

THE NEW DEPARTURE.

Result of the Meeting of the Inter-Provincial Conference.

Necessity for the Revision of the British North America Act—Amendments That are Considered to be in the Best Interests of the Dominion.

Following are the resolutions respecting amendments of the British North America Act, passed at the recent meeting of the Inter-Provincial Conference:

Whereas, in framing the British North America Act 1867, and defining therein the limits of the Legislative and Executive powers and functions of the Federal and Provincial Legislatures and Governments, the authors of the Constitution performed a work, new, complex and difficult, and it was to be anticipated that experience in the working of the new system would suggest many needed changes; that twenty years' practical working of the act has developed much friction between the Federal and Provincial Governments and Legislatures, has disclosed grave omissions in the provisions of the Act, and has shown (when the language of the Act came to be judiciously interpreted) that in many respects what was the common understanding and intention had not been expressed, and that important provisions in the Act are obscure as to their true intent and meaning; and whereas the preservation of Provincial autonomy is essential to the future well-being of Canada; and if such autonomy is to be maintained, it has become apparent that the Constitutional Act must be revised and amended; therefore the representatives and delegates of the provinces of Ontario, Quebec, Nova Scotia, New Brunswick and Manitoba, duly accredited by their respective Governments, and in conference assembled, believing that they express the views and wishes of the people of Canada, agree upon the following resolutions as the basis upon which the Act should be amended, subject to the approval of the several Provincial Legislatures.

1. That by the British North America Act exclusive authority is expressly given to the Provincial Legislatures in relation to subjects enumerated in the 92nd section of the Act; that a previous section of the Act reserves to the Federal Government the legal power of disallowance may be exercised so as to give to the Federal Government arbitrary control over legislation of the provinces within their own sphere; and that the Act should be amended by taking away this power of disallowance of Provincial Statutes, leaving to the people of each province, through their representatives in the Provincial Legislature, the free exercise of their exclusive right of legislation on the subjects assigned to them, subject only to disallowance by Her Majesty in Council as before Confederation; the power of disallowance to be exercised in regard to the Provinces upon the same principles as the same is exercised in the case of Federal Acts.

2. That it is important to the just operation of our Federal system, as well as the Federal Parliament should not assume to exercise powers belonging exclusively to the Provincial Legislatures, as that a Provincial Legislature should not assume to exercise powers belonging exclusively to the Federal and Provincial Governments for promptly obtaining a judicial determination respecting the validity of Statutes of both the Federal Parliament and Provincial Legislatures; that Constitutional provision should be made for obtaining such determination before, as well as after, a Statute has been acted upon; and that any decision should be subject to appeal as in other cases, in order that the adjudication may be final.

3. That it is in the public interest, with a view to avoiding uncertainty, litigation and expense, that the constitutionality of Federal or Provincial Statutes should not be open to question by private litigants, except within a limited time (say two years) from the passing thereof; that thereafter such constitutionality should only be questioned at the instance of a Government, Federal or Provincial; that any enactment decided, after the lapse of the limited time, to be unconstitutional should, for all purposes other than the mere pronouncing of the decision, be treated as if originally enacted by the Legislature or Parliament which had jurisdiction to enact the same, and as being subject to repeal or amendment by such Legislature or Parliament.

4. That a leading purpose of the Senate was to protect the interests of the respective provinces as such; that a Senate to which the appointments are made by the Federal Government, and for life affords no adequate security to the provinces; and that, in case no other early remedy is provided, the British North America Act should be so amended as to limit the term for which Senators hold office, and to give the choice, as vacancies occur, to the province to which the vacancy exists, as in any province, one half of the members of the Senate representing such province are senators chosen by the province; that thereafter the mode of selection be as follows: if the vacancy is occasioned by the death, resignation or otherwise of any other Senator, the vacancy to be filled as now provided by the Act, but only for a limited term of years.

