Articles

THE PREAMBLE TO THE BRITISH NORTH AMERICA ACT

In Lord Durham's Report it was urged with great emphasis that there should be a union of the provinces in British America. This Union, Lord Durham stated, "would enable the provinces to co-operate for all common purposes, and above all, it would form a great and powerful people, possessing the means of securing good and responsible government for itself, and which, under the protection of the British Empire, might in some measure, counter balance the preponderant and increasing influence of the United States on the American Continent (1) Lord Durham's recommendations were not original; the idea and the vision came from the economic and political needs of British North America. With the force of necessity behind it, Durham's idea travelled down through the years, through the abortive Union of 1840, to spring into full birth in 1867.

Durham's naked idea was given full clothing through the instrumentality of the British North America Act, 1867. (2) The object and intent of the compromise of 1867 are concisely expressed in the Preamble to that Statute:–

> "Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom and Ireland, with a Constitution similar in Principle to that of the United Kingdom:
>
> And, whereas such a Union would conduce to the Welfare of the Provinces and Promote the Interests of the British Empire:
>
> And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:
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> And whereas it is expedient that Provision be made for the eventual admission into the Union of other Parts of British North America:
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> Be it therefore enacted – etc. (3)"

In the Aeronautics Case (4) Lord Sankey, L.C. stated that "under our system decided cases effectively construe the words of an Act of Parliament and establish principles and rules whereby its scope and

(1) **The Durham Report**, 1839. P.P. 116-121. Quoted from Bourinot, J. G.; **Constitutional History of Canada**. P. 40.
(2) 30 & 31 Victoria, C. 3.
(3) 30 Vict., C. 3.
(4) **In re The Regulation and Control of Aeronautics in Canada**, (1932) A. C. 54 at P. 70.

effect may be interpreted." At this point, therefore, the words in the Preamble might be examined both in their natural and inherent sense and also with regard to the meaning given to those words by judicial interpretation.

The "desire" (5) of the provinces to form a Canadian Union had been sufficiently shown in the Quebec Resolutions and in the London Resolutions. It remained for the Imperial Parliament to give legislative expression to this desire. To this end, the constitutions of the provinces were surrendered to the Imperial Parliament for the purpose of being refashioned. (6) In the light of this opinion and because the words "will of the people" are not the same as "desire" of the provinces, the compact theory can find little justification in the Preamble or in the remainder of the statute. In spite of this obvious and generally accepted interpretation, the Judicial Committee has, at various times, gone outside the Act, ignoring the passivity of the word "desire" and referred to the Act as a "contract," "compact," or "treaty" founded upon the will of the provinces to unite as expressed in the Quebec and London resolutions. (7)

The words "federally united into one Dominion" both as they appear in the Preamble and in the general scheme of the British North America Act have been the great questions of constitutional controversy in Canada. The expression "federally united" undoubtedly expresses the intention of the Fathers of Confederation. This intention was set forth by Sir John A. MacDonald in these words:—

> "We have strengthened the general government. We have given the legislature all the great subjects of legislation. We have conferred upon them not only specifically and in detail all the powers which are incident to sovereignty but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures shall be conferred upon the general government and legislature." (8)

Lord Sankey, L.C. gave judicial expression to this intention when he said that the real object of the Act was to give to the central government those high functions and almost sovereign powers by which uniformity of legislation might be secured on all questions which were of common concern to all provinces as members of the constituent whole. (9) The basic scheme of federal union as expressed in the Act

(5) That "desire" must, in the final analysis, be sought in the London Resolutions of 1866, where the general principles underlying the union are set out: "A general government charged with matters of common interest to the whole country and local governments for each of the Canadas and for the provinces of Nova Scotia and New Brunswick charged with the control of local matters in their respective sections." cf. **Kennedy, W.P.M.**: Documents of the Canadian Constitution: 1759-1915. P. 611

(6) Viscount Haldane, in **Bonanza Creek Gold Mining Company Ltd. v Rex**, (1916) A. C. 566, at 579.

