

Hon. Chas. Fitzpatrick on Canada's Position.

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should not be subjected to any higher or other import duties than the produce of the United Kingdom of Great Britain and Ireland or of any other country of the like kind, nor shall the exportation from those colonies or possessions to the Zollverein be subject to any higher or other duties than the exportation to the United Kingdom.

PRINCIPLE OF CONSTITUTIONAL LAW

that the power of the Crown to conclude treaties binding on all communities of British subjects is subject to this limitation, that if they affect a taxation of the people, they require the sanction of the Legislature of a colony enjoying responsible Government is entitled to give or withhold its consent, and upon that consent the validity of the treaty to that extent, and as far as it affects the colony, must depend.

INVOLVE THE TAXATION OF THE PEOPLE

or what is the same thing, interfere with their fiscal liberty, or their power to manage their own customs, is subject to the limitation that such treaties depend for their binding effect upon the sanction of the Parliament of the people concerned, is too well established to need any lengthy array of authorities in its support.

TODD, IN HIS WORK ON PARLIAMENTARY GOVERNMENT IN THE COLONIES, LAYS DOWN THE STILL MORE GENERAL PROPOSITION THAT "THE LEGISLATURE IN ANY COLONY IS FREE TO DETERMINE WHETHER OR NOT TO PASS LAWS NECESSARY TO GIVE EFFECT TO A TREATY ENTERED INTO BETWEEN THE IMPERIAL GOVERNMENT OR ANY FOREIGN POWER, BUT IN WHICH SUCH COLONY HAS A DIRECT INTEREST."

Finally, in his despatch to the Australian Colonies, dated 13th April, 1872, Lord Kimberley says:—"Her Majesty's Government apprehend that the constitutional right of the Queen to conclude treaties binding on all parts of the Empire, cannot be questioned, subject to the discretion of the Parliament of the United Kingdom, or of the Colonial Parliaments, as the case may be, to pass any laws which may be required to bring such treaties into operation."

autonomy claimed by the people of Canada. Two years later a complaint was despatched from the Duke of Devonshire to the Duke of Devonshire, signed by the Canadian Privy Council.

A DECLARATION OF RIGHTS

on this whole subject which has since been challenged and is decisive of the position of Canada at the time. It will suffice to quote the following passage:—"Her Government would be entirely unimpaired if the views of the Imperial Government were to be preferred to those of the people of Canada. It is therefore the duty of the present Government distinctly to show that the Canadian Legislature, to adjust the taxation of the people in the way they deem best even if it should unfortunately happen to meet the disapproval of the Imperial Ministry. Her Majesty cannot be advised to disallow such acts unless her advisers are prepared to assume the administration of the affairs of the colony, irrespective of the views of its inhabitants."

THE POSITION OF CANADA WILL APPEAR STRONGER IF WE CONTRAST IT WITH THE CASE OF THE AUSTRALIAN COLONIES

In their Constitution Acts there used to be a clause expressly forbidding them to grant preferential treatment to any power, if such privilege was at variance with any treaty concluded by Her Majesty. Why was that specific enactment necessary if the same object was already attained by the general principles of constitutional law? It is clear that such prohibition clause was still prohibited, this clause in the Australian Acts was mere idle surplusage. Then note that it was to this clause and this clause alone, that Lord Kimberley alluded in his despatch of April, 1872, when replying to the claim of the Australian colonies to disregard the German treaty.

I have already stated that it was the desire of Sir Wilfrid Laurier and his colleagues to cause as little embarrassment to the Home Government as possible and to follow the line of least resistance. It is obvious that much friction would be saved if the object was attained of such a clause, without raising the question whether or not the two treaties were binding on Canada.

THERE WAS NO DISCRIMINATION

in favour of one power or against another. It was simply as though Canada had announced that she would levy a lower rate of duties upon all goods arriving, packed in a particular sort of crate, selected for the convenience of Canadian importers. Would it have been the duty of German merchants to complain that their British rivals were getting an unfair advantage because they used the specified form of packing case, while they themselves continued to use the clumsy old crates their fathers had been accustomed to? The instant answer would have been that the benefit of the lowered duties was confined to no particular nationality, but was open to all who would take the trouble to pack in the required way.

It would have been in the other case of no doubt that, at the time of the negotiation in Parliament the opponents of the Government were reduced to quoting the words of the German treaty and insisting that they must be taken in their most literal sense at any cost of absurdity or violence to common sense. They recalled that the treaty says that "the produce of the States of the Zollverein shall not be subject to any higher duties than the produce of the United Kingdom."