5. That it was the intention of the British North America Act, and of the provinces which were thereby confederated, that in respect of all matters as to which the Provincial authority, the Lieutenant-Governor of every province as the representative of the Sovereign in provincial affairs, should have the same executive authority as other Governors and Lieutenant-Governors of British colonies and provinces; that the Act has practically been so construed and acted upon in all the provinces ever since confederation; that it is of essential importance to the provinces that this right should be maintained, and should be placed beyond doubt or question; that there being no express provision in the Act declaring such right, and the right being in consequence occasionally denied and resisted, the Act should be amended

by declaring its true construction to be according to the intention and practice as herein mentioned.

6. That the Federal authorities construe the British North America Act as giving to the Federal Parliament the power of withdrawing from provincial jurisdiction local works situated within any province, and though built in part or otherwise with the money of the province or the municipalities thereof; and of withdrawing such local works (without compensation) by merely declaring the same to be for the general advantage of Canada or for the advantage of two or more provinces, whether that is or is not the true character of such works within the meaning and intention of the Act; that it was not the intention that local works should be so withdrawn without the concurrence of the provincial legislature, or that the power of the Federal Parliament should apply to any other except "such works as shall, although lying wholly within any province, be specially declared by the Acts authorizing them, to be for the general advantage," as expressly mentioned in section 29, subsection 11, of the Resolutions of the Quebec Conference of 1864, and that the Act should be amended accordingly.

7. That there exists in each Province the requisite machinery for preparing voters' lists and revising the same for elections to the Provincial Assembly; that, without any detriment to either Federal or Provincial interests, the lists so prepared were used for twenty years at all Federal elections, under the express terms of the British North America Act and of subsequent statutes of the Federal Parliament; that the preparation of separate voters lists for Federal elections is cumbersome and confusing, and involves great loss of time and needless expense to all concerned therein; and that in the opinion of this conference the British North America Act should be so amended as to provide that, at all elections to the Federal Parliament, in any province, the qualification and lists of electors should be the same as for the Legislative Assembly of the Province.

8. That the intention of the British North America Act and of the several Provinces thereby confederated was, that the Provincial authorities should have the power of appointing stipendiary, police and other magistrates, and all officers who are under the jurisdiction of the Provincial Legislatures; that ever since confederation all such appointments have accordingly been made by provincial authority; that it is just and right in the general interest that the provinces should have this power; that a question has been raised in some of the provincial courts as to whether, by the technical effect of the Act, such power exists, and that, to remove all doubt on so important a matter, an amendment of the Act should be obtained, expressly declaring that the jurisdiction to make such appointments does belong to the provinces.

9. That, according to the intention of the British North America Act and its promoters, the provinces are entitled to all fees paid or payable on legal proceedings in the provincial courts; that the provinces accordingly have always enjoyed or dealt with the revenue therefrom; that according to a recent decision of Her Majesty's Privy Council, the Provincial Legislatures cannot legislate as to such fees or apply the revenue to provincial purposes; and that the Act should be so amended as to expressly give this constitutional right.

10. That by the British North America Act the Provincial Legislatures have exclusive jurisdiction to make laws in relation to the administration of Justice, including the constitution, and organization of Provincial Courts, both of civil and criminal jurisdiction; that a judicial opinion has been expressed that a Lieutenant-Governor has the power of issuing commissions to hold Courts of Assize and Nisi Prius, Oyer and Terminer, and General Gaol delivery, but the right to do so is considered to be so open to question that, when it is deemed necessary to hold such Court, independent commissions expressed in the same terms have, by arrangement between the Federal and Provincial Governments and the Lieutenant-Governor, been issued by the Governor-General and the Lieutenant-Governor; that it is expedient that all doubt should be removed, and the contrivance of two commissions rendered unnecessary; and that an amendment of the Act should expressly declare that the Lieutenant-Governors have power to issue such commissions, subject to Provincial statutes.

