

any province of Canada should be set aside by that treaty. There it is. If the decision to which I have referred is sound, then this statute is useless and our international joint commission has no foundation. In the very nature of things it does deal with matters that are within provincial jurisdiction. As long as it deals with matters within the federal jurisdiction I cannot conceive of any difficulty arising, but the language of that section and the judgment of Lord Atkin are in complete contradiction with one another. Speaking for the privy council he has said that we have no power to abridge, lessen or alter the constitutional rights of the provinces by any treaty that we might make. True, this treaty was made by Great Britain, not by Canada. Lord Bryce signed on behalf of Great Britain and Mr. Root, on behalf of the United States, but that fact does not get us away from the provisions of section 132 of the British North America Act. This is not a matter of a treaty within the empire; it is a treaty that has to do with the United States. On May 19, 1911, we passed a statute that declared:

The laws of Canada and of the several provinces thereof are hereby amended and altered so as to permit, authorize and sanction the performance of the obligations undertaken by His Majesty in and under the said treaty;

This is so clear that I felt at the first opportunity which offered, namely, when the estimates were under consideration, I should direct attention to it. I should like the law officers of the crown to satisfy themselves as to just what our position may be. Section 132 of the British North America Act reads:

The parliament and government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof, as part of the British empire, towards foreign countries arising under treaties between the empire and such foreign countries.

I take it that it is alleged that under this section of the British North America Act there is power in this parliament to do what is done by chapter 28 of the statutes of 1911. But is that a sound contention? But it does create such a condition, in my opinion, having regard to the language of that judgment, if we give attention to its exact terms, that I venture to believe should receive the consideration of the government. The matter was discussed in this house in 1928 to considerable extent. I took the view then which Lord Atkin took in the privy council, that it was *ultra vires* for this parliament by legislation to bring about what amounted to an amendment to the constitution of the provinces. The then Solicitor General took another view, contend-

ing that section 132 was broad enough to cover the situation. I subsequently modified my view, having regard to the judgment of Lord Chancellor Sankey—

Mr. DUNNING: And you have to change it again.

Mr. BENNETT: Exactly, and that is the reason I venture—not expecting the Prime Minister to give an answer—merely to direct attention to the matter in order that it may be looked into by the law officers of the crown, and appropriate action taken. I do not express any opinion as to what, if anything, is essential should be done, but I point out that grave doubts are thrown on the validity of the statute itself, having regard to the terms in which it expresses the will of this parliament with respect to the provinces.

Mr. MACKENZIE KING: I assume that my right hon. friend in what he has just said did not intend to open a debate on the treaty-making power. It is a matter for the law officers of the crown; I am sure they will be pleased carefully to consider what my right hon. friend has said.

Mr. CHURCH: What has become of the application during the last few years before the international joint commission for additional power in the Niagara river, with a view also of preserving the scenic beauty of Niagara falls? The treaty was before the house a few years ago but was rejected by the United States for some reason. Has anything been done since?

Mr. MACKENZIE KING: There is no application before the international joint commission on the subject to which my hon. friend has referred.

Mr. CHURCH: Regarding the collapse of the bridge at Niagara falls, does the treaty not also give the joint commission jurisdiction as to the kind of bridge that may be erected, and also in regard to obstructions in the river? For example, material escaped and is floating in the Niagara river and away out into lake Ontario as far as Sodus point, and is a menace to navigation.

Mr. MACKENZIE KING: The authority is broad enough to permit the commission to make inquiry into any matters of the kind referred to, but the commission would first have to be directed to make such an inquiry, and no such request has been made by either government.

Mr. CHURCH: Has any action been taken by the commission in reference to the lowering of the water levels in the great lakes, brought about by the Chicago diversion? The treaty