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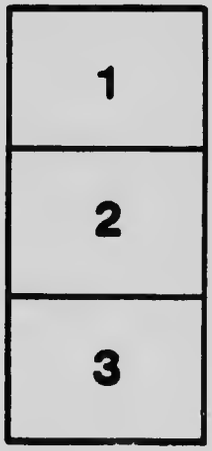

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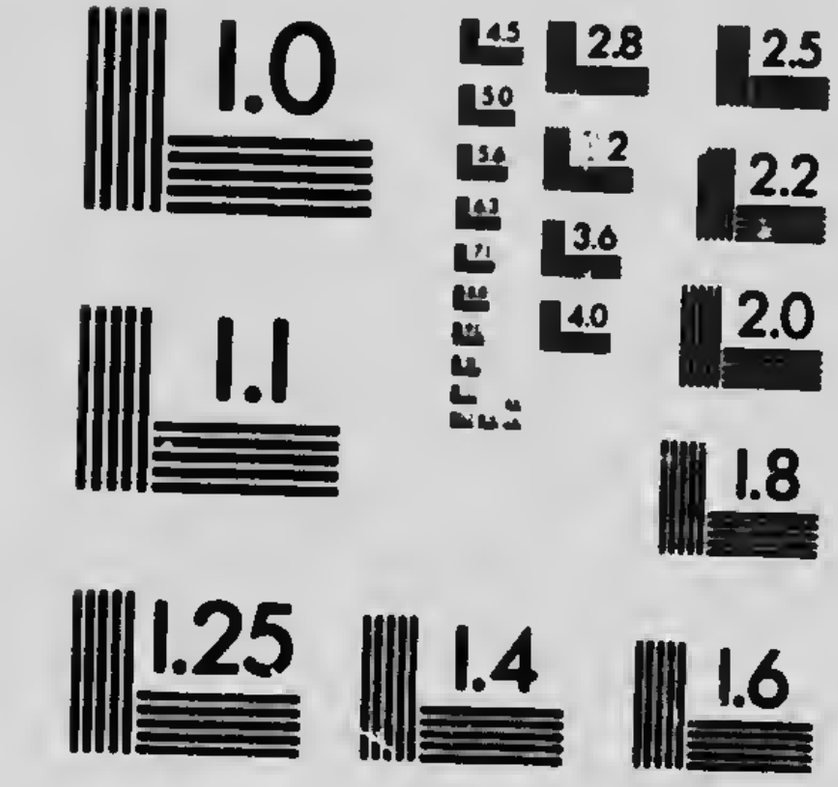

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CANADA: COLONY TO KINGDOM

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REPRINTED FROM
THE AMERICAN JOURNAL OF INTERNATIONAL LAW
APRIL, 1913

1913
(19)

CANADA

COLONY TO KINGDOM

I suppose there is a stage in the development of the creature at which opinion may very well vary as to whether it is a tadpole or a full-fledged, or rather a four-footed, frog. Canada, constitutionally, is in a somewhat uncertain case; for, if you say that she is a colony, you will be confronted with some well-developed legs, and if you say that she is an independent state, you will be asked to explain away the remains of the tail. What sort of compromising language a biologist would apply to his dubiosity, I do not know; but, with reference to Canada, I am prepared to make a distinction, — to say that she is nominally a colony, and really an independent state. A veritable bit of the actual tail is still visible; there may not, indeed, be enough for performance of its former function of control, but quite enough to betray the origin of the animal; while the legs can very clearly kick, if not speak, for themselves. Nominally, I say, Canada is a colony; the forms, the nomenclature, the legal appearance still exist. But in reality Canada is independent and governs herself. A short summary of Canadian political history will establish that point.

Resemblance to British History. A sketch of the constitutional development of the United Kingdom itself will, with a few explanations, suffice for the main features of the development of the Canadian constitution. Observe the following parallelisms:

1. The principal agency in British evolution was the Common's control of taxation. So also in Canada.

2. In earlier years this control was not completely effective because of the existence of the hereditary revenues of the crown, and the King's frequent recourse to aids, benevolences, prizes, etc. So also, as to the revenues, in Canada — for example, all the moneys derived from the sale and leasing of lands (the lands all belonged to the King, we were told); all fines; all fees of office (most of the officials received fees); and

all customs duties levied by Imperial statute. These revenues were large, and some of the governors looked forward with joy to the time when they would be sufficient to defray all expenditure and thus end forever the absurdity of bothering with legislative assemblies.