11. That it has been found by the experience of all legislative bodies to be necessary that they should possess certain privileges and immunities to enable them effectually to discharge the functions entrusted to them; that, for this purpose, Acts have been passed by the Parliament of Canada, and confirmed by Imperial legislation, defining the privileges, immunities and powers of the two Houses and of the members thereof; that Acts in like manner have been passed by several provincial legislatures, defining the privileges of their legislative councils and legislative assemblies; that these Acts have not yet been confirmed by Imperial legislation; that doubts have been expressed as to the power of the provincial legislatures to pass these laws; that a provincial legislature should have the same power to pass acts defining the privileges of the Senate and House of Commons and of the members thereof; that the provincial acts should be confirmed as the federal acts were; and that it should be declared by the amending Imperial statute that a provincial legislature has, with respect to itself, the same powers as the Federal Parliament has with reference to such Parliament.

12. That in two of the Provinces of the Dominion there is no second chamber; that in two of the provinces there is a second chamber; that in one of these five the Legislative Council is elected for a limited term; that the actual expenses of Civil Government and legislation in the several provinces largely exceed the amount provided therefor by the Act; and that the other expenditure necessary for those local purposes which, before Confederation, were provided for out of provincial funds, has largely increased since;

method of constituting the same; that the provision has failed to effect the abolition of the council in some provinces where public opinion is believed to favor such change; and that the Act should be so amended as to provide that, upon an Address of the House of Assembly, the elected representatives of the people, Her Majesty the Queen may by proclamation abolish the Legislative Council, or change the constitution thereof, provided that the Address is concurred in by at least two-thirds of the members of such House of Assembly.

13. That by the British North America Act it is provided that all lands belonging to the several Provinces of Canada shall belong to the Provinces respectively in which they are situated; that the claim recently made by the Federal Government to all Crown Lands as to which there was no treaty with the Indians before Confederation, is contrary to the intention of the Act and of the Provinces confederated, and is opposed to the construction which, until a recent period, the Act received from the Federal authorities, as well as from the Legislatures and Governments of the provinces; and that the Act should be amended so as to make clear and indisputable in its technical effect, as well as its actual intention, that all lands belong to the province in which they are situated, and not to the Dominion.

14. That by the British North America Act the jurisdiction with respect to bankruptcy and Insolvency is assigned to the Federal Parliament; that there is no Federal law on that subject now in force; that, in the absence of a law for the whole Dominion, it is in the public interest that each province should be at liberty to deal with the matter, subject to any Federal law which may hereafter be passed; that it is doubtful how far under the present provisions of the Act, the Provincial Legislatures can deal with the subject; and it is desirable that the Act be amended by expressly giving to the provinces the necessary jurisdiction, in the absence of and subject to any Federal law.

15. That it was provided by the 44th Resolution of the Quebec Conference of 1864, that "the power of respiting, reprieving and pardoning prisoners convicted of crimes, and of commuting and remitting of sentences in whole or in part, which belongs of right to the Crown, should be administered by the Lieutenant-Governor of each province in council," subject as in the said Resolution set forth; that all provision relating to this power was omitted from the British North America Act; that by the Royal Instructions given to the Governor-General subsequently to the passing of the Act, His Excellency is (among other things) "authorized and empowered, to grant any offender convicted of any crime in any court or before any Judge, Justice or Magistrate within the Dominion, a pardon;" that by reason of this language and otherwise doubts have arisen as to the power of a Lieutenant-Governor of a province to reprieve or pardon prisoners convicted of an offence against the laws of the province, or of commuting and remitting, in whole or in part, any sentence, fine, forfeiture, penalty or punishment in respect of any such offence; that it is presumed this was not the purpose of the instructions; that the power of dealing with all matters relating to the execution of prisoners convicted of crime should belong to the Lieutenant-Governor in Council of each province, leaving (if deemed desirable) the power of the Federal Government to apply to other cases; and that the Act should be amended accordingly.

16. That the provinces represented at this conference recognize the propriety of all questions as to the boundaries of the provinces being settled and placed beyond dispute; that the boundaries between Ontario, Manitoba and the Dominion, so far as the same have been determined by Her Majesty in Privy Council should be established by Imperial Statute, as recommended by the Order of Her Majesty; and that the whole northern boundaries of Ontario and Quebec should be determined and established without further delay.

