

Constitutional Annus Mirabilis

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THE year 1926 was a constitutional *annus mirabilis* in Canadian history. It witnessed Mr. King's unprecedented request for dissolution while a motion of censure was under debated; Lord Byng's refusal, Mr. King's repeated request to the Governor to get his orders from Downing Street; Lord Byng's refusal of that; Mr. King's abrupt abandonment of office, contrary to all precedent, leaving the country (in his own words) with "no Government;" Mr. Meighen's temporary Government, and its defeat (after four decisive victories) by a broken pair.

Scarcely less extraordinary, however, though perhaps less generally known, is another important constitutional event of the year; the Nova Scotia Government's attempt to abolish the Legislative Council, and Mr. King's frustration of that attempt.

In the Nova Scotia election of 1925, the Conservatives, after forty-three years of Opposition, had won an overwhelming victory: 40-3. They had also won an absolute majority of the popular vote: 270,524 to 166,418 for all other parties combined. But the new Government faced an Upper House of eighteen Liberals and one Conservative. The total membership had never been more than twenty one. Before the session opened, the Government appointed a second Conservative, but it was still, obviously, hopelessly outnumbered.

The Speech from the Throne, February 9, 1926, announced: "Conforming to the overwhelming pressure of public opinion, measures will be considered respecting

the Constitution of the Houses, with a view to the ultimate abolition of the Legislative Council." A bill to abolish the Council on May 1 was introduced in the Assembly on February 25. On March 11 the Council passed a resolution asserting the necessity for maintaining its own existence. The Abolition Bill passed third reading in the Assembly, March 16. On March 18, the Council, with one dissenting vote (the new Conservative member) gave it the three months' hoist, on the ground that, with prorogation next day, there was no time for proper consideration.

EVEN before the vote of March 11, however, this action was a foregone conclusion. None the less, the Government had tried to induce the Councillors to vote for abolition, but without success. So on March 5, the Premier, Mr. Rhodes, asked the Lieutenant-Governor, Mr. Tory (ex-Minister in the late Liberal Government) to appoint twenty new Legislative Councillors. The request was accompanied by a written opinion from the Deputy Attorney-General that the Lieutenant-Governor had power to make the appointments. Next day, Mr. Tory telegraphed the Secretary of State, at Ottawa, that he concurred in the opinion and proposed to sign the necessary Order-in-Council, March 15, unless otherwise instructed by the Governor-General. On March 8, the Under-Secretary of State wired back to delay approval. On March 15, the Dominion Government passed an Order-in-Council,

P.C. 414, instructing the Lieutenant-Governor not to sign. The ground given was the opinion of the Dominion Law Officers: "That at the time of Confederation the Legislature consisted in part of the Legislative Council composed of twenty-one members; that the effect of Section 88 of the British North America Act was to continue the constitution of the Legislature as it existed at that time and until altered by enactment of the Provincial Legislature; that the power which was formerly vested in the Sovereign to make appointments in excess of twenty-one was no longer vested in him nor was it transferred to the Lieutenant-Governor in Council, and that thereafter the power to increase the number of members of the Legislative Council was exclusively vested in the Provincial Legislature under the powers conferred by Section 92 of the British North America Act, and that the Lieutenant-Governor has no power to make any appointments in excess of the existing number, twenty-one. It is further suggested that on account of the differences of opinion on the subject, and having in view the disastrous consequences which might follow the enactment of legislation by a Legislature shorn of its Upper Chamber by an Act which might be declared to be illegal, action be deferred until the questions involved have been judicially determined." The whole correspondence, with a summary of P.C. 414, but not the text, was tabled in the Assembly, March 16, of course with the Lieutenant-Governor's consent, and was printed in full in *The Halifax Herald* next day.

THERE is a double irony about Mr. King's action in this case. Six months before, he had been fulminating against the Dominion Upper House. He was exacting from each new Senator a pledge to vote for any measure of Senate reform he might submit. Yet here he was, intervening to save the Nova Scotia Upper House. Three months later he was fulminating against the Governor-General's refusing the advice of his Ministers. True, there was one important difference. The Nova Scotian Government was fresh from a resounding victory

at the polls. Mr. King's Government, on June 26, 1926, was fresh from a resounding defeat at the polls and two defeats in the House of Commons.

Was there any real ground for this violent interference with provincial self-government? If the Dominion Law Officers were right, yes. But, were they? They admitted that before Confederation the Crown had power to appoint as many Legislative Councillors as it thought fit. They admitted that by section 88 of the British North America Act the Constitution of Nova Scotia was to remain as it was until altered by the Legislature. They could not deny that the Nova Scotia Act of 1872 transferred the power of appointment from the Crown itself to the Lieutenant-Governor-in-Council, and did not provide for any limitation of numbers. It would seem to follow inescapably (and the Judicial Committee later so decided) that the Lieutenant-Governor-in-Council had power to appoint as many Councillors as he pleased. The astonishing thing is that any lawyer of standing, let alone two judges of the Supreme Court of Nova Scotia, could have subscribed to any other conclusion. The even division in the Supreme Court of the province would certainly lend weight to the Dominion Law Officers' opinion, if it were not for the very positive and unqualified judgment of the Privy Council. It is hard to resist the conclusion that Mr. King's grounds for ordering the Lieutenant-Governor to refuse the advice of his Ministers were at best doubtful.

BUT unluckily for Mr. King's reputation, this is not the whole story. While the telegrams were going back and forth between the Lieutenant-Governor and the Dominion Government, *The Halifax Chronicle* got wind of what was going on, and published, March 10, a substantially accurate summary. The provincial Liberal leader, Mr. Chisholm, asked the Premier whether it was true. Mr. Rhodes said the matter involved the constitutional relationship between the Lieutenant-Governor and his Ministers, and was therefore highly confidential. It would be premature and unfitting to make any answer at the

moment. Mr. Chisholm then wired Mr. King that there was a "rumour" that the provincial Government was asking for appointments "exceeding 21". Mr. King obligingly wired back: "Rumour referred to in your wire is correct. Law officers of the Crown have been asked carefully to consider and furnish Government with expression of their opinion. Lieutenant-Governor has been so advised." Mr. Chisholm read this production to the Assembly, and renewed his question. Mr. Rhodes replied: "If the Prime Minister of Canada is so lacking in appreciation of constitutional procedure as to disclose confidential communications passing between the Lieutenant-Governor and the chief law officers of the Crown at Ottawa, this does not afford any reason for my departing from the correct practice."

Mr. King's instructions to the Lieutenant-Governor may have sprung from the purest zeal for the public welfare. But the telegram to Mr. Chisholm can only be described as a shocking and inexcusable breach of constitutional propriety for partisan ends; and the telegram casts a sinister shadow on the instructions. Without the telegram, it is at least possible to argue that here we have Mr. King the defender of law and order in Nova Scotia, flanked by Law Officers and Judges, standing in the breach against a possible flood of illegal Acts. With the telegram, we have only Mr. King the defender of the Liberal party in Nova Scotia, flanked only by Mr. Chisholm and the *Chronicle*, standing in the breach against the otherwise certain destruction of a party stronghold.

Sound Schooling

"The purpose of education," says President Robert M. Hutchins of Chicago University, "is not to fill the minds of students with facts, it is not to inform them, or amuse them, or to make them expert technicians in any field. It is to teach them to think, if that is possible, and to think always for themselves."