3. In earlier times the kings had large legislative authority, and the Stuarts claimed divine right to do as they liked. Defeated in many constitutional contests and finally in civil war, all such claims were withdrawn and ended. So also in Canada, where the same sort of contests, resulting in civil, although unsuccessful, war, preceded the concession of responsible government (1847).

4. In earlier times, the King was the chief executive officer, and took advice when and how he liked. So also his deputy in Canada.

5. Imperceptibly, executive functions became attached to various departments presided over by members of the administration of the day. So also in Canada.

6. Gradually the King ceased to attend council meetings of the administration, and finally withdrew altogether. So also in Canada.

7. The most marked advance in this last respect occurred on the accession of George I. Not only could he not speak English and his councillors not speak Dutch, but, apart from his desire for the use of British soldiers and sailors to help him in his seizure of Swedish territory, he did not care very much what his ministers did. So also in Canada. After British adoption of free trade and free navigation (1846–9), there were few matters in which the governors were specially interested. They guarded British interests only, even as George I watched over those of Hanover.

8. In earlier days, treaties were one of the peculiar prerogatives of the Crown. Nominally, they are so still, but, in reality, control has passed to the cabinet. So in Canada. Nominally, Canada has no foreign relations, but in reality she regulates them, very largely, as she wishes.

9. Even the influences which in England made so dilatory and sluggish the progress of political evolution were duplicated in Canada. There were the same placemen and place-seekers; the same sycophants and parasites; the same society-climbers and flatterers; the same strivers for titles and favors; the same grovellers, weaklings and imbeciles. But

besides all these, there were always very many estimable men, splendid men, who fought against reform because they did not like it; because they believed it low, vulgar and democratic; because they believed that government by the people would mean spoliation and anarchy; because of their assurance that the classes ought to govern and the masses to do as they were told.

The parallelism is close. Substitute the Colonial Secretary in Canadian history for the Sovereign in British, and it is fairly complete.

Present Position. Explanation of the present position will be assisted by dividing into two categories the authority which, in the course of time, has passed from the Imperial and become vested in the Canadian Parliament, namely, (1) that relating to local and purely internal affairs, and (2) that relating to matters having an external aspect.

Internal Affairs. Tight check upon even trifling details of our government was maintained until the union of the two Canadas in 1840. We had legislative assemblies, but the governors had the greater power. Our rebellions (1837–8) produced Lord Durham's report (1839). Lord Durham's report led to the introduction of responsible government, to which Lord Elgin afterwards (1847) gave practical operation. And British adoption of the principles of free trade (1846) by removing the only reason for interference in our domestic affairs, relieved us from a good deal of the parentalism which we had theretofore experienced and resented. After that, little tiffs from time to time with our governors were necessary. Every one of these men had to suffer a little clipping of the wings; one wanted to control the pardoning power in criminal cases; another wanted to exercise a sort of veto over provincial legislation; another imagined that he ought to control our militia, and so on. None of them got what he wanted, and in later years, although still apt to chafe and fret a little,[1] they have almost completely settled down into recognition of their limitations. Indeed, we may say that, with reference to all purely domestic matters, our independence of control is not only absolute, but is unreservedly admitted and acknowledged by the Imperial authorities.

External Aspects. Interference in our domestic affairs ceased, not

[1] The above has no reference, and, as far as I know, no application to His Royal Highness the Duke of Connaught.

out of deference to colonial sentiment and aspirations, but because, as Mr. Gladstone once said — when the British Government really came to consider the matter, they found that they had no interest in such matters.

In other respects, in relation to subjects with regard to which certain sections of the British people continued to consider themselves entitled to privileges in their colonies, there were the same old objections to our freedom of action, the same old Downing Street pressure and interventions. We have not quite finished with some of them yet. What has been done and what remains to be done may be seen from the following review under the headings (1) Judicial Appeals; (2) Tariffs; (3) Copyright; (4) Naturalization; (5) Merchant shipping; (6) Treaties; (7) War. The first two are settled. The third is practically settled. The fourth and fifth are under discussion. The sixth is settled. The seventh — we shall see.