17. That by the British North America Act all the Customs and Excise duties, as well as other revenues of the provinces, were transferred from the provinces to the Dominion; and it was provided that the following sums should be paid yearly by the Dominion to the several provinces for the support of their Governments and Legislatures:

Table with 2 columns: Province, Amount. Ontario, \$80,000; Quebec, 70,000; Nova Scotia, 60,000; New Brunswick, 50,000.

And that an annual grant in aid of each Province should be made, equal to 80 cents per head of the population as ascertained by the census of 1861; with a special provision in the cases of Nova Scotia and New Brunswick;

(2) That the revenue of the Dominion, at the inception of Confederation, was \$13,716,786, of which 20 per cent or \$2,759,966 went to the Provinces for Provincial purposes, 80 per cent, or \$10,956,820, going to the Dominion; that by increased taxation, on an increased population, the Dominion revenue has been raised from \$13,716,786 to \$33,177,000; that, while this increased taxation is paid by the people of the Provinces, and the increase of population imposes upon the Provinces largely increased burdens, no corresponding increase of subsidy has been granted to the provinces; that the Dominion revenue of the increased revenue of the Dominion, or \$4,182,525, being now allowed to the provinces, while, instead of 80 per cent, 87 per cent, or \$28,994,475, is retained by the Dominion;

(3) That the yearly payments heretofore made by the Dominion to the several provinces under the British America Act have proved totally inadequate for the purposes thereby intended; that the actual expenses of Civil Government and legislation in the several provinces greatly exceed the amount provided therefor by the Act; and that the other expenditure necessary for those local purposes which, before Confederation, were provided for out of provincial funds, has largely increased since;

(4) That several of the provinces are not a condition to provide, by direct taxation or otherwise, for the additional expenditure needed, and in consequence have from time to time applied to the

Federal Parliament and Government for increased annual allowances;

(5) That this conference is of opinion that a basis for a final and unalterable settlement of the amounts to be yearly paid by the Dominion to the several provinces for their local purposes and the support of their Governments and legislatures, may be found in the proposal following, that is to say:

(A) Instead of the amounts now paid, the sums hereafter payable yearly by Canada to the several provinces for the support of their governments and legislatures, to be according to population and as follows:—

Table with 2 columns: Where the population is, Amount. (a) Under 150,000, \$100,000; (b) Where the population is 150,000 but does not exceed 200,000, 150,000; (c) Where the population is 200,000 but does not exceed 400,000, 180,000; (d) Where the population is 400,000 but does not exceed 800,000, 190,000; (e) Where the population is 800,000 but does not exceed 1,500,000, 220,000; (f) Where the population exceeds 1,500,000, 240,000.

(B) Instead of an annual grant per head of population now allowed, the annual payment hereafter to be at the same rate of eighty cents per head, but that the population of each province, as ascertained from time to time by the last decennial census, until such population exceeds 2,500,000; and at the rate of sixty cents per head for so much of said population as may exceed 2,500,000;

(C) The population, as ascertained by the last decennial census, to govern except as to British Columbia and Manitoba; and as to these two provinces, the population to be taken to be that upon which, under the respective statutes in that behalf, the annual payments now made to them respectively by the Dominion are fixed, until the actual population is by the census ascertained to be greater; and thereafter the actual population, so ascertained, to govern;

(D) The amounts so to be paid and granted yearly by the Dominion to the Provinces respectively to be declared, by Imperial enactment to be final and absolute, and not within the power of the Federal Parliament to alter, add to or vary;

(6) That the following table shows the amounts which, instead of those now payable for Government and Legislation and per capita allowances, would hereafter be annually payable by the Dominion to the several Provinces, the same being calculated according to the last decennial census for the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, and Prince Edward Island, and according to the limit of population now fixed by statute for the Provinces of British Columbia and Manitoba:

Table with 2 columns: Province, Total allowance for Government and subsidy, and per capita allowance. Ontario, \$1,778,652.40, \$4.070,440.80; Quebec, \$1,307,921.60, \$3,490,440.80; Nova Scotia, \$1,538,662.40, \$3,490,440.80; New Brunswick, \$1,087,921.60, \$3,490,440.80; Prince Edward Island, \$256,986.40, \$3,490,440.80; British Columbia, \$187,112.80, \$3,490,440.80.

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(7) That this conference deems it desirable that the proposal above set forth should be considered by the Government of the several Provinces of the Dominion; and, if approved of, should be submitted to the Provincial Legislatures.

(17.) That, in the opinion of this conference, the several Provinces of the Dominion, through their respective Legislatures, should the earliest practicable moment take steps with the view of securing the enactment by the Imperial Parliament of amendments to the British North America Act in accordance with the foregoing resolutions.

RESOLUTIONS RESPECTING PROVINCIAL LEGISLATION IN CERTAIN MATTERS. There having been submitted for the consideration of this conference some matters of inter-provincial interest and concern in respect whereof no amendment of the British North America Act is necessary, this conference, as to certain of the said matters, resolves as follows:

(19) That, in view of the doubts which arise from time to time as to the respective powers of the Federal Parliament and Provincial Legislatures, it is expedient and just that it should be enacted by the respective Provincial Legislatures, that no action shall lie against any Judge, Stipendiary or Police Magistrate, Justice of the Peace, or officer, for any act done under the supposed authority of a statutory provision which may afterwards be held to have been beyond the Legislative jurisdiction of Parliament or the Legislature which enacted the same, provided the action would not lie against him if the statutory provisions had been within such legislative jurisdiction.

(20.) That it is desirable that the laws of the several Provinces for the enforcement of debts should be assimilated as far as may be consistent with the different legal systems prevailing in the respective Provinces; that this conference is of opinion that such assimilation should include provisions against preferences by insolvent debtors, and provisions for the examination of debtors, and for taking speedy possession of an insolvent's estate for the benefit of his creditors; so far as these subjects can be dealt with by the Provincial Legislatures.

(21.) That this conference approves of there being legislative provision in the several Provinces of the Dominion for rendering effectual in all the Provinces (subject to proper conditions) probates and letters of Administration granted in any one of them.

(22.) That this conference approves of a similar law, being passed in all the Provinces (subject to proper conditions) with respect to probates and letters of Administration, granted in the United Kingdom, to go into effect when probates and letters of Administration granted in the Dominion are by Imperial legislation made effectual in the United Kingdom.

Resolved, That copies of the foregoing resolutions be formally communicated by the president on behalf of this conference to the Federal Government, and that the conference do cordially in co-operation of the Federal Government in carrying into effect the resolutions. That copies of the foregoing resolutions be also transmitted by the President of this conference, to the respective Governments of the Provinces, not represented at this conference, namely Prince-Edward Island and British Columbia, with a view of their concurrence in and support of the conclusions arrived at by this conference.

(Signed.) O. Mowat, Prime Minister of Ontario, and Attorney-General. Honoré Mercier, Prime Minister of Quebec and Attorney-General. W. S. Fielding, Prime Minister of Nova Scotia and Provincial Secretary. Andrew G. Blair, Prime Minister of New Brunswick and Attorney-General. J. Norquay, Prime Minister of Manitoba, President of Council and Provincial Secretary. C. F. Fraser, Executive Councillor of Ontario and Commissioner of Public Works.

Arthur S. Hardy, Executive Councillor of Ontario and Provincial Secretary. A. M. Ross, Executive Councillor of Ontario and Treasurer. Geo. W. Ross, Executive Councillor and Minister of Education. David A. Ross, Executive Councillor of Quebec and acting Commissioner of Crown Lands. Joseph Shehyn, Executive Councillor of Quebec and Provincial Treasurer. Chas. A. Ern. Gagnon, Executive councillor of Quebec, Provincial Secretary and Registrar. J. McShane, Executive Councillor of Quebec and Commissioner of Agriculture and Public Works. Geo. Dunham, Executive Councillor of Quebec and Solicitor-General. F. G. Marchand, speaker of Legislative Assembly of Quebec. J. W. Longley, Executive Councillor of Nova Scotia and Attorney-General. A. MacGillivray, Executive Councillor of Nova Scotia. David McLellan, Executive Councillor, Provincial Secretary and Receiver-General of New Brunswick. C. E. Hamilton, Executive Councillor of Manitoba and Attorney-General.

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