canada is considered a democracy or not, we should at least contrive to do business on a business-like basis. If it can not be shown where, when and how the Provinces conferred the competency upon the Dominion to contract debts, then the Dominion Government is a phantasmagoria as unreal as "Snow White and the Seven Dwarfs".

Insofar as I am aware no Province has intimated a desire to repudiate its moral obligations. What I have to say is, that an agreement should be signed, transmitting this moral responsibility into a legal accountability. Copies of this article will be in the hands of subscribers from Vancouver to Halifax, before this issue is released to the public. It is safe to say, that when the Banks and Investors are aware of the situation appertaining they will insist, before they subscribe to this new issue of bonds, that past and future Dominion issues be guaranteed by an agreement signed jointly by the Provinces.

## DISUNITY OF CANADA

Last October, the Hon. Mc.L. Rogers, a member of the Dominion Cabinet, deplored the existence of sectionalism in Canada, stating this weakened the essential foundations of our Federal Government.

Compare this statement with that made by himself on Feb. 26, 1935 in his submission, on the B.N.A. Act to the Turnbull Commission, he said :— “I am thoroughly convinced that the British North America Act is not a pact or contract either in the legal or historical sense”.

If he is serious now, he is only serious in attempting to further confound a situation already rendered sufficiently confusing by the statements of his own and other Dominion officials.

The essential foundation of a Federal Union is an agreement.

Only by an agreement can the Provinces overcome the spiritual petrification which has ossified the heart of Canada. By such an agreement the Central Government becomes the servant of the united Provinces ; not their dictatorial master.

Dr. Beauchesne, K.C., C.M.G., LL.D., suggests the name the “Federal States of Canada.”

**CANADIANS :** Let us have a National Policy, a National Flag, National Representatives in Foreign Countries, and National Unity, and let there be no Right Honourables sitting on the Board of Directors of the “**Federated States of Canada**”.

## NOTE

The elevation of the Atty.-Gen. to the Privy Council and the Peerage of Great Britain was not Gazetted at the time nor subsequently, nor announced until July 1<sup>st</sup>, 1867 ; when this was the first official Act of Lord Monck upon convening Parliament at Ottawa. Later on March 6<sup>th</sup>, 1879 by a private letter in answer to a letter of the then Governor General requesting Sir John to submit a list of those he considered eligible to receive honours, he advises against granting too many, and in explanation said :

“That *honours* should be *granted* only for a *service* performed for the *Imperial Government*... Considerable feeling was aroused in Lower Canada among French Canadians at what was looked upon as a slight to the representative man of their race, and a motion on the subject was made in Parliament. Lord Monck refused to give any information on the subject, as being one of Imperial concern only ; but, in order to allay this feeling, obtained permission from Her Majesty’s Government to offer Mr. Cartier a Baronetcy, if I did not object to it. I, of course, at once stated that I should only be too glad to see my colleague receive the honour. Mr. Galt was made a K.C.M.G. All these honours were conferred upon myself and the other Gentlemen on account of the prominent part we had taken in carrying out the *Imperial policy of Confederation*, and without reference to us”... (Dominion Archives) *Italics mine*. See page 28.

# APPENDIX

## APPENDIX 1

### HANSARD

Pp. 2809 for 1936 by Mr. Blackmore.  
From the New Democracy, under  
“*Dynamics of Education*”  
by Dr. Joyce Mitchell

“ An article in the New Democracy of Nov. 8, 1934, entitled *Gold, History and Liberty* set me studying the historical agitation that led to the passing of the Second Reform Bill of 1832. It was amazing to learn in the article that *The true facts of that tremendous historical occurrence known as the passing of the Second Reform Bill of 1832 has been deliberately suppressed by successive governments, and that standing orders have been given to the permanent officials in government departments to take the utmost precautions by means of the government secret service that none of the real facts connected with the passing of the 2nd. Reform Act shall ever be published in any history, or book of historical reference, whether the same is intended for school boys, university students or professional historians.*”

It was in this article that I learned for the first time of the existence of a permanent Government official receiving a salary of **£1200** a year and pension — known as a historical adviser, whose miserable, degrading duty consist in advising the Government of the day how to evade and suppress historical truth in the interest of professional politicians ”.