Judicial Appeals. Our final court of appeal is the Judicial Committee of the British Privy Council. Originally, colonies had no option in the matter, — their charters so stipulated. Now the system continues in partial operation because Canada has not chosen wholly to abolish it. Nominally we have no control. Nominally the King may bring all judicial matters to "the foot of the throne," and do with them there as he thinks right. Really the King does nothing of the kind. Really our legislatures pass statutes, from time to time, assuming to limit the sovereign's authority. Really we do as we like, and the sovereign assents to any legislation we choose to pass.

Tariffs. The advent of free-trade in the United Kingdom ended the prohibitions theretofore imposed upon us, and we commenced (1859) the regulation of our own tariffs. Naturally enough, the British manufacturer did not like our methods, and the Colonial Office intervened and threatened to disallow our statute. The threat brought a plucky reply from the Canadian Government:

> Self-government would be utterly annihilated 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 affirm the right of 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.[2]

That ended the merely domestic side of the tariff question, but several points still remained: (1) Preferential tariffs—treating one country one way and another in another way, (a) as between different parts of the King's dominions, and (b) as between those parts and foreign countries. (2) The obligation of treaties (a) past and (b) future.

Preferential Tariffs. As early as 1885, Canada had been proposing reciprocally preferential arrangements within the King's dominions, and in 1894 she arranged for a meeting in Ottawa to consider that and other questions. Favorable resolutions were passed, but they met with no sympathy in England. We were told, in an official despatch of 28 June, 1895, that "the guardianship of the common interests of the Empire rests" with the British Government; that "in the performance of this duty it may sometimes be necessary to require apparent sacrifices on the part of a colony * * * that they will not, without good reason, place difficulties in the way of any arrangements which a colony may regard as likely to be beneficial to it"; that this would have to be done, and that that would have to be observed. Only twenty-seven years ago! Canada worried a little, and appeared to be able to do nothing. The principal difficulty was the existence of two old treaties which prevented the colonies charging lower duties on the productions of the United Kingdom than on those of Germany and Belgium. Canada asked that the treaties might be denounced. The United Kingdom said no. It would be bad for us, and subversive of correct principle. Then Canada took a peculiar step. She passed a statute offering the United Kingdom a preference (1897; 60 Vic. c. 16, s. 17) and asked what was going to be done about it. Shortly afterwards, the Colonial Conference of 1897 applied further pressure and Lord Salisbury denounced the treaties. Preference has become a familiar feature of colonial legislation. There are some other treaties yet, but none of great importance. The British Government is at the present moment endeavoring to arrange our release from them.

[2] Can. Sess. Papers, 1860, No. 38.

Practically, now, we do as we wish. Special arrangements have been made with various countries and we make such terms with them as we please. If we had chosen to consummate the recent reciprocity arrangements with the United States, no one imagines that the United Kingdom would have thought itself entitled to interfere even though the United States was, as to a few items of our proposed tariff, placed in a better position than the United Kingdom itself. Our tariff independence is complete.

Copyright. Canada's dispute with the United Kingdom was the result of American methods and American legislation. Copyright could not be obtained by Canadians in the United States unless the type of the book was set there, whereas British law gave copyright throughout the whole of the King's dominions to everybody who published (that is, put on sale) the book in the United Kingdom before publishing elsewhere. The effect was specially detrimental to Canada. I have myself been obliged to print books in the United States in order to get copyright there, whereas an American prints at home and obtains copyright in Canada by sending a few copies to London. In 1888, and afterwards, we protested very vigorously. A bill is now passing the British Parliament giving us complete control.

Naturalization. British legislation provides for the naturalization of aliens while they are *within the United Kingdom* only. It professes to change nationality only so long as the recipient remains within those limits. Early Canadian legislation conferred complete naturalization, but in later times Canada has conformed her law to the British model. She gives naturalization within Canada only.

The United Kingdom has now under consideration a proposal to widen the effect of her statute, and the position of Canada and the other Dominions has come under consideration. The United Kingdom contends that colonial legislation is necessarily limited to the colony's own territory, and that Canada, therefore, cannot confer nationality which would be valid beyond its boundaries. Canada contends that her authority is complete. Limitation of her legislative control to her own territory, she says, is a restriction from which no sovereignty is exempt. She asserts no extra-territorial validity to her laws. Conferring status (that is all that takes place) has no appearance of extra-territorial legis-

lation. Naturalization gives a status just as does marriage and incorporation of companies. Foreign nations recognize the status or not as they please. Canada further contends that her Constitution gives her complete control of the subject of "Naturalization and Aliens." Canada will, of course, win in the long run. There is but one and the same solution of all such questions.

