

GENERAL HERTZOG: Yes.

SIR CECIL HURST: This clause ought to have been to the effect that "the statute is not to be interpreted as regulating the rights and obligations *inter se* of territories under the same Sovereign or the protection of the same Sovereign." That would be the clause which it would be desirable to get rid of, that is to say desirable to get rid of the necessity of having it in, if we can—because getting it in leads to argument with foreign Powers.

Mr. FITZGERALD: I think one of our troubles here is this. You won't reach your end if you try to get it watertight. If I may say this, what we want is not to give a set-back to the general status of our various countries internationally, but rather to indicate it more and more; not to make it absolutely watertight and give a declaration that Canada is equal in every respect to Lithuania in the League of Nations. We do not want to do that, but merely to indicate it or gradually encourage it, whereas you want to make your side juridically watertight. I do not think we can make anything juridically watertight. We are trying frankly to have things both ways at once here, and if you are going to make one side juridically watertight you are going to make it negatively juridically watertight. Now, in the Arms Traffic Conference in 1925, it was stated that it was generally understood that these things did not apply. That, it seems to me, practically does away with the need for the *inter se* clause. On top of that now we propose changing the form of the treaty and bringing in The King at the top as the symbol of the special relationship existing between us. It seems to me, although that might not be absolutely juridically watertight, it would give a fair degree of certainty as to the finding if the thing were brought before a Court. The most that I think one could say then is, not to go back to our entering the League and say "Although we did not tell you at the time we entered the League, we come and tell you such a thing now that we are safely in, and being in claim all rights and privileges," we could possibly say: "But we have agreed amongst ourselves that such treaties would not apply amongst ourselves unless it was specifically stated that they would."

SIR CECIL HURST: Mr. Bruce proposes to drop clause 1. Therefore the proposal in it as to the relationship on which the various parts came into the League would disappear.

Mr. FITZGERALD: The special relationship existing between us, I think, will be said twice over, if we put in The King as a definite concrete symbol of that special relationship and then come along and talk of the special relationship, especially, as I say, as whatever it does juridically, in the popular sense it makes the international position of Canada equal to that of Trinidad.

SIR CECIL HURST: Surely that is not so. This inter-Imperial clause has been inserted in many treaties that have been drawn up. The practice is to be abandoned altogether, and no such clause is to be inserted in treaties at all. Surely we must make it quite clear that this change of practice does not show any abandonment of the idea? That is the object of the sentence that is embodied in paragraph 4, which it is now proposed to add as a sentence at the end of paragraph 2. You have got to bear in mind the effect that change of practice may have on the minds of the foreigners.

Mr. FITZGERALD: But the change of practice has not been all in the one direction. We are definitely indicating it in one way by The King. This special declaration, which I think will be harmful to the general esteem that we will have, is put in for a number of reasons; one is that it may be difficult to persuade the foreign nation to allow the *inter se* clause to go in; another is that it might conceivably be juridically held that the treaty obtains between us. Now we have as much right to say to the League of Nations: "Now we here have agreed that treaties will not apply between us unless we state specifically that they do," and we have as much right to say that as we have to come along to them and say: "You must remember that when we entered the League the special relationship obtained, and it has to translate itself in such a way in treaties that are negotiated." We have as much right to state an agreement given by us here as we have to say this thing was implicit all through.

SIR CECIL HURST: Are you quite right in saying that the changes have not all been in one direction? I think they have. This proposal to group the various parts together after the name of The King is not a new addition, the various parts of the Empire were previously grouped together.

Mr. FITZGERALD: Without an "umbrella."

SIR CECIL HURST: And also we had the system of the Central Panel. The change has been very much all in one direction.

Mr. FITZGERALD: It seems to me that the words "British Empire" appeared there. On the one hand we could say that meant the entity belonging to the League of Nations under that heading, which is Great Britain, its Colonies, Protectorates, &c. On the other hand, you had an alternative thing, that that was a sort of "umbrella" for all of us, which appeared in the words but did not appear in the entity of the person, but also appeared in the Central Panel. You may not consider this quite as strong as it was before, but we have definitely done something in the general heading of the King; and besides that, on the position you are anxious to avoid, there has been a definite declaration in 1925 on the Arms Traffic that that was understood.

SIR CECIL HURST: With regard to that Convention, are you quite sure it applies generally?

Mr. FITZGERALD: No; but I think I picture it in a Court. A Court is saying: "Does this apply between Great Britain and Canada?" You appear to say it does not, while someone else appears to say it does. They quote the Covenant of the League, and so on. You bring up first of all that this treaty was negotiated and that such a declaration was made. We were justified in presuming the statement made in 1925 continued to have application. Further, we have the King as the Head of all these States concerned, indicating that a special relationship exists; and further, possibly—I am not saying even now I would agree to it myself—on such a date it was notified by the members of the British Commonwealth, who agreed amongst themselves, that treaties to which they were severally parties with foreign Powers should not apply as between themselves. That was indicated to the Secretary-General of the League, and we know that the League does not go out of its way to cavil at a proposal made by Great Britain pre-eminently for the recognition of special conditions of the British Empire. I think that those things adduced as proof would be pretty convincing.

SIR CECIL HURST: Where do you find the statement that the treaties do not apply as between different parts of the Empire, except in the paragraph you are now suggesting we should drop?

Mr. FITZGERALD: No, but it is a difference of form.

Mr. BRUCE: I am afraid I have not got the hang of it. What are you suggesting at the moment?

Mr. FITZGERALD: I am suggesting, first of all, that we are stating that the basis or the fundamental element of our international position, whether that of Jamaica or Canada, is the special relationship; of course, if we drop clause 1 *in toto* certain things I object to would be gone; but what I want to do is this. If we are making a change, I feel those changes do not in any way prejudice the position which existed before; it does not make it watertight, but it does not prejudice it.

Mr. BRUCE: The suggestion, I understand, we are considering is that paragraph 2 comes in still as paragraph 2, but following the present paragraph 3, which becomes paragraph 1. Are there words in that which you want to strike out or alter? What exactly is it that you want to do?

Mr. FITZGERALD: As I say, it is what you call a propagandist point, namely, that paragraph 2 indicates quite clearly, when it uses the phrase "international position," that it refers to the international position of the various parts of the Empire, and it states that they are all the same, whether that part of the Empire be Great Britain, Canada, the New Hebrides, or Jamaica.

THE CHAIRMAN: Shall we say the self-governing parts of the Empire.

Mr. HARDING: That would hardly do, because the special relationship does apply throughout.

GENERAL HERTZOG: But I think that need not be mentioned, because if England contracts on behalf of Jamaica, Jamaica is a part, naturally. Her relationship to Jamaica will not be affected by that.

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