(7) **Attorney General for Australia v Colonial Sugar Co.**, (1914) A. C. at P. 253; **In re Aeronautics**, (1932) A. C. at P. 70; **Labour Conventions Case**, (1951) A. C. 326; cf. MacDonald, V. C.; **Constitutional Interpretation and Extrinsic Evidence; in 17 Can. Bar Rev. 77**, at 82.

(8) **Confederation Debates**, P. 33; quoted by F. R. Scott, in **The Consequences of Privy Council Decisions**; in 15 Can. Bar Rev. 485, at 488.

(9) **Re Aerial Navigation**, (1932) 1 D. L. R. 58 at 65.

was that "the Dominion to a great extent, but within certain fixed limits, may be mistress in her own house, as the provinces to a great extent, but within certain fixed limits, are mistresses in theirs." (10)

These judicial interpretations seem to make the meaning of "federally united" quite clear. However, frequent judicial juggling of sections 91 and 92 has deprived these two simple words of their elementary meaning; the Watson-Haldane school of judicial interpretation has taken the emphasis from the words "federally united" and has placed the accent on "confederation," – a word which is nowhere used in the B.N.A. Act. The process of cutting down the powers of the Dominion was begun as early as 1892. In Maritime Bank of Canada v. New Brunswick Receiver General (11) Lord Watson said:–

> "The object of the B.N.A. Act was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the provinces all the powers, executive and legislative, and all public property and revenues which had previously belonged to the provinces; so that the Dominion Government should be vested with such of those powers, property and revenues, as are necessary for the performance of its constitutional functions, and that the remainder should be retained by the provinces for the purpose of provincial government."

The idea expressed by Lord Watson that there was to be a federal government in which the provinces, and not the people, were to be represented implies central government by delegation which is not the same as a federation. (12) The plain words "federally united" time after time have either been ignored or twisted so as to give the provinces the pride of place in the Canadian Union.

In an Australian case, (13) Lord Haldane took occasion to destroy the meaning of the words "federally united." He said:

(10) Per Lord Sankey, L. C. in **Edwards v. A. G. for Canada,** (1930) A. C. 124.

(11) (1892) A. C. 437, at 441.

(12) "———Canada is a federation in essence; that is, that the central national government is in no sense a delegaton; that the provincial governments are in no sense 'municipal'; and that national and local governments exercise co-ordinate authority and are severally sovereign within the sphere specifically or generically or by implication consitutionally granted to them. This construction agrees with the Preamble———" Cf. Kennedy, W. P. M.; **The Constitution of Canada.** (Oxford, 1922.) P. 405.

(13) **A.—G. for the Commonwealth of Australia v Colonial Sugar Refining Co., Ltd.,** (1914) A. C. 237, at 252.

"The B.N.A. Act of 1867 commences with a preamble that the then provinces had expressed their desire to be federally united into one Dominion with a Constitution similar in principle to that of the United Kingdom. In a loose sense the word "federal" may be used, as it is there used, to describe any arrangement under which self-contained States agree to delegate their powers to a common Government with a view to an entirely new Constitution even of the States themselves. But the natural and literal interpretation of the word confines its application to cases in which those states, while agreeing on a measure of delegation, yet in the main continue to preserve their original Constitution. (14) Now, as regards Canada, the second of the resolutions, passed at Quebec in October, 1864, on which the British North America Act was founded, shows that what was in the minds of those who agreed on the resolutions was a general government charged with matters of common interest, and new and merely local Governments for the Provinces. The Provinces were to have fresh and much restricted Constitutions, their Governments being entirely remodelled. This plan was carried out by the Imperial Statute of 1867. By the 91st section a general power was given to the now Parliament of Canada to make laws for the peace, order, and good government of Canada without restriction to specific subjects, and excepting only the subjects specifically and exclusively assigned to the Provincial Legislatures by S. 92. There followed an enumeration of subjects which were to be dealt with by the Dominion Parliament, but this enumeration was not to restrict the generality of the power conferred on it. The Act, therefore, departs widely from the true federal model adopted in the Constitution of the United States, the tenth amendment to which declares that the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively or to their people. Of the Canadian Constitution the true view appears, therefore, to be that, although it was founded on the Quebec Resolutions and so must be accepted as a treaty of union among the then Provinces, yet when once enacted by the Imperial Parliament it constituted a fresh departure, and established new Dominion and Provincial Governments with defined powers and duties both derived from the Act of the Imperial Parliament which was their legal source."

(14) W.P.M. Kennedy states that "it cannot but be a surprise to constitutional students to find a federal constitution defined as one in which the central or national government is a delegation from the constituent states or provinces. Lord Haldane's definition appears to be based on an erroneous view of the essence of a federation and seems to have confused a federation with a confederation." Kennedy, W.P.M.: **The Constitution of Canada** (Oxford, 1922) P. 410.

The Preamble further states that the Constitution of Canada is to be "similar in principle to that of the United Kingdom." (15) Unlike the words "federally united" this phrase has caused little difficulty in judicial interpretation; the meaning of the phrase has been crystal clear to all serious students of the Canadian Constitution. Duff, C.J.C., in the Persons case (16) has given a generally accepted interpretation of the wider meaning of the phrase, viz.;–

> "The object of the Act was to create for British North America, a system of parliamentary government under the British Crown, the executive authority being vested in the Queen of the United Kingdom. While the system was to be a federal or quasi-federal one, the constitution was, nevertheless, to be "similar in principle" to that of the United Kingdom; a canon involving the acceptance of the doctrine of parliamentary supremacy in two senses, first that Parliament and the Legislatures, unlike the legislatures and Congress in the U.S., were, subject to the limitations necessarily imposed by the division of powers between the local and central authorities, to possess within their several spheres, full jurisdiction, free from control by the courts; and second, in the sense of parliamentary control over the executive, or executive responsibility to Parliament. In pursuance of this design, Parliament and the local legislatures were severally invested with legislative jurisdiction over defined subjects which, with limited exceptions, embrace the whole field of legislative authority."

With respect to the phrase a constitution "similar in principle to that of the United Kingdom," Mr. Edward Blake has said, "A single line imported into the system that complex and somewhat indefinite aggregate called the British Constitution." (17) Thus, this line incorporated into the Canadian constitutional system, insofar as they were not at variance with the actual terms of the British North America Acts, all the great landmarks of the British Constitution – Magna Carta, the Petition of Right, the Bill of Rights, the Habeas Corpus Acts, the Act of Settlement as well as the generally recognized constitutional conventions and usages. (18) These constitutional checks operate in Canada to limit the executive authority which is vested

(15) "The object of the B.N.A. Act was" as the preamble of the Act recites, "to unite (the provinces) federally into one Dominion, under the Crown of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom — to sow, in fact, the seed of the parent tree, which, growing up under the protecting shadow of the British Crown until it should attain perfect maturity, would in the progress of time become a nation identical in its features and characteristics with that form from which it had sprung, and to which, in the meantime, should be given the new name of "Dominion," significant of the design conceived, and of the anticipated fortunes of this new creation."
cf. **Gwynne J., in City of Fredericton v. The Queen,** (1879) 3 S.C.R. 505 at 561.

(16) **Reference re Meaning of Word "Persons" in S. 24 of the B.N.A. Act,** (1928) S. C. R. 276 at P. 291.

(17) **St. Catharine's Milling and Lumber Co. v The Queen.** 14 App. Cas. 46.

(18) Kennedy, W.P.M.; **The Constitution of Canada.** (Oxford, 1922) P. 378.

by the B.N.A. Act in the Crown and is exercised, in the federal sphere, by a governor-general, and in the provincial spheres by lieutenant-governors. (19) The Act further provides that the legislative power of the Dominion shall be entrusted to a bi-cameral parliament consisting of a senate and a house of commons. Professor F. R. Scott, a noted authority on constitutional law, has suggested that the single line in the Preamble, referred to above, taken together with other clauses spread throughout the remaining part of the B.N.A. Act contain the elements of a Bill of Rights, however incomplete. (20) Professor Scott claims that Canada has adopted, but in part only, the principle of parliamentary sovereignty. We have, he says, adopted it to this extent, that within the spheres of jurisdiction assigned to them under the B.N.A. Act, and with some important exceptions, our Parliament and provincial legislatures are supreme. However, Professor Scott has pointed out that there is, under the Canadian Constitution, a very important limitation on the power of Parliament. He says:–

> "The B.N.A. Act contains two basic notions which are somewhat contradictory. One is the principle, inherited from the United Kingdom, of the sovereignty of Parliament. – – – In England no court may declare an Act of Parliament **ultra vires**, no matter to what degree it destroys the cherished liberties of the subject, or violates the fundamental rights of man. The King in Parliament is legally supreme, and his laws can never be invalid. It is the exceptions to this rule, however, which are important. For there are some absolute limitations on the principle of parliamentary sovereignty in Canada, and these occur precisely in order to guarantee certain political and minority rights. There is no Bill of Rights in the B.N.A. Act in the sense of a single article or section listing all freedoms which are safeguarded from legislative invasion, but there are a number of specific rules, which no laws, federal or provincial, can repeal."

Professor Scott's contentions would seem to have been supported in at least one case. In protecting the principle of the freedom of the press (21) Duff, C.J.C. said,

(19) Cf. Rex v Hess (No. 2) (1949) 1 W. W. R. 586 at 596, per O'Halloran, J. A. —"———the purported powers in sec. 1025 A (of the Criminal Law) to deny an acquitted person bail, to obstruct and delay his application therefore, and to detain him in custody for an offence of which the court has acquitted him and when there is no offence charged against him are all contrary to the written constitution of the United Kingdom, as reflected in Magna Carta (1215), the Petition of Right (1628), the Bill of Rights (1689) and the Act of Settlement (1701). I conclude further that the opening paragraphs of the preamble to the B.N.A. Act, 1867, which provided for "a constitution similar in principle to that of the United Kingdom," thereby adopted the same constitutional principles, and hence sec. 1025 A is contrary to the Canadian Constitution, and beyond the competence of Parliament or any provincial Legislature to enact so long as our constitution remains in its present form of a constitutional democracy."
(Cf. **Obiter Dicta**, 1947-48)

(20) Cf. Scott, F. R.: **Dominion Jurisdiction over Human Rights and Fundamental Freedom**; in 27 Can. Bar Rev. 497, at 501.

(21) **In Reference re the Alberta Press Bill**, (1938) 2 D. L.R. 81, at P.P. 107-109.

> "Under the constitution established by the B.N.A. Act, legislative powers for Canada are vested in one Parliament consisting of the Sovereign, an upper house styled the Senate and the House of Commons. Without entering into detail upon an examination of the enactments of the Act relating to the House of Commons, it can be said that these provisions manifestly contemplate a House of Commons which is to be, as the name itself implies, a representative body, constituted, that is to say, by members elected by such of the population of the United Provinces as may be qualified to vote. The preamble of the statute, moreover, shows plainly enough that the Constitution of the Dominion is to be similar in principle to that of the United Kingdom. The statute contemplates a Parliament working under the influence of public opinion and public discussion. There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter criticism, from attack upon policy and adminstration and defence and counter attack; from the freest and fullest analysis and examination from every point of view of political proposals."

Moreover, the fact that Canada was to have a constitution similar in principle to that of the United Kingdom meant that Canada was to have a flexible constitution; that is, as Mr. Lefroy has said, a constitution "capable of proceeding in a course of natural and spontaneous development." (22) If this was a goal of the B.N.A. Act, it has been missed because Canada's constitution does not possess the flexibility of the constitution of the United Kingdom.

Many diverse meanings can be given to the second clause of the Preamble – "whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire." Only two comments need be made regarding this section. The general line of Privy Council decisions has done everything possible to promote the welfare of the provinces even if, at times, sectional well-being was opposed to the national interest. With respect to the interests of the British Empire no Canadian can be blamed for suspecting that the Judicial Committee, in its approach to the B.N.A. Act, has had an imperialistic bias which was directly opposed to Canadian interests. However this may be, it is presumed, that the paramount interest to be kept in mind in the future in dealing with the B.N.A. Act will be Canadian, inasmuch as appeals to the Privy Council are now abolished. (23) At any rate the retention of the word "British Empire" in the Preamble is obsolete. It is submitted that the replacement of "Commonwealth" for "Empire" would be proper and appropriate especially in view of the words of Lord Jowitt in the Reference re Privy Council Appeals. (24)

