in the nature of a treaty of alliance. In such a case our provinces would have become independent and sovereign states, international persons enjoying unimpared internal sovereignty. But I share the opinion of the late Honourable Norman Rogers, as stated in 9 *Canadian Bar Review*, page 413 that;

> The term "confederation" as applied to the Canadian union is a misnomer. What was actually set up by the British North America Act was a federal state or federation.

On that point I would also refer to Dawson, at pages 33, 36 and 91.

I may add, honourable senators, that the vague use of the word "confederation" has created much confusion in certain quarters. It has given rise to the theory that because the provinces are sovereign in their own sphere they are in all respects equal to our federal state, and may be described as sovereign states, in the fullest sense of that term. On the contrary, it is evident that only our central power is a sovereign state in international law. Indeed, that Canada is one country and not ten countries is a truism which requires no demonstration.

At all events, the Quebec Resolutions cannot, legally speaking, be described as a treaty, because, as remarked by the late Mr. Rogers, in 9 *Canadian Bar Review*, page 400:

> There was no grant of powers to conclude a treaty, compact or binding agreement. The colonies of British North America had not acquired in 1864 the right to conclude commercial or political engagements either between themselves or with other countries.

After fully discussing this matter, Mr. Rogers concludes, at page 401, that delegations from the several provinces were simply authorized:

> . . . to confer on the subject of union in order that the home government might have the benefit of their advice before introducing the necessary legislation in parliament. There was no grant of authority to conclude a treaty, compact, or binding agreement upon matters which had been dealt with by the Imperial Parliament.

I wish now to repeat that in 1864-66 only the Imperial Parliament had the power to make a treaty or compact on behalf of the British Crown with another state. When Macdonald in 1865 called the Quebec Resolutions a "treaty", he meant, I believe, that such resolutions constituted a tentative arrangement arrived at on behalf of the three provinces concerned—my reference is found in the French edition of Mr. O'Connor's work, at page 170—and that if the Quebec Resolutions as adopted by the delegates in 1864 were not approved by the Parliament of Canada, it would be necessary to obtain further approval for any modification introduced by the unilateral action of the Canadian Parliament.

Macdonald was perfectly right in taking that attitude. The Quebec Resolutions had been tentatively agreed upon, and could not be changed without the consent of all the parties who had already subscribed to such definite terms of union. However, I submit that Macdonald was using the word "treaty", not in its strictly technical sense, but figuratively, in order to describe the solemn draft of a plan of union to which the delegates of the provinces then contemplated giving binding effect by means of an Act of the Imperial Parliament.

But in 1866 things in London took a turn different from what Macdonald anticipated. The delegates from the Maritime Provinces declared that they were not bound by the Quebec Resolutions. The London Resolutions introduced substantial changes, and finally the British North America Act contained some further changes.

After 1866, as we have already seen, Macdonald, Cartier and other Fathers of Confederation refused to treat the British North America Act as either a treaty or a compact.

To sum up, the Quebec Resolutions had to some extent a conventional character from the time of their adoption in 1864 until they were replaced in 1866 by the London Resolutions. The London Resolutions, in their turn, resulted from an agreement among the delegates, but they were modified and replaced by the British North America Act. It remains true that the Quebec Resolutions were used as the main basis for our federation. In this sense they were accepted in fact as a so-called "treaty of union" among the then provinces—Canada, Nova Scotia and New Brunswick. In re Attorney-General for Australia v. Colonial Sugar Refinery Company (1914) A.C. at 252-3, the Privy Council stated:

> The Canadian Constitution . . . when once enacted by the Imperial Parliament, constituted a fresh departure, and established new Dominion and Provincial governments with defined powers and duties both derived from the Act of the Imperial Parliament which was their legal source.

Reaffirming its view just cited, the Privy Council held, in re Bonanza Creek Gold Mining Company v. The King (1916) 1 A.C. at 579, that at the time of the enactment of the British North America Act

> . . . the constitutions of the provinces had been surrendered to the Imperial Parliament for the purpose of being refashioned. The result had been to establish wholly new dominion and provincial governments with defined powers and duties, both derived from the statute which was their legal source, the residual powers and duties being taken away from the old provinces and given to the dominion.

I know that some previous judgments of the Privy Council may be cited in favour of the treaty or compact theory, but I submit that they are overruled by the more recent