Merchant Shipping. This is the only matter of any importance, apart from those involving foreign relations, about which there is any difficulty, and it promises a few years more controversy before it, too, ends in the same old happy way. Originally British law applied to all ships flying the British flag. Then a distinction among those ships was introduced by permitting registration of ships in the colonies, and the colonies were authorized to legislate with reference to those ships. It was recognized too and permitted that the colonies should have control, subject to certain limitations, of ships (any ships) engaged in their coastal trade. Afterwards special constitutions were granted to Canada (1867) and Australia (1900). And now two points are being discussed: (1) Have the Dominions authority to control by their legislation all ships within their waters? and (2) If not, is such authority to be accorded to them?

The questions arose in connection with attempts by Australia and New Zealand to regulate the rates of wages, the equipment, the sanitary arrangements of all ships engaging in their trade. British and foreign vessels employ cheap labor. Lascars get less than ten cents a day, and the accommodation for the men upon some of the ships is in proportion to the wages. Australia and New Zealand insist that their own ships shall pay proper wages and be properly equipped; and the result is that their own ships are beaten out of their own trade by inability to compete with ships careless of the well-being of their men.

The British Government agrees that the colonies may regulate their own ships and also all ships doing coasting-trade, but they object to regulation of ships trading between one colonial port and any outside place. Objection is put chiefly upon the ground that the proposed legislation would be equivalent to exclusion of British and foreign ships; that British ships ought not to be excluded; and that if foreign ships were excluded, foreign countries would retaliate not merely against

colonial shipping but against British ships also. The British Government points out, moreover, that the existence of many foreign treaties debars the possibility of legislation along the proposed lines.

The colonies, at the last Imperial Conference (1911), made replies to these objections, and they adopted two resolutions, one requiring such modification of the treaties as would relieve the colonies from the contracted limitation of their authority (some of the treaties have already been got rid of), and the other in the following language:

> That the self-governing oversea dominions have now reached a stage of development when they should be entrusted with wider legislative powers in respect to British and foreign shipping.

The British Government assented to the first, but opposed the second, of these resolutions.

Treaties. Originally the United Kingdom made such treaties (binding upon the colonies) as it pleased, and in doing so paid little regard to the interests of the oversea possessions. For example, when, as above mentioned, the colonies came to object to the Belgian and German treaties (made as late as 1862 and 1865 respectively), Lord Salisbury said:

> With respect to these two unlucky treaties that were made by Lord Palmerston's government some thirty years ago, I am sure the matter of the relation of our colonies could not have been fully considered. We have tried to find out from official records what species of reasoning it was that induced the statesmen of that day to sign such very unfortunate pledges; but I do not think they had any notion that they were signing any pledges at all. I have not been able to discover that they at all realized the importance of the engagements upon which they were entering.

In 1878, we obtained a declaration from the British Government that, for the future, no commercial treaty would be made by which Canada should be bound, unless she herself assented to it.[3] The German and Belgian treaties had been made before that date. They are now gone, and we are free from any future commercial treaty obligations other than those of our own making.

And we do make them. In 1879, we wanted to enter into some tariff arrangements with Spain, but having to act through the British Foreign

[3] British Blue Book, Commercial, No. 5, 1903; Can. Sess. Pap., No. 24, p. 7.

Office, negotiations were difficult, and our commissioner, Sir A. T. Galt, said (as afterwards summarized by Sir Charles Tupper): "that he found himself greatly hampered in discharging the duties imposed upon him by the Government of Canada, because he only stood in the position of a commercial commissioner, and it was necessary that all his negotiations with the Government of Spain, should be conducted through Her Majesty's Minister at the Court of Madrid." [4]

In 1893, our commissioner to negotiate trade arrangements with France, Sir Charles Tupper, was associated with the British Ambassador at Paris, and *Sir Charles did the work.*

In 1897, further arrangements were made with France, and on this occasion the part taken by the British authorities was purely formal. With reference to it Sir Wilfrid Laurier afterwards said:

