DOMINION STATUS*

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ON November 18th, 1926, a Report by a Committee of the Imperial Conference on "Inter-Imperial relations"—I would ask you to note the title, for it is important in the light of subsequent controversy—was signed by Lord Balfour, and was subsequently adopted by the Imperial Conference. It contained, among many other things, the following sentence which Lord Balfour thought so important, as indeed it was, that he emphasized it with italics:

> The group of self-governing communities composed of Great Britain and the Dominions, their position and mutual relation, may be readily defined. They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any respect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British commonwealth of nations.

These words were big with destiny. They have been the subject of speculation, interpretation, dispute, not only within the British Empire but outside it. They have excited the most lively curiosity among foreign jurists, not excluding American jurists. One of these, Professor Loewenstein of Munich, has lately sent me a commentary of his own upon them, in which he describes the Report embodying them as the "Magna Carta of the British Commonwealth"—*Die Magna Carta des Britischen Weltreiches*. The synonym is not inapt in one respect; namely in this, that it was well and truly said by Maitland of the most sacramental words in Magna Carta that it was possible for subsequent generations to worship them because it was possible to misunderstand them. And after reading, with some closeness, the intermittent debates on this Report which occur and recur in the Dominion parliaments —at Ottawa, at Cape Town, in Dublin, at Canberra, at Wellington, nay, at St. John's—I find there are almost as many opinions as to the meaning, by which I mean the effective meaning, of the words I have quoted as there are Dominions. Nay, more, I find that in two at least of the Dominions, Canada and South Africa, their parliaments themselves are divided in opinion. The difference of view between the Irish Free State and New Zealand—and no

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difference could be more marked—is not more remarkable than that which divides Mr. Mackenzie King, the Prime Minister, from Mr. Bennett, the leader of the Opposition, at Ottawa, or that which separates General Hertzog from General Smuts at Pretoria. These differences—particularly about the words "equality of status" and its application to "external" affairs—are, at first sight, so emphatic, the construction placed on them in two Dominions so extravagant, that one might be tempted to think that Lord Balfour's formula had come not to fulfil but to destroy. Indeed, the exultation they have excited in some quarters is only equalled by the depression, perhaps I should say the doubt, they have induced in others. A distinguished member of the New Zealand Cabinet, who did me the honour of inviting my opinion on this subject, wrote to me some two years ago as follows: "It seems to me that a whole series of questions has been left in doubt by the last Imperial Conference, and I am at a loss to understand, personally, the enthusiasm with which the decisions were received." Since then, the enthusiasm has been succeeded, as enthusiasm generally is, by a cold fit.

Let me, at the very outset, administer a sedative. That most disputatious person, Thomas Carlyle, once wrote of an evening he spent with a friend: "We had a pleasant evening and parted, except in opinion, not disagreeing." The Dominions may disagree with us or, it might more truly be said with one another, and yet remain united. In all the dialectic of these Dominion debates I have not found a single responsible politician disputing their own and our common allegiance to the King. And there is more than loyalty in that; there is law. Once grasp, as some of these Dominion orators have not quite grasped, the significance of the maxim, so often laid down and so often applied by the Judicial Committee of the Privy Council, that the Crown is "one and indivisible throughout the Empire," and a great deal of the current use and misuse of the term the "sovereignty" of the Dominions will, in losing half its meaning, lose all its danger. Once admit the truth of that other legal maxim, as important to the autonomy of the Dominion courts as it is to the territorial sovereignty of their legislatures, that "the King is everywhere present in his Dominions," and you will discover the source of the Dominion prerogatives themselves. And with what *The Times*, in a happy phrase, has called "the regalisation" of the office of Governor-General, as the King's representative—as the result of the Imperial Conference's Report —we may yet discover that here, and not elsewhere in the Report, is the new status of the Dominions. In future the Governor-General will exercise all the prerogatives delegated to him on the advice of

the local ministers; the distinction between the "Governor-General" and the "Governor-General in Council" will disappear; and the King's ubiquitous "presence" in the Dominions, metaphysical though it sounds, will be more intense, if I may so put it, than ever it was. More of that in a moment. As for the differences revealed in these Dominion debates, I am inclined to think that all this liberty of prophesying is all to the good. Of the Dominions it may be said, reversing the apostolic words, not "We must be bond in order that we may be free," but "We must be free in order that we may be bond." Remember that this Report is not an end but a beginning, and that it is the task of the next Imperial Conference, after due meditation and exploration, to give effect to it. In a recent debate in the New Zealand parliament, a certain member said of it, in words of protestation, "Here is something about which neither the parliaments nor the peoples of the Dominions have been consulted, and yet it is a written constitution for the Empire." With all respect to him, it is nothing of the kind. The Report may be prophecy, but it is certainly not law. Mr. Bennett, in a recent debate on the subject at Ottawa, said with far more truth, "Much constitutional surgery will be necessary before this Report can be really put into effect." Perhaps he had in mind the amputation of a certain section of the *Colonial Laws Valadity Act*, that section which declares—I prefer the word "declare" to "enact", for a very good legal reason—that the colonial laws shall be void in so far as they are "repugnant" to the laws of the imperial parliament. But before a surgical operation is recommended, it is usual to make a diagnosis. The power of the imperial parliament to legislate for the Dominions is almost as obsolete, from disuse, as the human appendix; but, before removing it, it is as well to make sure that the body politic of Empire is really suffering from appendicitis, or the operation may leave serious after-effects on the vitality of the patient, especially in the matter of Merchant Shipping, and many other things affecting its circulation. Be that as it may, there can be none better qualified to make the necessary diagnosis than the Dominion parliaments themselves. Sooner or later they may feel compelled to call in that elderly practitioner, whom some of them are apt to think rather old-fashioned, but who is wise with the wisdom that comes with age, if it ever comes at all, the British Government.

Meanwhile, in all the excitement produced by certain departures in the last two years on the part of one Dominion, Canada to wit, it is well to remember that "equality of status" among the Dominions and ourselves does not necessarily mean, or require, uniformity

