

were combined in one parliament and formed a legislative union. They did pass a resolution approving the Quebec resolutions, but as I have just remarked, this assent was given not by two independent provinces but by a single parliament representative of the people of Upper and Lower Canada. Then, who made the treaty? Certainly it was not made with the Maritime Provinces. The Legislature of Prince Edward Island rejected the resolutions; it turned them down cold. The matter was never submitted to the legislatures of New Brunswick and Nova Scotia. Every constitutional authority that I have consulted seems to agree that the essential feature of a compact of this nature is the sanction of the legislatures. No sanction was given; and it is a good old rule, agreeable both to law and common sense, that it takes two parties to make an agreement.

Anyway, honourable senators, my honourable friend from Toronto-Trinity (Hon. Mr. Roebuck) and myself, when we were discussing treaties before the Privy Council, took the stand, that treaties can be made only with nations. That view was sustained. The parties must have the status of nations. Today Canada has that status, but it did not have it in 1867. Prior to confederation this country consisted of only a little handful of individual colonies—and colonies they were, in the full sense of the word. They were not in a position to make treaties. They were empowered only to express approval or disapproval of legislation passed by the Imperial Parliament, which alone had jurisdiction, and on which alone rested the final responsibility for legislation. So in my humble opinion, which I am encouraged to offer because very distinguished students of constitutional law and history have expressed the same views, there does not exist any compact constituting an obligation of the nature of a treaty which cannot be varied except by unanimous consent.

Hon. Mr. Euler: In that connection, may I ask my honourable friend a question which may be of considerable interest to other senators? If, as he says—and I agree with him—matters which fall entirely within federal jurisdiction are wholly within the competency of the Canadian Parliament, would it be within the power of the Canadian Parliament to abolish the Senate?

Hon. Mr. Farris: The Canadian Parliament? Yes, I think so.

Hon. Mr. Euler: The agreement of the Senate would be necessary?

Hon. Mr. Farris: The Senate is a part, and a very important part, of parliament. Some of us might be willing to concede that it is the most important part.

Hon. Mr. Euler: That is the answer I expected.

Hon. Mr. Farris: My leader, who asked me to move this resolution, knows that I hesitated a long time before I agreed to do so, because I wanted to convince myself that the resolution was right. There are things which a man accused of being a partisan, as sometimes I am, may be willing to do for his party; but I cannot conceive of any senator supporting this resolution if he thinks that as a constitutional proceeding it is unsound. It would take more than mere party loyalty to induce him to do that.

Some Hon. Senators: Hear, hear.

Hon. Mr. Farris: For my part, I pondered this resolution a long time, until I had satisfied myself at least, that it was on a sound basis and warranted our support. I see one or two of my friends are smiling because they know that what I am now saying has been expressed privately to them. I have written down what I believe to be the correct view of this question.

It is not enough to say that there was not a compact. One cannot ignore the fact that most important and solemn obligations were undertaken at the time of confederation. Nor should it be forgotten that there was an obligation on the part of Canada—of each province—and of the Imperial Parliament to recognize these obligations and see that they were not violated. The authority to create the Canadian constitution of 1867 was vested exclusively in the Parliament at Westminster. Nobody, I suppose, will dispute that statement. Neither by treaty nor in any other way could the colonies at that time create a union, either federal or legislative, between themselves. The authority of the Imperial Parliament was supreme. It carried with it corresponding responsibilities and obligations to legislate in the public interest of those to be affected. In so doing the British Parliament gave effect to the wishes of the colonies, as expressed to them by the representatives at that time, not as the consummation of a treaty, but as a statute enacted by parliament to confer on those colonies a charter of union and self-government, subject to such restrictions and limitations as the Act prescribed and such obligations as necessarily go with a statute of that kind.

Under this new constitution an entirely new set of governments—one federal, the others provincial—was established. Today the government of Ontario is not in the same form as government which existed provincially in Ontario before this legislation was passed in 1867. The government of Ontario at that time was a part of Canada, itself composed of two provinces. I reiterate that