

SIR CECIL HURST: Yes. 1 refers only to the League, but 2 refers generally to "this special relationship between the various parts of the British Empire, whether separately represented in the League or not," as "a fundamental element in their international position."

MR. BRUCE: The words "separately represented in the League" rather bring it back towards the League interpretation, do they not?

SIR CECIL HURST: The words were introduced not for that purpose, but to show that this special relationship existed just as much between two parts of the Empire that were represented in the League as it does between two parts of the Empire not represented in the League; for instance, from the juridical point of view, the relationship between Australia and Canada is not different from that which obtains between Australia and Newfoundland, but Newfoundland is not represented in the League.

MR. BRUCE: Supposing you take 1 out and have 2 coming after 3 and link it up with 4 to make it all one paragraph, would not that do it?

SIR CECIL HURST: Yes, I should be content to see 1 disappear altogether provided it is clearly understood round this table that the doctrine it enunciates is correct.

MR. BRUCE: I was going to get a little more than that, or I imagined I was. Make 3 into 1 and then redraft 2 and 4 taken together and call them 2. You will then refer to the special relationship rendering it unnecessary. Do you see the idea?

SIR CECIL HURST: Yes.

MR. BRUCE: I think you would get exactly the same thing without too much of a special reference to the League. That was the only point. That seemed to me to present a good deal of difficulty.

SIR CECIL HURST: Let us take it by stages. I am entirely open that 3 should go first; then 2 would follow on very correctly after 3, because 3 contains the words "the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire," and then we have "this special relationship between the various parts of the British Empire, whether separately represented in the League or not, is a fundamental element in their international position."

MR. LAPOINTE: And then the words of paragraph 4: "The principles laid down in paragraphs 1 and 2 render superfluous the inclusion in a treaty of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King."

SIR CECIL HURST: If it became paragraph 2, following on, it would simply be this: "This special relationship between the various parts of the British Empire, whether separately represented in the League or not, is a fundamental element in their international position. The principles laid down in paragraph 1 renders superfluous the inclusion in a treaty of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King."

MR. BRUCE: That is what I mean.

MR. FITZGERALD: I would like to ask a question. "This special relationship between the various parts of the British Empire, whether separately represented in the League or not, is a fundamental element in this international position." I believe in the document E. 104 it was "basis of their international position." I do not know whether Jamaica is regarded as represented in the League of Nations, but I think the international position, that is to say, the position existing, say, between Canada and Nicaragua, is different from that existing between Jamaica and Nicaragua.

SIR CECIL HURST: This sounds rather hypothetical, but I should have thought it was not a bit different.

MR. FITZGERALD: Looking at it from the layman's point of view, supposing Canada were to make a treaty with Nicaragua, Jamaica could not make one on the same terms.

SIR CECIL HURST: A treaty can be made on behalf of Jamaica with Nicaragua.

MR. FITZGERALD: But it is not the same.

SIR CECIL HURST: But the difference does not affect Nicaragua; the only difference is domestic, isn't it?

MR. FITZGERALD: From the point of view of national vanity, if you like—feeling that we wish to appear, as we feel, equal to any other country in the League of Nations or elsewhere—if we now lay it down that the international status of Canada is equal to that of the Falkland Islands, or Jamaica, or Trinidad, or any place you like, it is not very helpful from that point of view.

SIR FRANCIS BELL: Or equal to Great Britain.

MR. BRUCE: It does not do that. The insertion of those words does not seem to me to do that. You have got your special relationship—one cannot get over that—and it is only adding some words that will make it perfectly clear that we recognise it. I cannot see how the position of a Crown Colony, because it is inside the words "the British Empire, whether separately represented in the League or not," is going to reduce distinguished persons like ourselves to the same rating as Jamaica. I cannot see it.

MR. FITZGERALD: I must say it seems to me that to the ordinary foreign layman it would certainly give that impression, even if it did not mean it.

SIR CECIL HURST: Substitute Great Britain in your own mind, Mr. Fitzgerald, for the Irish Free State; as between Nicaragua and Great Britain, the relationship is exactly the same as between Nicaragua and Jamaica.

MR. FITZGERALD: Yes, that is all right, but, you see, there is this sort of thing: if you had done two or three terms in gaol for picking pockets, you would have to be much more careful not to appear as a pickpocket than the man who was an elder in the Presbyterian Church. In the same way, Great Britain's position is so firm and unassailable that she can afford to be very humble about it. We cannot; we would be taken too much at our word.

GENERAL HERTZOG: May I ask this? We want to provide something that is practicable. This particular resolution is meant to be supplementary to this draft treaty that you have laid before us. You are afraid that this draft treaty, unless there is the draft resolution with it, will not say certain things or contain certain things which are essential as to the relationship we stand in as regards one another when we sign a particular treaty?

SIR CECIL HURST: I would not put it quite as high as that. I should say I should feel less anxiety with regard to the form of treaty being adequate if our position had been made clear at Geneva.

GENERAL HERTZOG: You want that to be made clear at Geneva, but it seems to me that the point you raised a few minutes ago is a point we have to keep in mind, namely, that if Great Britain, South Africa and, we will say Holland, enter into a treaty, and we, Great Britain and South Africa, become signatories to that treaty, it will be clear to the world that the relationship arising from the Dominion connection between Great Britain and South Africa is not affected by that. For instance, would you look at the draft treaty on the second page: "Who having communicated their full powers," and so on? Then simply have a standing clause that this will not apply in practically all cases—it is hard to conceive of a case where it will apply—this treaty will not apply as between Great Britain and the other Dominions.

SIR CECIL HURST: That means, in fact, going back to the procedure of having the Inter-Imperial Clause in the formula set out in paragraph 13 of E. 104 inserted in every treaty.

GENERAL HERTZOG: Exactly. It was really that formula, I think, if I may say so, that gave rise to the exception which was taken to it. Instead of saying "unless the Dominion specifically takes part it will be considered to be excluded." That is the Dominion Clause, is that how it goes?

SIR CECIL HURST: That is the Exclusion Clause you are referring to now.

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