of type, still less duplication and re-duplication of action. The fact that certain Dominions chose to contract out, not for the first time and even before the Imperial Conference, from certain treaties —the Conventions signed at Lausanne, for example—impresses me less than the fact that certain other Dominions elected to be bound by them. The appointment of a Canadian Minister Plenipotentiary at Washington need not alarm us, especially if we scrutinize the terms of his appointment, and recall the source of his authority, which is the King. The accrediting of a Canadian Minister to Tokyo need not, for reasons which I will particularise in a moment, excite us; and even if it did, we should be soothed with the reflection that out of the six Dominions only one, the Irish Free State, has followed the Canadian experiments in diplomatic representation; while, of the remaining four, two, the Australian Commonwealth, and the Dominion of New Zealand, have emphatically disclaimed any intention of doing anything of the kind. But even if they did, I should be inclined to repeat the words of Mr. Mackenzie King, in answer to certain criticisms, and echo "Why not?" If an Empire delegation worked well at Paris—and as a member of it I share the common view that it did—and also at Washington, there is no reason why a permanent Empire delegation in every foreign capital should not work, provided—it is rather a big provision—that certain legal aspects of such a situation, which are at present very imperfectly apprehended, are clearly understood. There is even something to be said for Mr. King's suggestion of an "Imperial diplomatic service." Have we not already something of a prototype in the Imperial General Staff? Even that remarkable legislative experiment of last year's session at Ottawa, I mean the *Canadian Customs Amendment Act*, does not depress me. But it makes me think. That Act, which was directed against smuggling, provided that not only might any ship, of whatever nationality, "hovering" in the territorial waters of the Dominion, be subjected to search, and if forbidden goods were found on board, brought into port, seized and forfeited, and her master fined, but that a vessel registered in Canada (which, by the way, is none the less a British vessel solely subject to British law the moment she is beyond the three-mile limit) might be similarly dealt with if found *outside* the territorial waters—in other words, within twelve marine miles. For reasons which I have no time to develop here, I think that provision of the Canadian Act was bad in law, *ultra vires*, and a direct challenge to the rule that a Dominion cannot legislate extra-territorially. So thought many of the Opposition at Ottawa. But the reply of the Minister in charge of the Bill is surely very

comforting. After referring—not very correctly, I think—to the *Halibut Fisheries Treaty Act* as a direct precedent, he said in effect: "Well, if we are wrong in thinking this Bill *ultra vires* and unconstitutional, there is always the Judicial Committee of the Privy Council to say so." That does not exactly indicate a revolutionary attitude, certainly not an insurgent one.

Let us consider at the outset the form of this Report, and, if there be any, its sanction. It is, be it emphasised, a Report adopted by a resolution of the Imperial Conference. That, and nothing more. It has never been incorporated in an Order in Council, much less in an Act of the Imperial Parliament. But an ingenious writer, who has a Canadian axe to grind, has contended in a recent issue of that admirable periodical, the *Canadian Bar Review*, that it is binding on the Canadian courts. Those courts, he insists, have suffered for sixty-two years from what he calls a "colonial" complex, by which he means an inferiority complex. They ought to have known, he pursues, and now they shall know, that the preamble to the British North America Act made Canada a Kingdom, her Governor-General a Viceroy, her legislature sovereign even beyond the ambit of her territorial waters, and the power of the Imperial Parliament to bind her as null and void as the power of the legislature of France to bind the Province of Quebec. As a lawyer I totally disagree with every one of this writer's conclusions, though they are not without political significance, even as I dispute his premises. Not one of this propositions was implied in the preamble to the Canadian constitution, and only two of them, at most, are implicit in the Imperial Conference Report. But that is not my point. My point is this: after expressing a lively fear that the Canadian courts will be as contumacious after the resolution as before it, he says, with evident relief and in almost so many words, "But thanks be to God, there is still the Judicial Committee of the Privy Council." Their Lordships are, he says—and his saying is true—the advisers of the King, and the King "could not be advised by them to ignore the resolutions of an Imperial Conference." The tribute to the Judicial Committee is refreshing, without being rare, but I do not quite see how their Lordships are to take judicial notice of a resolution of the Imperial Conference. You might as well expect them to take judicial notice of a resolution of the British Cabinet.

No. This resolution, whatever else it be, is not law. It is not a legal provision, but a "political" one, using that term in the sense in which it has always been used by the Supreme Court of the United States ever since the case of *Luther v. Borden*, namely a

"governmental" provision the enforcement of which rested with Congress and not with the courts. Such, for example, was the question in America, whether the government of a particular state, Oregon to wit, conformed to the republican type prescribed by the American Constitution. But the resolution of the Imperial Conference is even less than the American analogue, for it is neither embodied in a written Constitution nor does it constitute one. Some of it, or rather some of the consequences implicit in it, may sooner or later require an Imperial statute; but, before that is done, we shall all have to agree what those consequences are, and we are a long way from that.

Then what, you may well ask, *is* this resolution? My answer would be that it is at most a convention. And by a convention I do not mean a treaty. With the Covenant of the League of Nations, of which I shall have something more to say, it has nothing whatsoever in common. His Majesty cannot make a treaty with his own subjects, an elementary legal proposition which the Irish Free State Government either overlooked or ignored when it sought to register with the Secretariat of the League of Nations that British statute, known as the "Irish Agreement," on which, and on which alone, the Irish Constitution is based. It is, as we shall see in a moment, the only statute in which we shall find a legal definition of Dominion status, and a very elusive definition it is. No! When I speak of this resolution as a convention, I mean a convention in the sense of a purely political understanding the force of which is exactly co-relative with the extent to which it is observed. Some Canadian critics, Mr. Bourrassa, for example, are already contending that it is *not* being observed, and that when Canada broke off trade relations with Russia simultaneously with ourselves, she acted "on a simple command from Mr. Amery," as he puts it. I doubt that, I doubt it very much. But be that as it may, a great deal of what is contained in the Report has been observed for nearly a generation. If, as has been well said, a "convention" is a voluntary practice which has hardened into a tradition, then that part of the resolution, or rather the Report adopted by the resolution, which declares that the Dominions are "in their *domestic* affairs in no way subordinate to the British Government" has already acquired the sanctity of a tradition. It has even received a measure of judicial notice. There is one case in our law reports, and only one, in which you will find a definition, a partial definition it is true, of the "domestic" character of Dominion status. It is to be found in the famous case known as *Art O'Brien's Case*. When in 1921 the forceful politicians of Southern Ireland—

I cannot call them belligerents, and I dare not call them rebels—came by invitation to Downing Street, they demanded, as the price of peace, "Dominion Status." As nothing less than a British statute could give them that, the law officers of the Crown, to say nothing of the parliamentary draftsmen, must have been not a little staggered to find a statutory definition for something which had never yet been defined, and which was indeed almost wholly conventional. Fortunately the Irish representatives—for reasons which the Chief Justice of the Irish Free State has recently made public—were already prepared to oblige them, and their definition was accepted. Here it is. The new Dominion was to have a status—I quote the text of the Agreement, now a statute—"in law, practice and constitutional usage, governing the relationship of the Crown, or the representative of the Crown, and of the Imperial Parliament, similar to that of the Dominion of Canada." And the Court of Appeal, in the case cited, decided that these words meant that our Home Secretary was no longer able to exercise any executive authority whatsoever in Southern Ireland. There, so far as it goes, is a definition of "Dominion Status." But as it was delivered three years before the Imperial Conference, it does not go very far, and it tells us nothing whatsoever of what Dominion Status means in the realm of "external affairs." Indeed, that is just the question which Canada herself is asking, and sometimes she will not wait for an answer.

As for the Privy Council, it has never defined Dominion Status, though it has gone some little way in that direction. It has spoken of the legislature of Canada as sovereign within its own territorial ambit; but a most learned judge of the High Court, Mr. Justice Willes, had said almost the same thing of Jamaica, at least fifty years earlier, in the notable case of *Philips v. Eyre*, and Jamaica is not, and never was, a "Dominion." In *Theodore v. Duncan*, Lord Haldane—but I cannot let so great a name pass so perfunctorily and without a valedictory tribute. Lord Haldane had graced these Rhodes lectures of mine with his presence in the chair on two occasions, and ill would it become me to forget it. Here in this place, now honoured by the presence of his successor on the Woolsack, Lord Hailsham, he put forth, on the fifth of November, 1913, his memorable suggestion that the Judicial Committee, sitting, as indeed it now does, in separate divisions, might some day go on Assize throughout the great Dominions. Nay, more, what is far more important, he had played so great a part in the adjudication of questions such as these by the Judicial Committee, particularly in cases from Canada, that it would be, I think, no great

exaggeration if I were to adapt to him the words used of Chief Justice Marshall in America, and to say that by his decisions he had made himself the father of the Canadian Constitution. His last judgment in the *Ontario Schools Case*—a judgment as masterly and as emancipatory in its interpretation of the nice equipoise between the Dominion and provincial powers of legislation as his judgments in the *Great West Saddlery Company Cases* and the *Toronto Electricity Commissioners Case*—was written by the hand of a dying man. And I think it may interest you to know that, only a few days before the end, his last petition to his medical adviser was that, although all other activities might be, as indeed they were, forbidden him, he should be allowed to continue occasionally to participate, after the Long Vacation, in the sittings of the Privy Council. Such was the devotion of a dedicated life to the great Imperial tribunal which, whatever the disintegrating effect of the resolution we are considering may be, will remain the focus of such Imperial unity as may be left to us.

In *Theodore v. Duncan*, Lord Haldane laid down, in memorable words, "The Crown is one and indivisible throughout the Empire, but it acts in self-governing States on the initiative and by the advice of its own Ministers in those States." But that, be it observed, was a case from Queensland, not from a Dominion. There are other cases; there is the *Mackay Case* from British Columbia; there is the *Commercial Cable Co. Case* from Newfoundland, which *is* a Dominion. There are also the answers of their Lordships to the series of interrogatories referred to them by His Majesty in the *Irish Boundary Case*. But in none of these cases have their Lordships ever said that the Crown acts *exclusively* in Dominion matters on the advice of Dominion Ministers. The great change definitely effected by the Report of the Imperial Conference is that in future the Crown, or rather its representative, is *bound* to do so. He ceases, in the words of the Report, to be "the agent of the British Government", and becomes the personal representative in the Dominion of the King and of the King alone. Now here is, to use a vulgarism, the "catch" in the new dispensation, and it will call for some pretty hard thinking before the next Imperial Conference is to translate the proceedings of the last into legal form. The "catch" is the exercise of the regal power of what is called "reservation." The Governor-General of every Dominion is directed, sometimes by his Instructions, and sometimes by the very Act of the Imperial Parliament which at once grants and incorporates the constitution of the Dominion, to "reserve" certain Bills, after they have been passed by the legislature of the Domin-

ion "for the signification of His Majesty's pleasure." In so doing he acts alone, and not as "Governor-General in Council," that is to say, not on the advice of the Dominion Government. Hitherto the Colonial Office—we must now say the Dominions Office—has advised His Majesty whether Bills so reserved shall receive his assent or not. But in virtue of the words of the Report I have quoted, the Dominions Office can no longer perform this function. It has abdicated. Who, then, shall advise the King? For the King, as we all know, cannot act alone. Is the Dominion Government, in other words the very Government which was responsible for originating the Bill so reserved, to advise him? That is equally impossible, for no Government would advise His Majesty to reject its own legislation. The whole object of reservation, which is to preserve some external control over legislation affecting "external" or Imperial interests, would be defeated if the Dominion Government alone advised. This is a very delicate question. I do not think it has ever been put. I am sure it has never been answered. Does it not inevitably point to the exercise of personal power by the King, a personal power which, though constitutionally dormant, is legally never dead. If it does not point in that direction, the only other course you can steer is a kind of Imperial Cabinet. But an Imperial Cabinet has proved to be impossible, except in time of war, for the simple reason that the Dominion Prime Ministers cannot, except very intermittently, attend one. You might say, but it would hardly be true, that such a Cabinet exists in a sense—I mean in the sense that it is now common form in communications between one Dominion Government and another or with the British Government—to begin with the words, "My Prime Minister to Your Prime Minister." But that is all.

And what of the letters-patent which create and define the Governor-General's office and delegate the prerogatives? What of the Instructions which inform him how to exercise them? Who is to instruct him? What are his instructions to be? Here again the British Government has abdicated. One thing seems certain: the next Imperial Conference will have *pro tempore* to become an Imperial Cabinet and to advise, collectively, the King on a common form of "Instructions" and on the drafting of a common form of letters-patent. There is another question. The Governor-General in future will be a very lonely man. He will no longer have behind him the support of the British Government. He will be, he now is, we are told, a Viceroy. That is just what the Privy Council has always held a Governor not to be. He enjoys none of the personal prerogatives of the King, such as immunity from

suit in the courts of his own jurisdiction. That anachronism, for anachronism it now is, will no doubt be adjusted by statute. But in some things he may still have to exercise a certain discretion—the grant of a dissolution, for example. You will remember the action of Lord Byng in Canada. He acted on Ministerial advice, but he did not escape fierce criticism. And Viceroy though the Governor-General may now be, it remains to be seen whether he will still escape. After all, the assimilation to the King can never be complete. A Dominion Government, or a Dominion Opposition, may demand the recall of a Governor-General; no British Government can "recall" the King. There are other difficulties, but there I leave it.

But while these questions may vex the lawyer and perplex the politician, there is another aspect of the Report which has aroused far more anxiety and dispute in the Dominions overseas. I refer to the words which describe the Dominions as "equal in status, in no way subordinate, in *external* affairs." Observe that word "external." I suspect some subtlety in it. The word "foreign" is, you will observe, avoided, perhaps carefully avoided. Now a matter may be external to a particular Dominion without being foreign to the Empire. But the very ambiguity of that word "external" has been the root of all the mischief. It has raised the assumption in two, possibly three, of the Dominions that they have thereby acquired an independent voice in foreign affairs. Let us consider the application of this in the matter of diplomatic representation. Now, no difficulty arises so long as we confine ourselves to the affairs of a Dominion which are external to that particular Dominion without being foreign to the Empire. Such affairs are entrusted to a High Commissioner, and a High Commissioner, although a very august and indeed indispensable personage, is not an ambassador, whether he be the Canadian Commissioner in London or the new British Commissioner at Ottawa, nor can he, by anything short of a dissolution of the Empire, become one. An ambassador is, *ex hypothesi*, in the words of Chief Justice Campbell, "one who does not owe even temporary allegiance to the sovereign to whom he is accredited." The High Commissioners, and the Governments which they represent, would be the very last to disclaim allegiance. There is therefore no question of "sovereign independence" of the Dominions in foreign affairs involved here. Is there such a question involved in the appointment of a representative of Canada on the Joint International Commission in North America, of a Canadian Minister to Washington and to Tokyo? All of them are now, indeed, appointed on the advice of

the Canadian Government, not of the Foreign Office. That fact is, I admit, of considerable constitutional importance. But let us go a little farther back. Before any Minister Plenipotentiary, whether he be British or whether he be Canadian, can be accredited to a foreign State, that State must be "recognized," as lawyers put it. With whom does that recognition lie? Well, let me take a case in point. Some two years ago, it was my duty, in the course of my practice, to advise on the question whether the consignees of certain products imported into this country, and representing the original property of the lay clients confiscated by the decrees of the Soviet Government of Russia, could be sued in an action for conversion. The interests at stake were enormous, representing many millions of capital, and the lay clients were naturally very anxious that I should find it possible to advise the taking of proceedings. But when I came to look up my cases, I found one, *Luther v. Sagor*, decided by the Court of Appeal on precisely the same point, and subsequently noted with approval by the House of Lords in the *Russian Bank Case*, which was dead against us. It was accordingly my duty to advise against an action—to the sorrow of my clerk, the custodian of my fee-book, who, I regret to think, did not, apparently, concur in my opinion. In that case the court had held that the decrees of the Russian Government, however bad in morality, were binding in law to effect the transfer of title to property within their jurisdiction, because they were the decrees of a sovereign State which had been recognised as such by the British Government, and a letter from the Foreign Office, dated the 12th of April, 1921, which was put in, was held to be decisive. Now, supposing I had been asked whether the consignees in any British Dominion of the products in question (and they were being exported all over the world) could have been successfully sued. Would my answer have been any different? No! Every Dominion court would have held that the Foreign Office letter was conclusive. "The courts," to quote Lord Justice Scrutton, "must be guided in questions whether a particular person or institution is a sovereign *only* by the statement of the sovereign on whose behalf they exercise jurisdiction." That sovereign in every Dominion is the King. And it lies with the King, as advised by the British Secretary of State for Foreign Affairs, and by him alone, to declare whether a foreign State is recognized as a sovereign State or not. By that decision every Dominion is bound. It does not matter whether that recognition be *de facto* or *de jure*, provisional or permanent; it is equally decisive. In other words, Canada is able to have a Minister to represent her at Tokyo because, and only because, the

British Government recognises Japan as a sovereign State. If the British Government withdrew that recognition, the Canadian Minister at Tokyo would be *functus officio*. What then becomes of the doctrine of the equality of status of the Dominions and Great Britain in foreign affairs?

Now let us take the converse case. Are the Dominions, as General Hertzog has told us, recognised as "sovereign independent States" by the mere "publication" of the Imperial Conference resolution? Surely that is a little too ingenious. No doubt some foreign Governments have encountered the Command Paper, presented to parliament, which embodies that resolution. But I may encounter a person in the street and still not recognise him. I might even cut him. Even assuming that the resolution means all that General Hertzog, no doubt honestly, thinks it means, he surely has overlooked the fact that recognition requires two parties, one to claim it, the other to accord it. No foreign Government has yet been asked to recognise the sovereign independent status of a Dominion; none has yet accorded it. A foreign court might, it is true, if such an issue came before it in litigation, assume to decide it. But if it did, it would do one of two things. It might proceed on the ground of common notoriety and universal recognition. Our courts would not, for example, either require or seek the assistance of the Foreign Office in deciding whether the United States was a sovereign State. Or again, the foreign court might, if it liked, as did our own Admiralty Court in the case of *The Charkieh*, apply certain tests, and one of them would be fatal to General Hertzog's contention, namely, this: "Has the Dominion which claims to be an independent sovereign State an independent right of making peace and declaring war?" And about that there can be no doubt. It has not. I am well aware that General Hertzog, with his usual courage, has not shrunk from this test, and here, at any rate, he and General Smuts would appear to be on common ground. The former has told us that the South Africa Union has acquired the right to remain "neutral" in the event of Great Britain declaring war; while the latter has put it another way by saying that, in the future, "if a war is to *affect* South Africa, she will have to declare it." Now every war, not excluding a war to enforce the Pact of Locarno, or the Straits Convention, from the obligations of both of which the Dominions were excluded, would "affect" every Dominion, if only in the very vital matter of its commercial relations. It is just for that reason that I think these partial commitments of the British Empire very dangerous. They create a false sense of immunity in the Dominions, and they will paralyse

our immediate action when we have to meet our enemy in the gate. But with all respect to these two distinguished statesmen, I submit that they are wrong. It is true that General Hertzog has subsequently limited his claim to "qualified" neutrality. But there is no such thing in international law, any more than there is such a thing as "benevolent" neutrality. And if the King should in future declare war on the advice exclusively of the British Government, as he did in 1914, the effect will be exactly the same now as it was then. Every court in the Dominions will be bound to take judicial notice of such a declaration, with all its legal consequences, such as the illegality of trading with the enemy, the voidance of contracts, and all the rest of it. And here is another point. Not only does it require at least two parties to effect recognition, but so also does it require two parties, at least, to admit a state of neutrality. There is the enemy to be considered. Would any Power at war with Great Britain refrain from the right of search, and possibly capture, in the case of a foreign ship destined for a South Africa port? Would not that port be "enemy destination"? Nay, more, would any ship owned and even registered in South Africa, on a voyage to a neutral port, be exempt from capture? How could it be? In law it is a British ship. Could a South African resident in the enemy country claim exemption from internment by pleading that he was an alien friend? Would not the enemy government impale him on the horns of the implacable dilemma: "He who is not with us is against us"? Nothing short of a Declaration of Independence could achieve the neutrality of a Dominion, and there is the authority of no less eminent a judge than Mr. Justice Isaacs of the High Court of Australia, in *Taylor v. The Attorney-General of Queensland*, for saying that any Dominion statute purporting to give effect to such a Declaration would be treated by the Dominion courts themselves as bad, void and *ultra vires*.

