

as he likes, he is there. It is no use your arguing about it and saying you rely on his behaving in a reasonable way; the legal position, the position from which you are unable to escape, is that, without the consent of that individual, who is sent out from England, you cannot make a law and govern yourselves." He said to call it a democracy is a sham. I suggest that, on the documents, on the papers, on the strict reading of the position, there is a great deal to be said for that position, that the Governors-General theoretically govern because their signature is required to give effect not only to legislative acts, but also to a large number of executive acts, in exactly the same way as the King, people might say, is the governing agent of Great Britain, and, it might be put, of the whole Empire. Also, the position of the Imperial Parliament at present is a position which depends in relation to the Dominions simply upon the observance of an understanding, that the legal powers that exist are not going to be exercised except with the consent and by the request of the Dominions so far as Dominion affairs are concerned. Now perhaps I have been labouring the obvious, but it appears to me that this sort of thing is the kind of thing we want to bear in mind when a Belgian professor writes an article saying that the position of the Dominions in the League is a sham, and that the power of the Dominions to make their own international agreements is a pretence because there is a signature which technically covers them. Those arguments, for these general reasons, do not affect me very much, any more, I would say, than the argument that we are governed by the King or the Governor-General. It appears to me that, on the question of substance, there is no room for complaint, at least as far as Australia is aware; I think Mr. Fitzgerald said that in one case Ireland had become bound by a Treaty or some international obligation to which Ireland had not consented or given her assent. I do not know whether that is so.

Mr. FITZGERALD: Full powers were signed by Great Britain; it was for a modification of Clause 393, as far as I remember, covering Ireland.

Mr. LATHAM: If that is so, I should think that was an error, but, as far as Australia is concerned, I am not aware that Australia has ever become subject to any obligation, in recent years, that Australia did not desire to become subject to, and, speaking generally, I think that is the position of the other Dominions. If that is so, then I think we may fairly say that, upon questions of substance, there is no difficulty so long as we do not become bound when we do not desire to become bound. That leaves open the question of form. It seems to be we are dealing simply with the question of form, if the question of substance is a matter of common agreement, that no self-governing Dominion is to be bound by any treaty unless she signifies her desire through the responsible Ministers of the self-governing Dominion. Now, the question of form, for reasons I have sought to indicate by analogy, does not weigh very much upon my mind, or upon the minds of the Government of which I am a member, or upon the people of Australia. That does not mean that it is not important elsewhere—I fully appreciate that. What is the present position?

I understand that the effect of the present position is that, although, as Mr. Fitzgerald has said and General Hertzog also, there is one signature which is given by a plenipotentiary which binds the whole Empire, and that plenipotentiary is appointed by one of the Governments of the Empire, still, the actual substance of the matter appears to me to be this, when Great Britain signs anything, *i.e.*, when a plenipotentiary appointed in London, to make the position perfectly plain, signs any international document, that signature never binds that Dominion unless that Dominion has indicated by its responsible Ministers that it desires to be bound and indicates that desire by a separate signature. That, I understand, is the actual position to-day, and it seems to me that it pays rather more attention to form than to substance if it is said that it is a matter of grace that the Dominions are only let out, as it were, by an excluding clause: that we are in first of all, and that it is only by virtue of an excluding clause that we are let out. It seems to me that to found an objection on that point, having regard to the very clear understanding between the different parts of the Empire, that they are not to be bound except by their own signature, is rather over-emphasising the form; and that that is only a matter of grace might be said in the case of—let me take my example—of the Governor-General, that it is purely a matter of grace on the part of the Governor-General whether he will do his job according to the understanding under which he is appointed. I think there is a great deal in what Sir Cecil has said, that when the present system is rationally examined, when it is examined with the understanding upon which we are all working, there is much to be said for the present

system in preventing other people picking holes in the method of signature, whereas between ourselves the position is quite understood. At the same time, I would not now think of saying absolutely that one rather than another system should be adopted. It is a matter, I suggest, merely of discussing a formula, and if the present formula is objected to on the ground of form, then I am perfectly prepared myself to consider any actual alternative suggestion which is made which we can have before us in a concrete case, in a concrete example.

GENERAL HERTZOG: With regard to what Mr. Latham has said, I think Mr. Latham makes a little too light of the question of form in this; and in substance it is admitted even in this document before us that, when your central panel signs a treaty, it signs on behalf of all the Dominions, it binds all the Dominions; and the Dominions would be internationally bound, *i.e.*, over against the other contracting parties, if it were not that in that treaty any particular Dominion or all the Dominions are excluded.

Mr. LATHAM: I think so.

GENERAL HERTZOG: Exactly. That is admitted. Then we see at once what the whole position is as far as foreign countries and interpreters of international law are concerned. When we enter into an international document, that document has to be interpreted by international law upon the one side as much as upon the other. Your lawyers are there to interpret according to strict rules of law. Now one thing that your international lawyer says, as in the article I referred to, which cannot be denied, is that it is Great Britain who contracts in such a document both on behalf of Great Britain and on behalf of the Dominions. That is a matter that is admitted by us here; and your international lawyers say this, and to my mind, quite rightly: "If Great Britain has the right to advise the King, as it does in such a case, to sign a document that binds also one or more of the Dominions, then, as far as that is concerned, the Government of Great Britain has an authority extending beyond Great Britain also to the Dominions concerned."

Mr. LATHAM: Would you allow me to say one thing? That is, subject to the constitutional convention which is perfectly well understood between all the parts of the Empire, that the British Ministers are not going to advise the King to appoint a plenipotentiary who is able to act for a Dominion without the consent of that Dominion, testified by a separate signature.

GENERAL HERTZOG: That is exactly what we feel very strongly. Your international lawyer sitting at Brussels, or at Paris, or anywhere else, will say, "I know nothing as to your agreement amongst yourselves. Those are your agreements amongst yourselves. Those are as far as I am concerned —"

Mr. LATHAM: That is where I join issue.

GENERAL HERTZOG: I am sure Sir Cecil Hurst will not deny that.

Mr. FITZGERALD: I think Mr. Latham made a mis-statement there. I think, Mr. Latham, you overlooked the fact that the British Government, without separate advice from the Dominions, do appoint a plenipotentiary.

Mr. LATHAM: They do, but without power to bind the Dominion unless the Dominion assents.

Mr. FITZGERALD: That is the understanding.

Mr. LATHAM: It appears to me that this is very nearly the critical point.

GENERAL HERTZOG: It is for that reason I have been trying to point out the necessity of having, whatever we may agree as to our status, officially brought to the notice of international statesmen. Until such time they can take no notice of what you say: that is merely a matter between us, as to which they will say, "We know nothing about it. You may agree as to how you are going to conduct the Empire, and run the Empire, and act, but all that we have to do with is this document. So far as we know, only Great Britain is the Power and the international State; and here Great Britain signs, and signs not only on behalf of Great Britain, but also on behalf of the Dominions." Consequently, it is really the act of Great Britain; and when she says in this document, "this document will not affect South Africa," then it is her act to which we agree; it is her desire, her will with regard to it, that South Africa shall not be affected; but as to South Africa—well South Africa

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