## APPENDIX 2

### Annual Register 1861, page 216

On the 31<sup>st</sup> of October, a convention between Her Majesty, the Emperor of the French and the Queen of Spain was signed in London. It recited that: “Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; Her Majesty the Queen of Spain and His Majesty the Emperor of the French feeling themselves compelled, by the arbitrary and vexatious conduct of the authorities of the Republic of Mexico, to demand from those authorities more efficacious protection from the persons and properties of their subjects, as well as fulfilment of the obligations contracted towards their Majesties by the Republic of Mexico had agreed to conclude a convention with a view to combine their common action”.

Article 1. “Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; Her Majesty the Queen of Spain and His Majesty the Emperor of the French, engage to make immediately after the signature of the present convention, the necessary arrangements for dispatching to the coast of Mexico, combined naval and military forces, the strength of which shall be determined by a further interchange of communications between their Governments, but of which the total shall be sufficient to seize and occupy the several fortresses and military positions on the Mexican Coast.

Article 2. “The commanders of the allied forces shall be moreover authorized to execute the other operations, which may be considered on the spot, most suitable to affect the object specified in the preamble of the present convention, and specifically to ensure the security of foreign residents.

## APPENDIX 3

### SPEECH IN THE HOUSE OF COMMONS

**Sir John A. Macdonald, Feb. 24<sup>th</sup>, 1871**

One would think from the speech of the Hon. Gentleman (Hon. Sir John A. Galt) that the settlement of the Alabama claims was a matter of no importance. Was it of no importance that a terrible war between England and the United States which would subject Canada to all the miseries of the battleground should be avoided ?

The invitation to Canada to take part in this Commission, showed that Canada had made an additional step in the estimation and favour of England, in this, that he, unworthy as he was, should be chosen to represent the cause of Canada at Washington. (Cheers)

“There was no fear of England ceding a part of Canada and she would as much be giving up a portion of this country by ceding our rights to the three-mile limit as if she gave away one of our cities”.

In the joint High Commission about to sit at Washington there would be a sincere desire on both sides he believed for a settlement of the pending disputes, but there was no risk whatever to our interests.

Even if he would suppose England were willing to sacrifice us, as a matter of law she could not until the Canadian Parliament ratified the Treaty by its own Act.

#### **Memoirs of Sir John A. Macdonald**

**Vol. 2, pp. 322 (“Private”)**

Her Majesty’s High Commission  
In Washington, May 6<sup>th</sup>, 1871

“My dear Sir John,

“I have been thinking over the conversation which took place between us yesterday, and I am anxious to repeat to you the arguments which I then employed with a view to impress upon you the importance of your name being attached to the Treaty, which we hope to sign on Monday next.

“It is not necessary for that purpose that I should enter into any consideration in detail of the merits of that Treaty. I believe it is to be one which, taken as a whole, and regarded as it

ought to be, as a broad settlement of the many differences which have lately sprung up between Great Britain and the United States, is fair and honourable to all parties, and calculated to confer very important advantages upon our respective countries. I should doubtless have desired to see it differently framed, in some parts, but all negotiations, unless carried on under the shadow of a triumphant army, are necessarily compromises, and I am convinced that the arrangement to which we have come is the best that under the conditions of the problem before us we could have secured.

“Believing this, I am naturally most anxious not to run any risk of the Treaty being rejected by the Senate, and I cannot doubt that the absence of your signature would lead to that result. It would be a very serious matter if the signature of any member of the Commission were wanting, but any of our names could, I think, be more safely spared than yours.

“It appears to me, therefore, that you would incur a responsibility of the gravest kind if you were to withhold your signature ; such a step, moreover, would not only be one involving in all probability consequences very greatly to be deprecated but it would, as it seems to me, be inconsistent with your position as a member of the Joint High Commission. We of the English portion of the Commission are not separate members of a conference acting each by himself, but we are jointly the plenipotentiaries of our Sovereign, bound by the instructions which we receive from Her Majesty’s Government, and directed now to sign this Treaty.