But, say some, indeed many, look at the League of Nations. Well, let us look at it. Let us, like the High Court of South Africa in *Rex v. Christian*, ask what it is before we agree that it, or rather its Covenant, has recognized the Dominions as "international States." Now, many writers have instituted elaborate comparisons, by way of analogy, between the League of Nations and what is called the British Commonwealth of Nations. They seem to derive great spiritual comfort from regarding the two as twins. I have never seen twins less alike in their legal complexion, and I doubt if the two even come within the prohibited degrees of affinity in the holy estate of matrimony. We know what the British

Empire is; but, after a dusty pilgrimage through the almost innumerable utterances of jurists of all nations who have been busying themselves with the question, "What is the League of Nations?", I can find no consensus of opinion whatsoever. Never has there been such a confusion of tongues since the day of Pentecost. Some say it is a legal person; others say it is not. Perhaps that is why they have had to make the Secretary-General into a corporation sole, in order to find somebody to vest its property in. Some accord it the attributes of sovereignty, others refuse it, although not a single jurist has ever contended that it possesses them all. I am not a jurist—I am a practising lawyer; that is to say, I would, to vary the words of Cardinal Newman, live and die upon a fact, but I will be no martyr for a speculative conclusion. And amid all this babel of comment the nearest approach to anything like sense is the view of M. Larnaude, that the League is "an exclusively contractual relationship" under which certain States assume certain obligations, that it is, in fact, at most, a confederation and at least an alliance. That means something the membership of which, as regards any particular member of it, is terminable at his option. It involves the right of secession. Can you say that of the British Empire? Do you *want* to say it? Has any Dominion statesman ever said it? I think not. And even if you said it, it would not be true. Consider this—there is a writ, a mighty writ—how mighty you may see if you read the judgment of Lord Hailsham in a recent Privy Council case from Nigeria—the writ of Habeas Corpus, which runs to the remotest corners of the Empire for the protection of all who owe His Majesty allegiance. If a man wrongfully imprisoned is refused that writ by any court in the Empire, he may appeal or, to speak more strictly, may petition for special leave to appeal. And the answer will be, "Thou hast appealed unto Caesar; unto Caesar thou shalt go." Caesar is His Majesty, the King in Council. Where is Caesar at Geneva—at Geneva where they have lately been debating how they are to fill up the interregnum when the President of the Council goes back to China? Has the League of Nations any such writ? Has it any executive power at all? I have yet to hear of it. Has it even any subjects to protect? I do not know of them, unless it be our old friend, that no man's child of the law, "the man of no nationality." The League might well adopt him. The British Empire is a legal person of full stature represented by the Crown; what the League of Nations is, no one knows. The British Empire can declare war and make peace; the League can do neither—it remains to be seen whether it can even maintain peace. The British Empire main-

tains peace and ensues it. We have an Imperial citizenship, attenuated, indeed, in its political attributes by the discriminations of Dominion legislatures, inherent in their powers, as to what (in matters of franchise, immigration, deportation and the like), admission to it shall involve, but an Imperial citizenship none the less. But there is no such thing as citizenship of the League. Now the point of all these comparisons, or rather these contrasts, of mine is this, not to lay profane hands on the Ark of the Covenant, but to say "You cannot establish the proposition that the British Dominions are mutually independent States, international States, on such an insecure legal foundation as the League of Nations." And I have in mind, in particular, the proposition of General Smuts that the admission of the Dominions to membership of the League has constituted a "recognition" of their international, some say their internationally independent, status. But how did they come to be admitted? The Covenant of the League, providing for their admission, is an integral part of the Treaty of Versailles, and that treaty was signed—look at the preamble of it — by the British Empire as one principal, represented by several agents. Nowhere are the Dominions mentioned as separate contracting parties. "From the point of view of international law," as M. Rolin truly says, "the British Empire therein appeared as one person, not as a plurality of persons." In a remarkable report on the Washington Conference, to be found in the New Zealand Parliamentary Papers, the late Sir John Salmond said exactly the same thing. All that, as M. Rolin observes, was "very clever" (*tres habile*) of us. So it was. The English people are rather good at following Bacon's advice, "Stir not questions of jurisdiction." I do not know of a single treaty concluded by His Majesty in which the Dominions are mentioned as "nations." They are generally called "parts of the British Empire," and I am not prepared to admit that the part is greater than the whole, which is the conclusion you are bound to arrive at if you begin to talk of their sovereign international independence. The so-called recognition of the international status of the Dominions at the hands of other signatory Powers of the Treaty and its Covenant was a recognition of a claim made by the *British* Government. The whole of this theory that an international status of the Dominions has been established by some authority external to Great Britain is a complete fallacy. If you are going to argue from the Covenant in this way, you would have to say that India, which is not self-governing at all, possesses Dominion status. Who, indeed, determines whether a Government is "self-governing" and, as such, entitled to membership of the League?

Does the League? Consider this: one foreign Power, an original member of the League, and yet another foreign Power, which subsequently adhered to it, have both ceased to be self-governing since their admission; each has established a dictatorship. Has the League ventured—would it ever venture?—to say to those Powers, "Out you go! You no longer conform to our definition of conditions of membership"? No! Self-government is a matter exclusively within the domain of municipal law; the Covenant belongs to the sphere of international law, and it has never been incorporated by statute in our municipal law. The so-called recognition of Dominion status by the League is a recognition accorded to the Dominions at the request of His Majesty's Government. I am well aware that the Irish Free State, with the certitude of youth, applied direct to the League for admission to membership. A sub-committee sat—I think behind closed doors—to consider the application, and eventually granted it. But does any sane man suppose that that sub-committee, in considering whether the Irish Free State was a self-governing Dominion, made no enquiries of the British Government? Of one thing I am sure; the Irish Government itself put in evidence their new constitution. In other words, they put in a British statute.

I am well aware that the Dominion representatives, sitting in the Assembly of the League, have an independent voice and an independent vote, and that they sometimes express different opinions, different, be it noted, not only from our own, but from one another's. But the Assembly is only a debating society. Nor does its very welcome admission of Canada to a seat on the Council mean that she is "sovereign" and independent, in any international sense, of Great Britain. If the Council decided things by a majority, someone might argue, with some little plausibility, that it did mean that, but I am sure he would be wrong. But the Council does not decide things by a majority; its decisions have to be unanimous. It is also true that, at Geneva, the Dominion representatives may and do subscribe to treaties and conventions. Some do; others don't. But the test of a convention is not who negotiates it, but who ratifies it. And until the King "in respect of" a Dominion, or as the King in parliament in that Dominion, ratifies a convention subscribed to by that Dominion at Geneva, it is nothing but a piece of paper. Twenty-six conventions have been approved at Geneva without ever being ratified at all. They are as that flower of the field which to-day is and to-morrow is not. One of them, it has recently been decided by the Supreme Court of Canada, it is beyond the power of either the Canadian Government or the

Canadian parliament to ratify at all. The Supreme Court decided in 1925 that a League of Nations convention dealing with hours of labour, signed by Canada, could not be ratified even by the Canadian parliament, because it concerned industrial legislation which is exclusively within the legislative jurisdiction of the Canadian provinces, and without legislation the convention could not be put into effect.

