

America were, as I have said, consenting parties, and the measure founded upon them must be accepted as a treaty of union.

Let us now come to some authorities in the years after confederation.

Mr. Antonio Perrault:

This Imperial Act of 1867 was the last phase of a treaty, of a compact, of a contract entered into by two races, the French and the English races, two religious groups, the one Catholic, the other Protestant, both wishing that this federation should maintain a perfect equality of treatment between those two racial and religious groups.

The British North America Act is a law in this sense that it is made up of texts promulgated by the Imperial Parliament, but a law that may be enacted only to confirm an understanding, an agreement of wills between provinces and between two different racial groups.

This question is no longer discussed since the judiciary committee of the Privy Council has rendered its judgment in the case of "The Regulation and Control of Aeronautics in Canada."

Judge J. T. Loranger:

The British North America Act was not, as the constitutional Acts, that preceded it, a law enacted out of sovereign authority by England and imposing a constitution upon her colonies; it contains a mere ratification by the mother country of the pact entered into by the provinces, ratification which confirmed its provisions and made it binding by conferring upon it the authority of an Imperial Act.

Judge P. B. Mignault:

Confederation is only the legalizing of a pact entered into between four provinces . . . The provinces did exactly the same thing as tradesmen who form a partnership, they pooled part their wealth, and kept all the rest for themselves.

Mr. Ollivier:

As we will have occasion to prove later on, the B.N.A. Act is not a contract; it is a statute of the British parliament; but as it is based on an agreement, on a compromise, it partakes of that agreement and of that compromise, so that none of the privileges granted us under this law may be taken away without violating the moral law, the constitutional law and inasmuch as we are an autonomous nation, the international law. It would constitute an action similar to that of Germany tearing up the treaty which guaranteed Belgium's neutrality.

In 1935, Mr. Edwards, who was then Deputy Minister of Justice, in appearing before the Special Committee, made this statement:

In any case where the amendment would affect some matter of provincial concern, the provinces were consulted.

Following this there appear these questions and answers:

Q. Do you mean directly or indirectly?

A. In certain cases directly. But my own view is that a matter which only affects a province because it is one of the provinces of the dominion, is not a provincial concern.

Q. What I mean by that is, you have all sorts of powers under the peace, order, and good government clause. Under that it would be quite easy to develop the theory that the constitution should be amended in regard to matters which the provinces might consider as infringements upon their powers, In fact, it has happened.

A. Well, on that branch, my idea would be that the Dominion authorities would not seek an amendment of that kind without consulting the provinces in advance.

Q. At least should not.

A. I think, constitutionally, would not.

The Chairman of that committee said:

Perhaps we will have the memorandum prepared for the next day. There are two other things I will call your attention to: one is the view put forward by Professor Arthur B. Keith, in *Responsible Government and the Dominions*, page 586, in which he says:

"It was most expressly recognized in 1907 by the Imperial government that the Federal constitution is a compact which cannot be altered, save with the assent both of the dominion and the provinces."

Lord Sankey, in a Privy Council judgment, stated:

Inasmuch as the Act embodies a compromise under which the original provinces agreed to federate, it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected. The process of interpretation as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of sections 91 and 92 should impose a new and different contract upon the federating bodies.

Now, honourable senators, if this Act is of the nature of a treaty, compact or compromise, how can it be amended without the consent of the parties concerned?

I wish to quote some more testimony given by Mr. Edwards:

Q. It might lend great weight, Mr. Edwards, but do you think we representatives of all the provinces in the federal arena are authorized to speak for the provinces on the question of jurisdiction?

A. Not for the provinces, no.

BY THE CHAIRMAN:

Q. Will the people of the provinces accept, in respect to matters within the legislative jurisdiction of the federal government, representation by members of the federal parliament? As I see it, they are not elected to go to Ottawa to give expressions to opinions on matters of provincial jurisdiction?

A. You could not by mere declaration transfer any power from the provinces to the Dominion.

The question arose that is so much discussed to-day, as to what was the character and nature of the federation and the so-called compact there. My view about that is that it is not necessary to decide whether the British North America Act was a compact and whether the doctrine of unanimous consent upon which it is based is of importance in determining the present question. In my view what happened in confederation was that certain peoples who had their then form of government were desirous of exchanging that form of government for another form of government, which is set out in the British North America Act; that they voluntarily—there were certain minor protests which were not recognized—they voluntarily agreed to accept the new constitution and they and the dominion are bound by the terms of that constitution as it stands today; so that when you come to face any question as to how you