(22) **Report to the Senate of Canada, 1939, by W. F. O'Connor at P. 22**
(23) **Reference re Privy Council Appeals, (1947) A. C. 127**
(24) **(1947) A. C. 127.**

In the third section of the Preamble it was stated that "Whereas on the Establishment of the Union by Authority of Parliament it is expedient not only that the Constitution of the Legislative authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared." The words "by authority of Parliament" mean that the B.N.A. Act was, and is, a British statute. Professor W. P. M. Kennedy states that the Privy Council has always considered it as a British statute and has always held that its interpretations must begin from that point of view. (25) The remaining part of this section deals with the establishment of the executive government in Canada and with the division of legislative powers between the Dominion and the provinces. These matters were taken care of in detail in the main body of the Act and will not receive any consideration in this article.

The last section of the Preamble has led to the enlargement of the Dominion of Canada. The power to establish additional provinces in the Dominion and to alter the limits of the provinces, with their consent, and to legislate for any territory not included in the Province, was conferred upon the Parliament of Canada by the B.N.A. Act, 1871. (26) This Act also confirmed other Acts of the Parliament of Canada respecting Rupert's Land and the N.W. Territories and the Province of Manitoba. Rupert's Land and the N.W. Territories became part of Canada pursuant to the Rupert's Land Act, 1868 (Imp.). Manitoba was admitted as a province in 1870, British Columbia in 1871, Prince Edward Island in 1873, Alberta in 1905, Saskatchewan in 1905 and Newfoundland in 1949.

Up to this point the plain words of the Preamble have been considered. This has been done in order to get "back to the constitution." But, it is evident that plain words are not enough, for the Canadian Constitution, regardless of the B.N.A. Act, is what the judges say it is. Thus, at this point, it is proper to consider the various lights in which the courts have looked at the B.N.A. Act and the weight which has been given to the Preamble.

In 1932, the Judicial Committee stated that the B.N.A Act embodied a compromise under which the original provinces agreed to federate and that it was important to keep in mind that the preservation of the right of minorities was a condition upon which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected. "The process of interpretation," according to Lord Sankey, "as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of sections 91 and 92 should impose a new and different contract upon the federating bodies." (27) Un-

(25) Kennedy, W. P. M.; **The Constitution of Canada.** P. 405.

(26) 34-35 Vict., c. 28.

(27) **In re Regulation and Control of Aeronautics in Canada,** (1932) A. C. 54.

doubtedly this is a worthy judicial platitude even if the principle is erroneously stated. However, by no stretch of the imagination can it be said that the Judicial Committee have followed this dogma. Indeed, Professor Kennedy has said, with some truth, that "the terms of the Constitution, in their plain meaning, are not extremely difficult of application, and that the complexities which today flow from our constitutional law to the detriment of our national life do not flow from the British North America Act itself but from the interpretations of it. These interpretations cannot be supported on any reasonable grounds. They are simply due to inexplicable misreadings of the Act." (28) The errors of interpretation to which Professor Kennedy refers are too numerous and too widespread to be mentioned here. Not only have there been errors but there has been no stability in the interpretation and exposition of the Act. For a long time the B.N.A. Act was regarded as a mere statute to be treated by the same methods of construction and interpretation as courts of law apply to ordinary statutes. (29) At other times the Act has been treated as a great constitutional charter or has been likened to a "living tree." (30) Sometimes the Act has been given a narrow technical construction while at other times and by other judges a broad liberal interpretation has been chosen. The Privy Council, like a man suffering from insomnia, has tossed and turned from one approach to the other, never certain and rarely true to the intentions of the farmers of the Act. As W. P. M. Kennedy has said:—(31)

> "Our final courts, in ninety-nine cases out of a hundred, interpret our constitution as a statute. Thy have refused, as happened until quite recently in the judicial interpretation of the Australian constitution, to allow the importation of anything not necessarily implicit, to follow American law cases or American precedents, to see in it anything of a contractual nature, or to be guided by its historical origins. They have interpreted it, and given effect to it, according to its own terms, finding the intentions from the words, and upholding it precisely as framed. As a statute, they have applied to it most generally the arbitrary rules of statutory construction, which whatever else, they might have done, have at times robbed it of its historical contents and divorced its meaning from the intentions of those who in truth framed it."