“I hold, therefore, that it is our clear duty to sign, that we act under the orders of our Government, and that, in the position we occupy, we should not be justified in disobeying those orders. I trust that, under these circumstances, you will see the great importance, and indeed, as I believe, the absolute necessity of your not separating yourself from your colleagues in the signature of the Treaty, and

“I remain, yours sincerely,

“De Grey”.

**Extract from a letter Sir John wrote at the time to Dr. Tupper**

“I must say that I am greatly disappointed at the course taken by the British Commissioners. They seem to have one thing on their minds – that is, to go home with a treaty in their pockets, settling everything, no matter at what cost to Canada... The effect which must be produced on the public mind in Canada by a declaration from both parties in the Imperial Parliament against our course, will greatly prejudice the idea of British connection, as British connection will have proved itself a farce. I do not like to look at the consequences, but we are so clearly in the right, that must throw the responsibility on England”.

**Correspondence of Sir John A.  
pp. 145**

Excerpts from letter to the  
**Hon. Alex. Morris**

The Arlington, Washington,  
April 21<sup>st</sup>, 1871

My dear Morris,

..... Never in the whole course of my public life have I been in so disagreeable a position and had such an unpleasant duty to perform as the one in which I am now engaged. However, the work had to be done, and I am resolved to do it...

Yours sincerely,  
John A. Macdonald.

**Sir John A. Macdonald (Memoirs) pp. 149**

“Thanks for your various letters about this important treaty. Never was there such a bungled matter from beginning to end. You may tell Lord Granville from me, confidentially, that if he wants his business done at Washington correctly at any time he must send me **alone**. But seriously, the whole thing was badly managed, first at Washington, and still worse in England. I suppose that the Treaty will come to something in the end, but instead of removing heart-burnings, it has laid the foundation of new suspicions, and all without the slightest necessity”.

**pp. 153**

“The chief ground of attack on the Government was the Washington Treaty, and our submitting to Gladstone’s resolve was not to press the Fenian claims. Added to this, of course, were all the sins of omission and commission that gather round an administration of so many years’ duration as ours.

“I never worked so hard before, and never shall do so again, but I felt it to be necessary this time. I did not want a verdict against the Treaty from the country, and besides, I sincerely believe that the advent of the Opposition, as it is now constituted, to power would greatly damage the future of Confederation.

**APPENDIX 4**

Full Power to the Earl De Grey, Sir Stafford Henry Northcote, Sir Edward Thornton, **Sir John A. Macdonald, and Montague Bernard, Esq.**, to negotiate with plenipotentiaries of the United States.

**VICTORIA R.**

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith... To all and singular to whom these Presents shall come, Greetings : Whereas, for the purpose of discussing in a friendly spirit with Commissioners to be appointed on the part of our Good Friends, the United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement. We have judged it expedient to invest fit persons with full power to conduct on Our part the discussions on this behalf. Know ye, therefore, that We, reposing a special trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our right and trusty and right well-loved Cousin and Councillor George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderick, a Peer of Our United Kingdom, President of Our Most Honourable Privy Council, Knight of Our Most Noble Order of the Garter, ...of our right trusty and well beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honourable Order of the Bath,

...of Our Trusty and well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends, the United States of America, ...of Our Trusty and well-beloved **Sir John Alexander Macdonald**, Knight Commander of Our Most Honourable Order of the Bath, a **Member of Our Privy Council for Canada**, and Minister of Justice and Attorney-General in Our Dominion of Canada, ...and of Our Trusty and well-beloved **Montague Bernard**, Esquire, Chichele Professor of International Law in the University of Oxford;— have named, made, constituted, and appointed, as We do by these presents name, make, constitute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries; Giving to them, to any three or more of them, all manner of power and authority to treat, adjust, and conclude with such Minister or Ministers as may be vested with similar power and authority on the part of Our Good Friends, the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above mentioned end, and to sign for Us and in Our Name, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work, in as ample manner and form, and with equal force and efficacy, as We Our-selves could do if personally present; Engaging and promising upon Our Royal Word that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or to act contrary thereto, as far as it lies in Our power.

