

*Government's Right to Office*

depended upon. I commend those words to the consideration of parliament because Burke was worthy of example by the members of other parliaments in matters of that kind.

Now, the fact is, Sir, that this parliament has met under circumstances that are without precedent in the British Empire, without precedent in the long history of constitutional government and practice that has come down to us. For never, Sir, in the history of parliamentary institutions has parliament met under those circumstances without the Prime Minister being in either one House or the other. My hon. friend said that he would produce precedents to show that the practice that has been followed was the correct practice. I shall deal in some detail with those matters, for if there is a precedent I shall be glad to know of it, and I will give it my support at once. If there is any precedent by which the Prime Minister, the head of the administration, the head of the government—without which indeed there can be no government, without which there may be ministers but no ministry, no government, no cabinet—if there is any precedent that my hon. friend can produce, be he layman or lawyer, I shall indeed be glad, because this act, properly termed usurpation on the part of my hon. friends opposite, is not one on which any constitutional lawyer can look lightly or regard without profound regret.

Parliamentary law consists not of statutes alone. I read a moment ago a section from the British North America Act; that is the *lex scripta*, the written law. But there are customs, there are usages and there are traditions. A long series of precedents bound in the journals of the Houses of Parliament have come down to us through the ages, and they govern us quite as much as does the written law. Hence it was the late Sir William Anson wrote of the Law and Custom of the Constitution, not of the law of the constitution as something written, the *lex scripta*, but the law in custom, the *lex parliamenti*, not written in the sense that it is crystallized in the form of law, but embodied, I say, in the usages, customs, traditions and precedents which have come down to us through the ages, representing the struggle of free peoples against the sovereign on the one hand and the lords on the other, in order that a free parliament might function.

I have beside me a number of authorities which I doubt not many members of this House have recently been reading. I intended to refer to some of them, but I will not trespass upon the time of the chamber beyond saying that you have Todd's great book as an

[Mr. Bennett.]

authority; and it is a matter of pride with every Canadian to think that that book has been accepted as a great authority in every part of the world where representative institutions have been in vogue. We have many other great books. We have Dicey on the constitution, we have Anson on the Law and Custom of the constitution and many others. We have the journals and precedents of Speakers. We have all those things before us, and we have constitutional usages.

There is one other book to which I shall presently refer, and it is written by a very eminent man, a man of great learning. He was a foreigner. I refer to Redlich's book, *The Procedure of the House of Commons*. It is a book which will charm any reader, whether layman or lawyer. We have also the book written by Sir Erskine May, who was formerly Clerk of the House of Commons in England.

Custom and precedents have crystallized into law—not written law but the law of custom. So that at the present day we have a cabinet. In the days of King Charles we had a cabal. In days long prior to that they had a system of placemen; a number of placemen advised the sovereign, but the idea of a cabinet, a ministry, a government, have been evolved from the necessities of the case. In the early days it was a committee of the king's privy council. Hon. members will recall that in our British North America Act there is a provision for the appointment of privy councillors—the King's Privy Councillors for Canada. In England and in Great Britain we had committees of the privy council. In time that became known as the cabinet, and later it became known as the ministry or the government of the day. I shall refer to some authorities with respect to that matter, because it seems to me to be of the utmost importance that this House should have a clear appreciation and understanding of what is involved in cabinet and cabinet responsibilities. I am sure if my learned and hon. friend who has just taken his seat (Mr. Macdonald, Antigonish-Guysborough) had as carefully studied the precedents to which I shall refer before the meeting of parliament as he did afterwards he would not have made the observations which he has just made. Parliamentary responsibility is really, so far as we are concerned, cabinet responsibility. Cabinet responsibility did not come easily. In the first instance, what had we? The king had favourites. Those of us who read Bingham's book on the Prime Ministers of England will recollect that the first volume deals with the chief ministers from 920 to 1720; the second volume deals with the prime ministers from 1721 to 1921. He