Needless to say the plain meaning of the B.N.A. Act has suffered greatly because of this judicial error and wandering from one interpretation to another. The Preamble, of all of the parts of the Act, has probably suffered more by this Privy Council treatment.

(28) Kennedy, W. P. M.; **The Terms of the B.N.A. Act; In Essays in Canadian History.** Ed. by R. Flenley (Toronto 1939) P. 129.
(29) Cf. Bank of Toronto v Lambe, (1887) 12 App. Cas. at 579.
(30) Cf. **Edwards v A—G. for Canada,** (1930) A. C. 124.
(31) Kennedy, W. P. M.; **Some Aspects of the Theories and Working of Constitutional Law** (New York, 1932)

A noted authority on the interpretation of statutes (32) has said:–

> "A statute is the will of the legislature and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it.———The object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used———."

It is submitted that the Privy Council has not followed this fundamental rule. The intentions of the Fathers of Confederation have been largely ignored. Moreover, the Privy Council has even tried to strike down words like "federally united" and substitute for this the idea of a confederation or a sort of treaty-union.

"The influence of the preamble," says Story, in his commentary on the Constitution of the United States of America, "has a foundation in the exposition of every code of written law, – upon the universal principle of interpretation, – that the will and intention of the legislature is to be regarded and followed. The preamble is entitled to great consideration. It is, indeed, that introductory statement to which both reason and authority point for ascertaining the intention of the enactment." (33) A review of the great constitutional cases of Canada show that the Preamble to the B.N.A. Act has received little or no consideration. To a great extent it has been ignored. The plain words of the Preamble have not been allowed to exercise "their due force and appropriate meaning." (34) When great constitutional cases came before them the learned judges of the Privy Council preferred to rely on their own political ideas rather than what was contained in the written words of the Preamble.

"The Preamble is properly referred to," says Story in his Commentaries, "when doubts or ambiguities arise upon the words of the enacting part." (35) If this is a sound rule of interpretation it cannot be said that it has been faithfully followed by the Judicial Committee. This was all too clearly shown by Lord Haldane in his decision in Commonwealth of Australia v. Colonial Sugar Refining Co. (36)

Potter has pointed out that "in the history of American jurisprudence and of American fundamental law, there is no single paragraph that possesses more profound significance, in the expression of the object and intent of the instrument and its framers, than that of the preamble to the federal constitution. The highest judicial authority ever accords to it a significance becoming an instrument which was laying the deep foundations of a national government for American empire which should rest on the solid basis of the will of an intelligent

(32) Maxwell, P. B.; **The Interpretation of Statutes.** 9th ed. (London, 1946) at P. 12.
(33) Quoted by Potter, P.; **A General Treatise on Statutes.** P. 107.
(34) See the dissenting judgement of Taschereau in **The Citizens' and the Queen Insurance Cos. v. Parsons** (1880) 4 S.C.R. 215 at 299.
(35) Potter, P.; **A General Treatise on Statutes.** P. 107.
(36) infra. P. 4

and free people;———" (37) Unfortunately, it can be said unequivocably that this principle has not been acted upon by the Judicial Committee in interpreting the B.N.A. Act. In performance the B.N.A. Act has fallen far short of the promise of the Preamble. (38) The Preamble promised a federal union. The Privy Council gave the Canadian people something else. The intentions of the Fathers of Confederation have been overlooked. The consequence of this has been, in many fields of government activity, futility and disillusionment.

(37) Potter. P.; **A General Treatise on Statutes.** P. 266

(38) However. it is too extreme to assert with Mr. Dicey that the Preamble of thhe B.N.A. Act is a notable instance of "official mendacity." (Quoted from Dicey, The Law of the Constitution, 3rd Ed. P. 155. Modified in later editions to "diplomatic inaccuracy".)

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