

Those subsections were the essence of the basis upon which the provinces entered confederation. If they are to be repealed—and they will be, because the imperial parliament will accept the recommendation of this parliament—then a different basis of representation will be established than was contemplated either by the Canadian delegates in London in 1866, or earlier at Quebec. I read the pertinent sections of the resolutions passed at the city of Quebec on the 10th of October, 1864, as the basis—as the report itself says—of a proposed confederation. Section 20 says:

For the purpose of such readjustments—

That is, readjustments after succeeding censuses:

—Lower Canada shall always be assigned sixty-five members.

That was the basis upon which the provinces of Canada, Nova Scotia and New Brunswick entered confederation.

For the purpose of such readjustment, Lower Canada shall always be assigned sixty-five members, and each of the other sections shall at each readjustment receive, for the ten years then next succeeding, the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy according to the census last taken by having sixty-five members.

Then of the essence of confederation was this section, No. 21:

No reduction shall be made in the number of members returned by any section, unless its population shall have decreased relatively to the population of the whole union, to the extent of five per centum.

That five per centum was changed in the British North America Act to one-twentieth. Later, on the 4th of December, 1866, there was a conference in London of delegates from the provinces of Upper and Lower Canada and Nova Scotia and New Brunswick. They made some changes in the resolutions passed at the city of Quebec, but while they made certain alterations they stood firm on those two sections, renumbered 21 and 22, which read as follows:

20. For the purpose of such readjustments, Lower Canada shall always be assigned sixty-five members, and each of the other sections shall at each readjustment receive, for the ten years then next succeeding, the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy according to the census last taken by having sixty-five members.

21. No reduction shall be made in the number of members returned by any section, unless its population shall have decreased relatively to the population of the whole union, to the extent of five per centum.

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It is significant to note that it was on the basis of the Quebec resolutions and on the basis of the resolutions passed in the city of London that the foundation stones were laid and the requisites for confederation established.

I am not going to enter into a discussion to-day, interesting though it might be, of the question whether the British North America Act is a pact, a treaty, a statute or a contract. There is a division of opinion on that. Professor Kennedy, of the university of Toronto, and others, take the stand that we should get away from the idea that it is a contract or treaty. They say it is not so, either in history or in law. Doctor Maurice Ollivier, a law officer of the crown, in an outstanding book entitled "Problems of Canadian Sovereignty" refers to the evidence of the Clerk of this house, Doctor Beauchesne, who before a committee of this house strenuously denied that the British North America Act was a contract. He pointed out, at page 360, after referring to a discussion that took place in the committee set up by parliament in 1935 to discuss the question of amendments to the British North America Act:

From the preceding dialogue it is easy to understand the danger in which the province of Quebec stands if it lacks the right to take part in deliberations on the subject of our constitution. If the British North America Act ought to be amended, it is better that this be done with the consent of the province and that it take its part of the responsibility rather than that it should see the changes made without its knowledge.

That statement, I respectfully suggest, applies to all the other original parties to confederation, and to the provinces that have entered since. Other outstanding leaders have taken the point that the British North America Act is a contract. The Hon. G. Howard Ferguson, when premier of Ontario, wrote a letter to Mr. Bennett on September 20, 1930—I am not going to quote the whole of it; it is set out in detail in Dawson's "Constitutional Issues in Canada"—in which he said in part:

The province of Ontario holds strongly to the view that the agreement should not be altered without the consent of the parties to it.

And he attached a memorandum in which it was submitted that the rights of the various provinces to equal voice concerning any contemplated changes in the law or the convention of the constitution of the dominion rest upon fundamental considerations and historic facts which are as binding to-day as ever they were upon all the parties to confederation.

There are others who maintained that the British North America Act is in the nature of a treaty. Sir John A. Macdonald took that