I think it rather necessary to say here, in view of a certain theory put forward in Canada, though very few Canadians I think subscribe to it, that the Dominions are not and never were "Kingdoms", and that the Report has not in the least altered the position in this respect. The theory is not new; it was indeed put forward before the war by a distinguished Canadian lawyer, Mr. J. S. Ewart, K.C. I do not think these rather fanciful persons have the slightest idea of the disintegrating effect on the unity of the Empire that such a relationship would involve if it were ever adopted. It would mean what international lawyers call a merely "Personal Union" between Great Britain and Canada, corresponding to the union of the kingdoms of Great Britain and Hanover before the accession of Queen Victoria. As M. Fauchille has observed, the characteristic of such personal unions is that they are accidental and temporary. They are, as someone has said, a dynastic accident, and almost invariably lead to fusion or, more commonly, to complete and final separation. It is a clear rule of international law in the case of such a personal union that either of the two kingdoms may remain neutral in a war in which the other is engaged. Hanover was, in fact, neutral in the year 1795 when Great Britain was belligerent. In short, the King is not the King "*of*" Canada, he is the King "*in*" Canada. Canada would lose far more than she would gain by the substitution of such a personal union for the existing tie; and among her losses would be any right to be defended by us at sea.

And before I take farewell of the League of Nations, let me remind you of the declaration, the unimpeachable declaration, of the British Foreign Office on the 27th November, 1924, addressed to the Secretary-General, which was as follows:—

> His Majesty's Government has consistently taken the view that neither the Covenant nor any Conventions concluded under the auspices of the League are intended to govern the relations *inter se* of various parts of the British Commonwealth.

In other words, the British Empire, represented at Geneva, is a unit, and none the less a unit because she is represented by different agents.

Then there is the Permanent Court of International Justice, commonly known as the Hague Court. Two Dominions have hinted—it can hardly be said that they have done more—that they would be prepared to subscribe to what is known as the "Optional Clause" by which those who adhere to the "Statute" may bind themselves to submit to the exercise of the court's compulsory jurisdiction. That may come about, or it may not. Personally, having regard to the court's recent judgment in the *Lotus Case*, I hope it will not. And when I reflect on the well-known jealousy of the Dominion parliaments with regard to the exercise of treaty-making powers even by their own Governments, and their insistence that ratification shall take the form of legislation, I am not at all sure that the Dominions, or at any rate all of them, will be willing to accept the principle of compulsory awards by a court external to the Empire. They, I think, will not do so without insisting on their own legislative sanction of each particular award. But of one thing I am certain. If the Dominions and we ever do subscribe to the Optional Clause, it will be with one pretty mighty reservation, and that is the same reservation as I have just quoted in respect of the jurisdiction of the League itself in matters governing the relations *inter se* of the various parts of the British Empire. After all, why should we submit disputes between parts of the Empire to the arbitration of a court outside it? We have already got a tribunal within the Empire which may and does decide such disputes when referred to it by His Majesty. I mean, of course, the Judicial Committee. It has arbitrated between two Dominions in the Labrador Boundary case, between two Australian States in another case, between two Canadian provinces in a third, and between the British Government and the Government of Northern Ireland in a fourth. All of these decisions—you must not call them judgments—have been observed. Are you sure that any judgment of the Hague Court, even in a matter which does not affect the internal relations of the Empire, would be similarly respected? Nay—and here is a most important point, which I invite the enthusiasts among us for subscription to the Optional Clause to consider—has anyone considered the opinion of a most authoritive jurist at Geneva, M. Rolin, which is that any country which subscribes to the Optional Clause, even *with a reservation*, will thereby have lost the right to say what that reservation means, and will have put it into the exclusive power of the Hague Court itself to interpret the reservation? In other words, if we subscribe to that clause, we—by which I mean both the Dominions and ourselves—will have parted with the power to decide what are our relations

with one another. Do that, and you will have dealt a deadly blow at the unity of the Empire.

Optimist though I am, I confess to some anxiety about the future. There is the Locarno Pact. By that Pact, from the obligations of which the Dominions are expressly exempted, we are bound to go to war against the "aggressor" alike in the case of violation and of "flagrant" violation. It is a fine distinction and reminds me of nothing so much as the words of the learned judge who said, of the attempted distinction between negligence and "gross" negligence, that gross negligence was only negligence with a vituperative epithet. Now it is provided by the Locarno Pact that in a case of flagrant violation *each* party, individually, is bound to come "immediately" to the help of the party attacked, without waiting, as in the case of ordinary aggression, for the decision of the Council of the League of Nations. The British Government will therefore have to decide, if the occasion arises, for itself whether the act of aggression is "flagrant," and Sir Austen Chamberlain has explained, in the House of Commons, that the British Government remains the judge, and the sole judge, of whether such a case of "immediate" danger has arisen. Very well. The "next war" will come like a thief in the night, and, most literally, in a bolt from the blue. I have some little claim to speak of such things, having served for five years on a Commission for the disarmament of the greatest military power of modern times, and I recall a distinguished German officer saying to me—I think with considerable truth—that the next war might be fought and won in three weeks. There will probably be no ultimatum; an ultimatum was never necessary in international law to the commencement of hostilities, and soldiers disapprove of it for obvious reasons. Now consider the effect of such a situation on our relations with the Dominions. Having regard to the effects of war on them and their commerce, their citizens and their property, whether they actively participate in it or not, will any British Government dare to decide what is a "flagrant" violation, involving immediate action, without at the very least consulting the Dominions? And while the jurists of the Foreign Office are trying to make up their minds as to the meaning of the adjective "flagrant," and the Dominion parliaments, possibly prorogued, are being summoned to say whether they agree or not with that definition (provided it is ever reached), the war will be fought and won, won, that is to say, by the aggressor. If we stop to consult the Dominions, we shall lose the war; if we do not stop, we may lose them. They were never even consulted, as the Foreign Office has admitted, about

the Locarno Pact; they were merely, to quote the Foreign Office expression, "informed." I don't want to be cynical, but, for a reason presently to be mentioned, I hope that the information conveyed something more than Departments usually convey in a parliamentary answer. On the other hand, the Dominions were, according to the Prime Minister of Canada, "advised but not informed" (I quote his own words) of the recent Anglo-French Naval Pact. In the case of the draft Anglo-Egyptian Treaty, the Australian Prime Minister welcomed such information as he was given, with the intimation, without further ado, that his Government was "vitally interested" in the Suez Canal and approved; the Canadian Prime Minister, on the other hand, neither approved nor disapproved, remarking that his Government was not interested at all. But there was a significant intervention on that occasion in the Canadian parliament: the Leader of the Opposition, Mr. Bennett, asked for whatever correspondence that there might have been on the subject between the British Government and the Dominion Government to be put on the table of the House. The Prime Minister felt himself compelled to reply that our Foreign Office had intimated to him that what it had published to the British parliament was all that it could allow, or rather wished to allow, to be published to the Dominion parliament. There lies a certain danger. Our Foreign Office, sometimes wisely, sometimes not so wisely, is secret to the point of secretiveness in the face of the House of Commons. But Dominion parliaments are not accustomed to that sort of thing, and will not tolerate it. Can one be surprised, in view of that fact, that Dominion Governments are less and less inclined to associate themselves with the diplomacy of the Foreign Office?

