

That implies that a treaty or agreement must be signed by the appropriate authorities and ratified. As to whether the British North America Act was an agreement or a treaty, here is some evidence. Doctor Ollivier at page 54 of the special committee, says:

To revert to the statement that confederation is a contract, this proposition contains a number of fallacies: First, confederation so-called is not a confederation; and second, it is not a contract.

Again, Doctor W. P. M. Kennedy, at page 69, says:

I approach this problem as a practical problem and I think we have got to get away from the idea that the British North America Act is a contract or a treaty. I do not want to go into that, but it is true neither in history nor in law.

At page 115 we find Mr. Norman Rogers giving evidence and he is questioned by Mr. Cowan:

You do not subscribe to the belief that this was a pact or contract?

Mr. Rogers: I am thoroughly convinced it is not either in the historical or the legal sense.

Our own Clerk, Doctor Beauchesne, at page 125, said:

It is quite true that if we applied to the British North America Act the principles followed in the interpretation of statutes, it is not a compact between provinces; it is an act of parliament, which does not even embody all the resolutions passed in Canada and in London prior to its passage in the British parliament where certain clauses that had not been recommended by the Canadian provinces were added.

I think that is sufficient evidence to substantiate my claim.

I was going to draw a comparison between the federal constitution of Australia and what we have in Canada, but time does not permit me to do so. Therefore I wish to conclude by asserting that we continued from 1867 to December 11, 1931, as a united colony. That situation was changed on December 11, 1931, by the statute of Westminster; whereas we were not self-governing we became self-governing. But what was the position? The provinces were not able to federate in 1867. They were not permitted. They would have to draft their own agreement, draft their own constitution and submit it to the people for ratification. They did not do that in 1867. The privilege to federate was therefore a future privilege and therefore, before the provinces could federate, they must become free, independent and sovereign. By section 7, paragraph 2, of the statute of Westminster the provinces of Canada were made sovereign, free and independent in order that they might consummate a federal union which they had wished to consummate in 1867 but were not

[Mr. Kuhl.]

permitted to do so. Since December 11, 1931, the provinces have not acted on their newly acquired status. There has been no agreement signed between the provinces since 1931. There has been no constitution adopted; the people have not been consulted on anything. There is not a scratch of a pen in Canada showing where there is any agreement between any of the provinces constituting anything.

I think the most important aspect of this whole situation is the sovereignty of the individual citizens of Canada which is involved. John Locke has this to say on the question of individual sovereignty:

Men being by nature all free, equal and independent, no one can be put out of this estate and subjected to the power of another without his own consent. The only way whereby anyone divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community.

I wish to assert, Mr. Speaker, on that basis that the people of Canada did not have the privilege in 1867 to agree to anything and they have not done so since 1931. I contend as a citizen of this country that I have been put out of my state of independence without my consent, and that applies to every citizen of Canada. I demand, therefore, that proper steps be taken in the Dominion of Canada to establish a constitutional position which is in harmony with our status.

If the house will bear with me these are my last words. What is the starting point? This brings me back to some more evidence given to the special committee on the British North America Act in 1935. At page 116 Mr. Cowan was questioning Mr. Norman Rogers and he said this:

Mr. Cowan: You get back to this: your start is another interprovincial conference?

Mr. Rogers: I am afraid it is. I see no feasible alternative.

Hon. Mr. Lapointe: There is no doubt about it.

Then we have the evidence of Doctor Skelton at page 42 which is as follows:

No other country in the world looks to the parliament of another country for the shaping of its constitution. This solution would only be supported if we believe that Canadians are the only people so incompetent that they cannot work out a solution of their constitutional problem, and so biased that they alone among the peoples of the world cannot be trusted to deal fairly with the various domestic interests concerned.

On a previous occasion in this house I quoted Doctor Beauchesne's suggestions as to how to overcome the situation which exists in Canada, and if the house will permit me I should like to give the quotation at this time. Doctor Beauchesne had this to say, and with this I shall close: