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that it was almost impossible to weld them into a Legislative Union at once. Why, sir, if you only consider the innumerable subjects of legislation peculiar to new countries, and that every one of those five colonies had particular laws of its own, to which its people have been accustomed and are attached, you will see the difficulty of effecting and working a Legislative Union, and bringing about an assimilation of the local as well as general laws of the whole of the provinces. We in Upper Canada understand from the nature and operation of our peculiar municipal law, of which we know the value, the difficulty of framing a general system of legislation on local matters which would meet the wishes and fulfill the requirements of the several provinces.

"The whole scheme of Confederation, as propounded by the Confederation, as agreed to and sanctioned by the Canadian Government, and as now presented for the consideration of the people and the Legislature, bears upon its face the marks of compromise. Of necessity there must have been a great deal of mutual concession.

"As I stated in the preliminary discussion, we must consider this scheme in the light of a treaty.

"The conference having come to the conclusion that a legislative union, pure and simple, was impracticable, our next attempt was to form a government upon federal principles, which would give to the General Government the strength of a legislative and administrative union while at the same time it preserved that liberty of action for the different sections which is allowed by a Federal Union.

And I am strong in the belief that we have hit upon the happy medium in those resolutions, and that we have formed a scheme of government which unites the advantages of both, giving us the strength of a legislative union and the sectional freedom of a federal union, with protection to local interests."

The other passage which I propose to quote is from the speech of Lord Carnarvon in the House of Lords in 1867 when he moved the second reading of the British North America Act:

"A legislative union is under existing circumstances impracticable. The Maritime Provinces are ill-disposed to surrender their separate life, and to merge their individuality in the political organization of the general body. It is in their case, impossible, even if it were desirable, by a stroke of a pen to bring about a complete assimilation of their institutions to those of their neighbours.

Lower Canada, too, is jealous, as she is deservedly proud, of her ancestral customs and traditions; she is wedded to her peculiar institutions, and will enter this Union only upon the distinct understanding she retains them."

Mr. Speaker, there are certain fundamental features in the arrangement made in 1867 which in some quarters is sought to be ignored. May I take this opportunity to re-state them as follows:

(1) The Provinces created the Dominion. To quote the present Minister of Justice in a recent debate in the House of Commons "The Dominion is the child of the Provinces; it is not the father." (Unrevised Hansard, 1937, p. 477.)

(2) The Provinces were not merged in the Dominion. New Brunswick continued as a Province of Great Britain; her soil remained British soil; her identity was unaltered; the continuity of her Legislature unbroken.

(3) Within Canada, the whole area of self-government was divided between the central authority on the one hand and the provincial authorities on the other, each acting independently. In respect of the matters entrusted to it by the Provinces, the authority of the central Government was supreme; in respect of those matters retained by the provinces, the authority of their Legislatures remained sovereign; both being subject only to the paramount authority of Westminster.

(4) It was never contemplated that the Dominion should have control over the Legislature or Executive Government of any Province nor the right to restrict or interfere with the exercise of their powers.

"These are the outstanding features of the Federal system of Government arranged in 1867 and go to very heart of the Treaty of Union.

In support of this summary, may I quote a passage from the judgment of the Privy Council in the case of the Liquidators of the Maritime Bank, (1892, A. C., p. 441):

"The object of the Act (meaning the British North America Act) was neither to weld the Provinces into one nor to subordinate provincial Governments to a central authority, but to create a Federal Government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each Province retaining its independence and autonomy."

Federal Relations  
Mr. Speaker, our Federal system of Government was established upon the footing that the central Government has no authority over this Legislature. To grant or allow it such control would defeat that system,

substitute in its place a legislative union and in the end destroy the Confederation.

The reasons which weighed in the past in favour of a Federal Union have equal, if not greater, force today. New Provinces have entered the Union; conditions have become more diverse and varied. Yet there are those who maintain that this Nation, stretching from the Atlantic to the Pacific, can be shaped and fashioned on a common anvil at Ottawa.

Those who desire a greater centralization of power have attempted action along two distinct lines.

On a former occasion, I discussed one of these movements at some length. With your indulgence, Mr. Speaker, I will quote a passage from my speech in the budget debate last Session:

"We are told that we are living in a new age, under conditions which the founders of Confederation never contemplated; the old arrangements must be modified; there must be a fresh alignment of powers between the Dominion and the Provinces, at the expense of the Provinces.

"No one will deny that some adjustments may be necessary, but the suggestion that social reconstruction is possible only through Dominion legislation and control carried little conviction. In theory that method might create greater uniformity; but in practice uniformity has not resulted from the exercise by the Dominion Government of its privileges and powers. Discriminatory methods have created a very real grievance in this Province.

"Our forefathers in 1867 rejected the arguments in support of uniformity, when they refused to enter a legislative union. The grounds for such rejection are just as strong today. New Brunswick has her own peculiar conditions, her own particular problems and her own special interests. I am yet to be convinced that we should put up our umbrellas in New Brunswick because it rains in Ontario and Montreal.