In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand. Given at Our Court at Windsor Castle, the sixteenth day of February, in the Year of Our Lord One Thousand Eight Hundred and Seventy-One, and in the Thirty-fourth year of Our Reign.<sup>12</sup>

<sup>12</sup>. *Parliamentary Debates*, Vol. 204, p. 2046.

## APPENDIX 5

The Earl of Carnarvon to  
Governor Sir H. Robinson, K.C. M.G.  
Downing Street., May 4<sup>th</sup> 1875

..... “Advice thus having been given to a Governor, he has to decide for himself how he will act...

“But whether the case might be one more immediately concerning the internal administration of the Colony, or one of wider import, it has seemed to me, as well as to my predecessors, that the Royal Instructions not only lay down a sound **Constitutional** view, but provide a mode of procedure which is calculated to assist the Colonial Governments in the administration of justice without *infringing upon the responsibility of Ministers*.

“It is true that a Governor may (and indeed must, if in his judgement it seems right) decide in opposition to the advice tendered him.

“On the other hand a governor who, by acting in opposition to the advice of his Ministers, has brought about their resignation, will obviously have assumed a responsibility for which he will have to account to Her Majesty’s Government”.

Sessional Papers No. 116,  
Vol. IX — No.8, 1876 .

## APPENDIX 6

### COMMISSION

L.S. George R.I.

Commission appointing the Right Honourable Lord Tweedsmuir, G.C.M.G., C.H., to be Governor General and Commander in Chief of our Dominion of Canada.

(I)

**Dated this 10<sup>th</sup> Day of August, 1935.**

**Recorded November 2<sup>nd</sup>, 1935**

George the Fifth, by the Grace of God of Great Britain, Ireland, and the British Do-

minions beyond the Seas, King, Defender of the Faith, Emperor of India ; to our Right Trusty, and well beloved John, Baron Tweedsmuir, Knight Grand Cross of our Most Distinguished Order of Saint Michael and Saint George, member of our Order of the Companions of Honour, Greeting.

We do, by our Commission under our Sign, Manuel and Signet, appoint you, the said John, Baron Tweedsmuir, to be, during our pleasure, Our Governor General and Commander in Chief in and over Our Dominion of Canada, with all the powers, rights, privileges and advantages to the said office belonging and appertaining.

(II)

And we do hereby, empower and command you to exercise and perform all and singular the powers and directions contained in certain letters patent under the Great Seal, bearing date at Westminster, the twenty-third day of March, 1931, constituting the said office of Governor General and Commander in Chief, or in any other Letters Patent adding to, amending, or substituted for the same according to such Orders and Instructions as our Governor General and Commander in Chief for the time being hath already received, or as you may hereafter receive from Us.

(III)

**Commission dated the 20<sup>th</sup> day of March, 1931. Superseded**

And further, We do hereby appoint that, as soon as you have taken the prescribed Oaths and have entered upon the duties of your office, this, Our present Commission, under Our Sign Manuel and Signet, bearing date the 20<sup>th</sup> day of March, 1931, appointing the Right Trusty and Right Well Beloved Cousin and Counsellor, Vere Brabazon, Earl of Bessborough, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, formerly Captain in our Territorial Army, to be our Governor General and Commander in Chief in and over Our Dominion of Canada.

(IV)

**Officers, etc., to give obedience**

And we do hereby command all and singular our Officers, Ministers, and loving subjects in our said Dominion, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court of Saint James, this 10<sup>th</sup> day of August, 1935, in the Twenty-Sixth year of our Reign.

By His Majesty's Command.

(Sgd.) R. B.

**Bennett.**

(This Commission was not and has not been **Proclaimed** in the "Canada Gazette").