> It has long been the desire, if I mistake not, of the Canadian people that we should be entrusted with the negotiation of our own treaties, especially in regard to commerce. Well, this looked-for reform has come to be a living reality. Without revolution, without any breaking of the old traditions, without any impairment of our allegiance, the time has come when Canadian interests are entrusted to Canadians, and just within the last week, a treaty has been concluded with France — a treaty which appeals to Canadians alone, and which has been negotiated by Canadians alone.[5]

In 1909, Canada created a Department of External Affairs, and the statute (8, 9, Ed. VII, c. 13) expressly refers to negotiations with foreign countries:

> The Secretary of State * * * shall have the conduct of all official communications between the government of Canada, and the government of *any other country in connection with the external affairs of Canada*, and shall be charged with such other duties as may from time to time be assigned to the department by order of the Governor in Council in relation to such external affairs, or to the conduct and management of international or intercolonial negotiations, so far as they may appertain to the Government of Canada.

In 1910, a treaty was arranged between the United Kingdom and the United States providing for the general arbitration of differences

[4] Hans., May 12, 1887, p. 396; and see Canadian Sessional Papers, 1894, No. 56A, p. 98.

[5] Quoted, Hans., 1907, 8, p. 1260.

between Canada and the United States, by proceedings with which the British authorities have nothing to do, by direct communication, namely, between Canada and the United States. In this respect, the treaty is really equivalent to a transfer from the British Foreign Office to the Canadian Government of the conduct of external relations with the only foreign country with which Canada has large and delicate relations. Article 10 of the treaty is as follows:

> Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States, any such action will be by and with the consent of the Senate, and on the part of His Majesty's Government, with the consent of the Governor-in-Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.
>
> A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.
>
> If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth and sixth paragraphs of Article XLV of the Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

When we remember that in 1892 the British Foreign Office declared that "To give the colonies the power of negotiating treaties for themselves without reference to Her Majesty's Government would be to give them an international status as separate states, and would be equivalent to breaking up the Empire into a number of independent

states," we are able to realize the import of our present arrangements with the United States.

War. The relation between Canada and the United Kingdom with reference to war, divided, with the question of reciprocity with the United States, the attention of the electors at our last general elections (21 September, 1911). Popular vote ended reciprocity, and the war question is now, and will for some time be, the chief subject for political discussion.

The relations between the United Kingdom and the colonies prior to 1902, were stated in a memorandum presented to the Colonial Conference of that year by the War Office, as follows:

> Prior to the outbreak of the war in South Africa, so far as any general scheme for the defence of the Empire as a whole had been considered, it was assumed that the military responsibilities of our great self-governing colonies were limited to local defence, and that the entire burden of furnishing re-enforcements to any portion of the empire against which a hostile attack in force might be directed must fall on the regular army. There may possibly have been some pious hope that in time of need the colonies might rally to the mother country, but no definite arrangements were made, nor were inquiries even on foot as to whether such aid might be expected, and if so, in what strength. Indeed, the necessity for it was by no means realized and its reliability was doubted.[6]

Before that date, Australia and New Zealand had made an arrangement with the British Admiralty whereby certain payments were to be made by the colonies, and certain naval defence provided by the Admiralty, and at the conference of that year, all the other self-governing Dominions, except Canada, agreed to send annual money contributions. Canada declined upon the ground of the inconsistency of the proceeding with the principles of self-government.

At the same conference, the British Government asked that, "The great self-governing colonies may be able to give some assurance as to the strength of the contingents which they should be able to place at the disposal of His Majesty's government for extra colonial service in a war with a European Power."

But the colonies declined to pledge themselves, and Canada and Australia said that the matter would be considered "when the need arose."

[6] Colonial Conference, 1902, pp. 47, 48

At the next conference (1907), Canada had the satisfaction of finding that, not only had the British Government been converted to her view, but that the experience of some of the other colonies had proved its soundness. The Prime Minister, Mr. Campbell-Bannerman, in his opening speech, said that he did not (as Mr. Chamberlain always had done), ask for money, for he recognized that "the cost of naval defence and the responsibility for the conduct of foreign affairs hang together. * * * You in common with us are representatives of self-governing communities." [7]

Afterwards, Canada and Australia commenced the establishment of navies of their own, and the question of their employment in British wars necessarily arose. The legislation of both the colonies was absolutely non-committal; the executives were given authority, at their discretion, to hand over the ships. The British Government made no claim. On the contrary, it readily agreed that "the naval services and forces of the Dominions of Canada and Australia will be exclusively under the control of their respective governments." [8]