In practice an attempt has been made, in deciding whether the Dominions shall be bound, or not bound, by British treaties, to draw a line of demarcation between what are called political treaties, by which they may or may not be bound, and commercial treaties, by which they are never bound. The Treaty of Locarno is an example of the first; the Anglo-German Commercial Treaty is an example of the second. But the line cannot be drawn with any fixity, and the only certain test is whether the treaty involves legislation. Such was the Anglo-Japanese Treaty of 1911, which was neither exclusively commercial nor exclusively political, but something of both. It conceded certain rights to the nationals of both parties in the matter of residence in each other's territory, carrying on business therein, and the like. These rights were in direct conflict with the legislation affecting Orientals in British

Columbia, and it was obvious that to attempt to bind Canada by it would have been quite inconsistent with her Dominion status in "domestic" affairs. The assent of Canada was therefore reserved, and, when she gave it, she had to embody the treaty in a statute, a statute which was promptly challenged, though unsuccessfully, by British Columbia as an invasion of her own exclusive rights of legislation in the matter of "property and civil rights" in a famous case known as *A. G. of British Columbia v. A. G. of Canada* (1924) A. C. 203. You will see, therefore, that the exemption of the Dominions from certain kinds of treaties has been the inevitable result of the principle of the *internal* sovereignty of the Dominions. On the other hand, where the enforcement of a treaty requires extra-territorial legislation, the power of the Dominions to make such a treaty does not exist, for they are powerless to pass such legislation, and thereby to make the treaty effective. Only the Imperial Government, or the Imperial Parliament, can make such a treaty and enforce it. You have an admirable illustration of this situation in the contrast presented by the Halibut Fisheries Treaty between Canada and America in 1923, and the Liquor Smuggling Convention between the British Empire (I use the word advisedly) and America in 1924. The Halibut Fisheries Treaty provided for the seizure and forfeiture of ships violating its provisions, even on the high seas, but the Canadian Government was powerless to extend it to British ships, or rather to British ships not registered in Canada, and could only apply it even to Canadian ships on the high seas, because a certain section of the Canadian Constitution would appear to allow the Canadian parliament, by way of exception, to legislate extra-territorially in respect of "Fisheries." Also, perhaps, because by a rather subtle legal logic, a Canadian ship, proceeding from a Canadian port out on to the high seas, violating the Fisheries Convention while there, and then returning to a Canadian port, is guilty of what the Privy Council once called "a composite act," which was either begun or completed *within* the territorial waters of Canada. Contrast all that with the Anglo-American Liquor Smuggling Convention. By that convention Great Britain gave the American Government the power, which otherwise it would not have had, to board British ships on the high seas up to twelve miles from the American coast, search them, and, if intoxicating liquors for importation are found on board, to seize and take them into an American port for "adjudication." Every Dominion is bound by that convention, although none of them is mentioned therein either one way or the other. Why? Because it deals with "British ships," and

there is, as I have said, no such thing as a Dominion ship. The results are not exactly comforting to the theory of equality of status in external affairs. If you look at the remarkable judgment recently delivered by Chief Justice Taft in *Ford v. The United States* (273 U. S. Reports, p. 593), you will see that by a most subtle process of reasoning, not unfamiliar to lawyers, as to where an overt act begins and where it ends, that great court has held that the officers of a ship from Vancouver, namely, from Canada, can, in virtue of the Anglo-American Convention, be tried and convicted by an American court for acts committed on the high seas. I do not know what the result of that decision may be, but it will certainly strengthen the demand in one or two Dominions for the repeal of certain Imperial Merchant Shipping Acts which define a British ship. And for a good deal more, such, perhaps, as the abolition altogether of the power of the Imperial Parliament to legislate for the Dominions, although, as it now never legislates for them except on their own initiative or with their consent, I think such abolition would be very unwise. For the exercise of that power may still be very useful whenever the Dominions desire what may be called inter-Dominion legislation, which legislation it is beyond their power to enact. Meanwhile, here is an immediate and pressing issue which I venture to commend to the attention of the Dominions Office. In the recent case of the steamships the *Yuri Maru* and the *Moron*, the Privy Council has laid down that an Imperial Act, the Colonial Courts of Admiralty Act of 1890, constitutes the high-water mark, if I may so put it, of the jurisdiction of those courts. That being so, it follows, if you look at Section 3 of the Act, that those courts cannot, unless the Imperial Parliament itself repeals that section, increase their jurisdiction to correspond with the growth of Admiralty law. The Dominion parliaments cannot increase it. The result is, I venture to think until their Lordships of the Privy Council have decided the point, that a certain convention concluded by the Government of Canada, and subsequently embodied in a Canadian statute, the *Canadian Maritime Conventions* Act of 1914, is *ultra vires* and void.

Well, I have said enough, and more than enough. My apology is, and must be, that for the treatment of so vast a theme and a theme nearly every aspect of which seemed to be imperfectly apprehended, both here and overseas, an hour's lecture is all too brief. One very important aspect of it, one implication of the Imperial Conference which will almost certainly call for legislative action, I can do no more than glance at it. It is the question of some qualification of the rule which restricts the operation of

Dominion legislation to Dominion territories and territorial waters. The most extraordinary division of opinion exists among Dominion statesmen, and even among Dominion lawyers, not only as to whether that rule should be abolished, but also as to whether such a rule really exists. It has been the subject of liberal relaxation by the Privy Council in the *Cain and Gilhula Case*, in order to mitigate it, and of the most amazing draftsmanship on the part of Dominion law officers in order to defeat it. For some mysterious reason there is nearly always a bigamist at the bottom of these efforts. The Criminal Code of Canada contains a provision that whoever, being a British subject, resident in Canada, and already married, leaves Canada with the "intent" to go through a form of marriage *outside* Canadian territory shall be liable to conviction in Canada—and this curious example of making mere intent punishable has been held, alike by the Supreme Court of Ontario and the Supreme Court of Canada, to be *intra vires*. A somewhat similar but less subtle statute has been held in New Zealand to be bad, as being in effect extra-territorial. But during war the exercise of the "war-power," as it is called in America, the "defence power" in Australia, may not only enormously increase the ambit of American federal jurisdiction, but extend the sphere of a Dominion's "territorial" jurisdiction. At any rate the courts of Australia and New Zealand have so held. If, said the latter to a conscientious objector who claimed that the New Zealand legislature could not conscript men to fight in France, our parliament has power to legislate for the "peace" of New Zealand (as it most certainly has), then it has power to legislate for its defence, and if we are constrained to let the enemy come within three miles of our coast before we can defend ourselves, where are we? Where indeed? So too in Australia. Australia had her own "D. O. R. A." empowering the Government to make almost any regulation it pleased for the *defence* of Australia—so much so indeed that her Prime Minister, Mr. Hughes, once said to me in Paris, "Do you know I ruled Australia during the war in my pyjamas with a fountain pen? With the aid of Garran, my law officer, who used to take down from my dictation in my bedroom before breakfast a new War Precautions regulation almost every morning!" "Ah," he added in a tone of regretful reminiscence which was not without its pathos, "the war is over, and I seem to have lost my appetite for breakfast." Well, an Italian reservist, by name Ferrando, who was being deported to Italy under a regulation putting into force the Anglo-Italian Convention, and who was too proud to fight, moved for a writ of Habeas Corpus to release him from the custody of the ship, and the court refused the writ and upheld the deportation. I do

not know whether Signor Ferrando was soothed by the observation of Mr. Justice Barton that, once he was on the high seas, there was really no constraint exercised upon him, because, as his Lordship gravely observed, he could always leave the ship "either by mounting into the air or by descending into the sea."