"But let me assure the House that this Government has never questioned that some adjustments may be necessary or advisable in the division of legislative powers made in 1867, and in the financial arrangements now existing between the Dominion and the Provinces. But as to the real move now on foot to give to the Parliament of Canada the power to enact a new Constitution in place of the British North America Act and impose a new charter on our Province, we view the entire proposal with the utmost distrust and suspicion.

"In the Record of Proceedings of the Dominion and Provincial Conferences of 1935, tabled at Ottawa recently, and in this House this afternoon, under the heading of 'Constitutional Questions' appears this report:

"A resolution was passed on a majority vote on nine to one (Mr. McNair representative of the Province of New Brunswick, cast the negative vote for the reason that he was unable to agree to the resolution in its entirety) reading as follows:

"This Conference, in the interest of the Dominion, and the Provinces is of the opinion:

"(a) That amendments to the British North America Act are now and subsequently may be necessary and imperative.

"(b) That, as in the case of all other self-governing Dominions, Canada should have the power to amend the Canadian Constitution providing a method of procedure therefore satisfactory to the Dominion Parliament and the Provincial Legislatures be devised.

"(c) That the Minister of Justice convene at an early date a meeting of appropriate officials of the Dominion and the Provinces to prepare a draft of such method of procedure, to be submitted to a subsequent conference.

"(d) That a conference be held at an early date after such draft has been prepared to consider such method of procedure."

"The portion of the resolution to which I objected asserted the principle that Canada should have the power to amend the Canadian Constitution.

"Honourable members have no doubt seen in the newspapers of the Province despatches emanating from Toronto and Ottawa indicating that the movement has been enlarged to embrace proposals for the enactment of an entirely new Constitution Act by the Parliament of Canada and the consequent repeal at Westminster of the British North America Act.

"In my view such a scheme would entirely destroy our federal fabric. The division of legislative and executive powers, which is the pith and

substance of a federal system of government must depend for its maintenance and stability upon a paramount law; in our case upon the supremacy of Imperial legislation.

"This Legislature holds its present powers because New Brunswick is an autonomous self-governing Province of Great Britain, sovereign within the sphere defined for her in the B. N. A. Act and independent of the Canadian Parliament.

"Under the new proposals she would become a mere territorial division of the Dominion and hold her powers by way of gift from the Parliament of Canada. To acknowledge the supremacy of the latter would be to confess our own subservency and subordination."

The other movement which culminated in the legislative programme of the Bennett administration involved the peaceful penetration by the Dominion into the legislative field of the Province through the application of new principles of interpretation of the British North America Act.

While this is a technical subject, I feel constrained to discuss it briefly, even at the risk of straining the patience of the House. To do so, it is necessary to refer to the two Sections of the British North America Act which regulate the distribution of legislative powers between the Dominion and Provinces of which it was observed by their Lordships in one of the recent decisions of the Privy Council "No one can doubt that this distribution is one of the most essential conditions, probably the most essential condition, in the inter-provincial compact to which the B.N.A. Act gave effect."

These sections are in part as follows:

"(91) It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the Peace, Order and good Government of Canada, in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater certainty but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the classes of Subjects next hereinafter enumerated:

(Then follows 29 Classes of Subjects specifically assigned to Parliament.)

"(92) In each Province the Legislature may exclusively make laws in relation to matters coming within the Classes of Subjects next hereinafter enumerated:

(Then follows 16 Classes of Subjects so specifically assigned to the Provincial Legislatures.)

It will be observed that under those sections certain enumerated classes of subjects were assigned to the Dominion Parliament, certain others to the Provincial Legislatures while the power to legislate in respect of any matter not falling within any of the enumerated heads was vested in the Dominion under its general authority to make laws, for the peace, order and good Government of Canada.

In the process of interpretation, the Courts extended the general authority of the Dominion Parliament and held that the power to make laws for the peace, order and good government of Canada gave to the Dominion Parliament the right to override the provincial Legislatures in cases of emergency where a national peril existed. For instance, a state of war involving Canada was, in the Fort Frances case, held by the Privy Council sufficient to justify Dominion legislation on matters normally within the Provincial field.

It was sought to support the reform programme of the Bennett administration in part by an extended application of those principles. It was contended that problems relating to social and industrial conditions had assumed in the provinces such proportions that it was impossible for the local Legislature to cope adequately with them; they had become national in their scope and had assumed such dimensions as to affect the body politic of the Nation and in consequence the Dominion Parliament was justified in intervening to suppress them.

Legislative Independence  
The acceptance of this doctrine would have destroyed the stability of our Constitution and the independence of the Legislatures. The danger lay in its application.

It is not a difficult thing for a Court to apply such a doctrine to cases of emergency, such as a war, famine or pestilence for the existence of the Nation.

(Continued on Page Seven)

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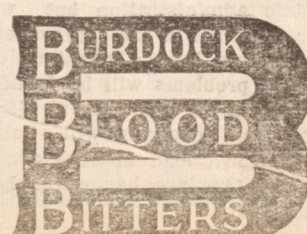
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