GRAVE GROUNDS OF POLICY

which might probably constrain the Imperial authorities to differ from that view, or at least, to decline to give it effect. In the same way, while we did our best to shape legislation in such a way as to avoid raising any question under the treaty, we knew that the Home Government might be tempted to do an injustice to the colonies to which their rights might conflict with that of the German and Belgian authorities. It might well be, for instance, that as between England and Canada, the treaties lacked that sanction and ratification which was constitutionally necessary to make them binding against the Dominion.

The question whether or not the assent of the Parliament of Canada was necessary to bring into force the clauses in the treaty that concerned her was a purely domestic issue. The power of making treaties is vested in the Crown alone, and the Crown and her colonies, to foreign power would look for satisfaction in the event of any infraction of the international agreement. But don't let anyone jump to the conclusion that, this being so, it was an idle and irrelevant thing to urge the constitutional question as between Canada and the United Kingdom.

FLING IT TO ALL THE WINDS

If it was a choice of evading the treaty or ending it, all Canada was for ending it. Of course we knew that our political opponents had been trying to do this, trying to get the bill in the House for an eighth of a century and in vain. On all hands we were met with dismal prophecies that our proposals were certain to be disallowed by the representative of the Crown and an incompetent with treaties prized by Great Britain. We listened and knew

it was unnecessary to answer. We were confident from the beginning that if the case against the treaties was put simply and definitely in plain English, made for all these sixteen years of dallying with the question the Conservatives had never got as far as that our request would not be refused. We felt pretty sure what the result would be, when John Bull understood that it was only a German treaty, which would be ended at any time, that barred the acceptance by England of a signal mark of Canadian goodwill which came accompanied by real benefits for profit.

ACHIEVED BY THE LIBERAL PARTY

For the first time in the long story of Britain, a foreign treaty has been wiped from the record at the direct invitation of a Colonial Parliament. And if that does not in itself make a new epoch it certainly shall mark one in the gradual development and growth of the relations between the advanced yet united communities which together make up the British Empire.

TRADE WITH GREAT BRITAIN

1888.....\$107,228,906
1895.....\$2,888,727
1898.....\$137,185,947

During the last fiscal year the new tariff was in operation for some months and what do we find? That already the tendency to decrease has disappeared, and that on the contrary the imports from Great Britain have increased by three million tons since the new tariff came into force.

The establishment of a preferential tariff in favour of the Mother Country was only one of the steps taken by the present Government to draw the ties of the Empire closer, and to facilitate trade with the people most willing to do so.

DISCRIMINATION AGAINST GREAT BRITAIN

of exactly four hundred per cent? A discrimination of four hundred per cent against the Mother Country compared with the treatment of the United States every time an ounce letter and reply were sent between England and Canada—was that the way to draw the peoples closer, or promote a policy of Imperial unity? Even when people on both sides of the Atlantic carefully kept their letters down to the half ounce weight the discrimination

of the Dominion. The want of Canada in field, and forest, and stream, and mine, is men to work the wealth with which nature has endowed her. Her surplus of labour, her surplus of running water to the sea, just because hands are wanting to harness the power which some day will set in motion a thousand busy industries in every corner of the land. While riches beyond the dreams of avarice await the coming of labour to woo them from the bosom of the rocks, the value of our forests will be doubled when they cease to be sold as fuel. Turn to the great plains of the West, and you will see uncultivated acres now abandoned to the antelope and the prairie-dog which wait only the touch of the human hand to break into plenty, and to become a land flowing with milk and honey. All that is needed to enable Canada to take her right place among the foremost countries of the world is the proper development of her magnificent resources.

FAR-REACHING EFFECTS UPON THE DESTINIES

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LETTERS OF THE CONTENTED SETTLER

simple tales of peace and happiness and successful work sent from the new homes to the old. Was it a wise policy which in the past presumed to levy a tax upon it through the Post Office, and so penalised communication with the Empire, that on today's letter a year per head of the people of Canada goes back to the old land? We at your rate thought it a bad policy, bad for England and bad for Canada, and so swept away an impost which pressed with special severity upon the poor, and made them suffer in exact proportion to the love they bore to the friends they had left.

NORWAY AND SWEDEN MAY FIGHT

CHRISTIANIA, Nov. 30.—The tension between Norway and Sweden is increasing. Bitter feeling between the two countries was caused by Norway's refusal of the emblem of the Swedish union from her flag. She is now openly suggested by the newspapers, which print the comparative armaments of the two nations, to make a notable increase of force on both sides of the boundary. The Norwegians claim they must assert their independence.

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