None of the last four cases I have cited ever went to the Privy Council; and the question, legally speaking, therefore remains very much where it was. Let me only say, as a practical issue, before I leave it, that if the Dominions are to be given, as I think they should be, powers of extra-territorial legislation, they will have to be rather carefully defined. I do not think the Dominion parliaments can reasonably, by which I mean profitably, expect to receive the oecumenical powers of extra-territorial jurisdiction inherent in the Imperial Parliament itself. As the late Mr. Justice Stephen wrote with perfect truth, the Imperial Parliament could make it a criminal offence for two Frenchmen to play roulette in Paris, or to gamble at the table of Monte Carlo, and if it did, the two Frenchmen would, once they came to this country, be tried and convicted at the Old Bailey. However contrary to international "comity" such a law would be, the British courts would be bound to enforce it. It is an extreme example and, except in matters of conspiracy against the public safety of the legislating State, such extra-territorial legislation, in respect of aliens, is rarely enacted by modern States. Obviously, such an Act might lead to prompt reprisals by the French legislature, who could retaliate by an Act making it an offence, punishable in the French courts, for two Benchers of Lincoln's Inn to play bridge in their Common Room, with the deplorable result that none of them would ever be able, with any equanimity, to take a trip to Paris. Indeed, the only provision making aliens punishable for offences committed abroad is, I think, a certain section of the *Merchant Shipping Act*, which has never been put into force. I do not think it would be wise to confer such a power, as to aliens abroad, on the Dominions. But be that as it may, it is, I think, fairly obvious that any power of extra-territorial legislation conceded to them will have to be confined to acts committed abroad—which, remember, means in this connection, in another part of the Empire as well as outside it—by their own "citizens." If once one Dominion began to punish, under such legislation, acts committed by a British subject in another Dominion, there would certainly be trouble. But how can you define a Dominion citizen? There is no such thing as a subject of a Dominion, as Lord Atkin pointed out in *Gibson v. Gibson*. An inhabitant of Australia, even one with an Australian

domicile, is not a subject of Australia. No, not though he be born there. He is a subject of the King. There is not a King "of" Australia; the King is "in" Australia. Ingenious attempts have been made by statute in Canada to define, for the purposes of immigration and deportation powers, a Canadian "citizen," and they have taken the form of confining such citizenship to such British subjects as are born in Canada, naturalised in Canada or, if neither of these, then such as have acquired a very peculiar domicile, namely, not a domicile which satisfies the common law tests in matters of marriage, divorce, succession and testamentary disposition, but a domicile which can be acquired only by five years' continuous residence in Canada. It is upon and by the adoption of some such statutory definition of Dominion "nationals" that any grant of extra-territorial jurisdiction to the Dominion legislatures will, I think, have to be based. Indeed, something of the kind is already necessary in virtue of the fact that three Dominions have contracted out of two of the Lausanne Conventions by which Turkey has granted certain privileges to British subjects, on condition that reciprocal privileges are granted to Turkish subjects in British territory. Those Dominions cannot have it both ways: in other words they cannot claim the privileges of British subjects in Turkey while refusing them to Turkish subjects in their own territory. On the other hand, as one of the conventions grants particular privileges to "British ships," and, as we have seen, all Dominion ships are British ships, the Dominions who contract out from that convention appear to get something for nothing. I have discussed that conundrum with two High Commissioners, and asked them what they made of it. Both of them frankly gave it up. I have no time to pursue that aspect of the matter. I will only say that there is a point beyond which the separate conclusion of treaties by any one Dominion cannot go without disastrous results to the greatest of our Imperial interests, namely merchant shipping and the uniformity of our merchant shipping law.

A sentence or two, and I have done. Words are most dangerous things. As that brilliant Englishman, Lord Halifax, observed some two or more centuries ago: "The habit of talking is so dangerous that it is almost impossible for a prudent man to be a sociable creature." Now politicians must talk; parliaments are there for them to talk in. Democratic government necessitates debate. Lawyers talk, but with an important difference. When they appear in court, they use, they must use, words which are capable of a precise and definite meaning—what my profession calls "terms of art." And the whole trouble in this controversy is that politicians, professors of political science (whatever that may be), publicists,

borrow our terms without understanding their meaning. In fact, to put it very plainly, they are, quite unconsciously, forging and uttering counterfeit coins. And when they, or rather some of them, talk without qualification of the "sovereignty" of the Dominions, they are leading both themselves and others astray. There *is* a sovereignty of the Dominions, just as, although in a much more restricted sense, there is a sovereignty of each of the States of the great American Republic—the Supreme Court at Washington has said so; but you must not, you cannot—as the Under-Secretary for Foreign Affairs did in the House of Commons the other day, and many a Senator did at Washington in 1919—regard the sovereignty of the Dominions as meaning the same thing as the sovereignty of the American States. It is much more. Nor can you treat it as meaning the same thing as the sovereignty of an international State. It is much less. If you want a fairly safe working definition of Great Britain and the Dominions, I will give it you in words I take from an American source and used, it is true, in another connection. Here it is. We and they are "an indestructible union of indestructible States." The definition, as you may already have gathered from my allocution, is not perfect; it is not flawless; but it may serve to warn off the course certain foreign Powers who, every now and then, seem to be trying to find a place to pierce the joints in the constitutional armour of our Empire in ways that it would be neither polite nor discreet for me to explain. For the rest, I hope that the many and distinguished representatives of the Dominions who are here to-night will not think me impertinent if I say: "The duties of the other members of the Empire to us are, I think, not less than our duties to them." I can say that with the more courage as the words are not mine, but those of Lord Balfour, uttered in the House of Lords on July 27th, 1926. Have we performed our duty to them? Do we perform it? There is a great Imperial service, a service whose tradition is silence, whose devotion to duty is as unobtrusive as it is instinctive, the graves of whose heroes are recorded neither in brass nor in stone, for they lie, in every latitude, in the fathomless depths of the umplumbed, salt, estranging sea. That service polices the Dominion lines of communication, it is on guard in the Pacific, its ships are within the call of the air to protect our Dominion fellow-subjects in foreign ports, its marines to guard every Dominion Legation that may ever be established. That service is the British Navy—the British Navy "whereon," to quote the noble words of the preamble to the Naval Discipline Act, "under the good Providence of God, the wealth, the safety and strength of the kingdom"—and surely of the Dominions?—"chiefly depend."