In the Province of Quebec a new political party, the Nationalist party, has been formed for the purpose of protesting against Canadian obligation to take part in British wars in the absence of representation in British councils. The Conservative party accepted that principle and united with the Nationalists in the formation of the present government. The Liberal party has always declared Canada's complete freedom of action; and, therefore, it may now be said that Canada is fairly unanimous in her assertion that there can be no obligation without representation. Our Prime Minister has indicated that an endeavor will be made to come to some agreement upon that basis with the British Government, and it is a part of his declared policy that no permanent arrangement will be finally made without having been first submitted for ratification to the people of Canada at a general election.

The situation is, therefore, not only very interesting, but extremely delicate. It looks as though the last trace of our tadpole tail were rapidly disappearing.

Parliamentary Control. In the Canadian Constitution are the following paragraphs:

[7] Proceedings, p. 5.

[8] Cd. 5745–2, p. 1.

55. Where a bill passed by the Houses of Parliament is presented to the Governor General for the Queen's assent, he shall declare according to his discretion, but subject to the provisions of this act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the Queen's pleasure.

56. Where the Governor General assents to a bill in the Queen's name, he shall, by the first convenient opportunity, send an authentic copy of the act to one of Her Majesty's principal Secretaries of State, and if the Queen in Council, within two years of receipt thereof by the Secretary of State, thinks fit to disallow the act, such disallowance (with a certificate of the Secretary of State of the day on which the act was received by him) being signified by the Governor General, by speech or message to each of the Houses of the Parliament, or by proclamation, shall annul the act from and after the day of such signification.

57. A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor General for the Queen's assent, the Governor signifies by speech or message to each of the Houses of Parliament, or by proclamation, that it has received the assent of the Queen in Council.

Those clauses are in the Constitution, but the understanding is fairly complete that they must not be acted upon. The last occasion upon which they were brought into operation was in 1888, when a bill respecting copyright was reserved by the Governor and remained unassented to. Canada had a grievance, as already stated, against the United States and wanted to retaliate. We were not permitted to do so. Our freedom is now conceded, and we shall very shortly do as we have been done by. The disallowance clauses of our Constitution are out of date.

A Canadian Flag. Our federation was formed in 1867, and shortly afterwards our government adapted the red ensign of the British mercantile marine to our purposes as a Canadian flag, by placing upon the fly of the flag the Canadian coat-of-arms. The Admiralty at first made no objection to the practice. On the contrary, a notification was sent by its Board to the Colonial Office, May 22, 1874, to the effect that "no objection would be raised to any vessel registered as belonging to one of her Majesty's colonies flying the red ensign with the badge of the colony in the fly."

The Admiralty soon changed its mind, and on the 25th of July of the following year intimated to the Colonial Secretary that the only proper

flag for the colonial mercantile marine was "the ensign without any badge."

Canadian ship-owners took little notice of this inhibition, and finally an Imperial statute [9] was passed to put us straight:

1. The red ensign usually worn by merchant ships without any defacement or modification whatsoever, is hereby declared to be the proper national colors for all ships and boats belonging to any subject of Her Majesty, except in the case of Her Majesty's ships or boats, or in the case of any other ship or boat, for the time being, allowed to wear any other national colors in pursuance of a warrant from Her Majesty or from the Admiralty.

Canada was notified of the passing of this statute, October 3, 1889, and at the same time was informed that there would "be no objection to colonial merchant vessels carrying distinguishing flags with the badge of the colony thereon, in addition to the red ensign."

That was not, however, what Canada wanted, and an application was made, June 30, 1890, under the provisions of the statute, "for the issue of a general warrant which will permit Canadian registered ships to fly the red ensign usually worn by merchant ships with the Canadian coat-of-arms."

Objection being made, the Canadian Government passed an Order-in-Council, October 31, 1890, in support of the previous application, and Sir Charles Tupper wrote to the Governor-General, Lord Stanley, on November 13, 1890, saying that: "Since about 1869 our ships have been encouraged by the Government of Canada to use the red ensign with the Canadian coat-of-arms in the fly. * * * These ships are in every quarter of the globe."

