

Mr. CAHAN: It is to be noted that Lord Watson sought, by judicial interpretation, to establish a new constitution for Canada, in which each of the nine provincial legislatures would be vested with sovereign or supreme power, and the power of the dominion government to veto provincial legislation, as established by the British North America Act, would be completely eliminated. Mr. Haldane proceeds:

Nowhere is his memory likely to be more gratefully preserved than in those distant Canadian provinces whose rights of self-government he placed on a basis that was both intelligible and firm. . . . It was the same with other portions of the empire. . . . He was a great servant of the empire.

Lord Haldane, who in 1912 became a member of the judicial committee, endeavoured to follow in Lord Watson's footsteps, but, at this date it is extremely doubtful if the "distant Canadian provinces" are enamoured with the political policies which those two judges of the privy council carried into effect, under the guise of giving judicial interpretations to the British North America Act, which Canadian statesmen had framed and placed before the parliament at Westminster for final enactment; but, in any event, those two judges succeeded in laying down novel rules for the interpretation of the British North America Act, which have since controlled the decisions of the Canadian courts, and which justices of the Supreme Court of Canada, however learned and experienced they may be, must, under existing conditions, utterly fail to overcome.

Ten years after he became a member of the judicial committee, Lord Haldane, in the Cambridge Law Journals for 1922, again wrote of Lord Watson:

Particularly he rendered an enormous service to the empire and to the Dominion of Canada by developing the dominion constitution.

That was in accord with the opinion of those publicists in England who, unfortunately, conceived that by fostering the division and disruption of a dominion and centralizing political control at Westminster they were ensuring the continuity of the colonial system with its arbitrary domination of the self-governing dominions. They sought to divide and rule. But history has proved the utter folly of such an effete imperial policy, and deplorable conditions in Canada to-day furnish convincing evidence of the disastrous effects of such a policy when expressed in

judicial decisions which preclude the political and economic development of this dominion. Lord Haldane continues:

At one time, after the British North America Act of 1867 was passed, the conception took hold of the Canadian courts that what was intended was to make the dominion the centre of government in Canada, so that its statutes and its position should be superior to the statutes and position of the provincial legislatures. That went so far that there arose a great fight; and as the result of a long series of decisions Lord Watson put clothing upon the bones of the constitution, and so covered them over with living flesh that the constitution of Canada took a new form.

Lord Haldane certainly exaggerates and incidentally, misrepresents the views of the Canadian courts which, in the earlier years, sought to interpret the British North America Act, 1867, in strict accordance with the terms in which it is drafted and so sought to carry into effect the clearly expressed views of its founders. But the judicial committee have, as he admits, by a long series of decisions so amended and redrafted the original constitution and so clothed it in fantastic conceptions of their own, that it bears the grotesque features of a jack-o'-lantern which now serves to evoke derisive comment and criticism.

And then, disclosing the extent of his own self-deception, Lord Haldane exclaims:

The provinces were recognized as of equal authority coordinate with the dominion, and a long series of decisions were given by him which solved many problems and produced a new contentment in Canada with the constitution they had got in 1867.

In these words, which were written less than sixteen years ago, we may clearly discern the tendency of the judicial committee to set at naught the provisions of the British North America Act as originally drawn, and to constitute one dominion consisting of nine provincial sovereignties, each coordinate with and of equal authority with the whole dominion, regardless of the immutable axiomatic truth that the whole is necessarily greater than its part.

We are now facing a problem which mere amendments to the British North America Act will not solve or eliminate, no matter what amendments may be procured, and that is the problem of interpretation. No amendment can prove effective to adapt a constitution to the needs of government if it is arbitrarily interpreted and applied, as were the provisions which it was intended to supplement and correct, by a tribunal of last resort, such as the judicial committee, which