Afterwards, November 7, 1891, Vice-Admiral Watson, then stationed at Halifax, wrote to the Governor-General:

I have read with much interest the correspondence relating to the Canadian flag. It will certainly be a great pity if the Home Government insist on its abolition. As a matter of feeling and sentiment, I know for certain it will cause very great dissatisfaction in the colony, and I can see no good result from the enforcement of the order; but on the contrary, I think a change enforced might give rise to trouble and will certainly cause general ill-feeling. They are proud of their flag, and their pride, in my opinion, should be encouraged and not dampened.

[9] 52, 3 Vic., c. 73.

The Governor-General took the same view, and in writing to the Colonial Secretary, December 12, 1891, referred to the use of the red ensign with the Canadian badge as follows:

> It has been one of the objects of the Dominion as of Imperial policy to emphasize the fact that, by confederation, Canada became not a mere assemblage of provinces, but one United Dominion, and, though no actual order has ever been issued, the Dominion Government has encouraged, by precept and example, the use on all public buildings throughout the Provinces of the red ensign with the Canadian badge in the fly.
>
> Of course it may be replied that no restriction exists with respect to flags which may be hoisted on shore, but I submit that the flag is one which has come to be considered as the recognized flag of the Dominion, both ashore and afloat, and on sentimental grounds I think there is much to be said for its retention, as it expresses at once the unity of the several Provinces of the Dominion and the identity of their flag with the colors hoisted by the ships of the mother-country.

Lord Stanley added that the enforcement of the Admiralty order "would be attended with an amount of unpopularity very disproportionate to the occasion, and at a moment when it is more than usually important to foster rather to check an independent spirit in the Dominion which, combined with loyal sentiments toward the mother-country, I look upon as the only possible barrier to the annexationist feeling which is so strongly pressed upon us by persons acting in the interests of the United States.[10]

Thus urged, the Admiralty gave way, February 2, 1892, at the same time retaining its opinion that "there are not unimportant objections to interference with the simplicity and uniformity of national colors. Whatever is conceded to Canada will almost certainly be claimed by the other colonial governments."

The warrant issued by the Admiralty, February 2, 1892, is as follows:

> We do therefore by virtue of the power and authority vested in us hereby warrant and authorize the red ensign of Her Majesty's fleet with the Canadian coat-of-arms in the fly, to be used on board vessels registered in the Dominions.

[10] At the Dominion elections of 1891, the question of closer trade relations with the United States was the principal issue, the Liberals strongly advocating a policy of unrestricted reciprocity.

The Admiralty's warrant sufficiently established a Canadian flag on our mercantile marine, and as appears from the despatch above quoted, our government, without any special Imperial authority, adopted it as our flag ashore. It very appropriately symbolizes and expresses the Canadian constitutional position; for the union-jack, in the corner, indicates our political origin and present affiliation, while the Canadian coat-of-arms in the fly denotes the commencement of independent national life. Its equivocal character has its parallel and its explanation in the ambiguity of our political status. Were we, in fact as well as in theory, a part of the British Empire, we should of course fly the flag of the Empire alone—the union-jack, the symbol of our subordination. And were we, in theory as well as in fact, an independent nation, we should fly no flag which did not clearly express our status and our nationality.

The Canadian flag has been adopted for use upon the recently provided Canadian war-ships, an agreement with the British Government declaring that on the jack-staff of our vessels there shall fly "the distinctive flag of the Dominion."

Summary. What has been said may be shortly summarized as follows:

1. As to all internal affairs Canada is absolutely free from control. She is really an independent nation.

2. With reference to those questions which have more or less an external aspect —

(a) Canada has reduced, and may at any time terminate, the system of judicial appeals to the British Privy Council.

(b) Canada arranges her own fiscal tariffs, including the giving of preferences as she pleases.

(c) Canada controls the subject of copyright.

(d) The subject of naturalization is at the moment in dispute.

(e) With reference to merchant shipping, the authority of Canada over ships registered in Canada and ships engaged in her coasting trade, is admitted. Her authority over other ships touching her ports is under discussion.

(f) Canada arranges her tariff-treaties as she pleases. And she has with the United States an arrangement under which all matters of difference may be decided without reference to the British Government.

(g) Canada has asserted her liberty of action with reference to British wars. She has frequently, through her Prime Minister, declared that she will or will not take part in such wars as she may think proper. Both political parties in Canada have agreed that there can be no war-obligation on the part of Canada in the absence of her participation in the diplomacies which involve war.

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