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10 DOWNING STREET

From the Private Secretary

3 February, 1982.

Dear David

Canada

The Prime Minister held two discussions this afternoon about the next steps on the Canada Bill.

At the first of these, the following were present: the Lord President, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Attorney General, the Chief Whip, Sir Robert Armstrong and the First Parliamentary Counsel. The Lord President outlined possible difficulties which could arise at Second Reading stage. He put forward a handling proposal which he had discussed with a number of colleagues present at the meeting.

After some discussion of the advantages of proceeding in the way proposed, and alternatives, the Prime Minister asked that the Lord President should now bring the Home Secretary into the consultations, and should report his reaction to her as soon as possible. It would not be possible to initiate consultations with the Opposition until the Government had further refined its view of the best way forward.

Later, the Prime Minister resumed discussion with the Home Secretary, the Lord President and Sir Robert Armstrong. The Home Secretary said that, in the face of the various potential procedural problems, he judged that the Lord President's proposal offered the least unattractive way forward. The Prime Minister therefore agreed that the Lord President should now share his ideas with one or two influential Government back benchers, and refine the text of the necessary Motion, with a view to discussing matters with the Shadow Leader of the House on Monday, 8 February. This would allow the Shadow Cabinet to be informed on Wednesday, 10 February, and further steps might be taken on 11 February. Meanwhile, Sir Robert Armstrong should speak to Mr. Pitfield tonight, confirming that the Government had not found it possible to proceed with the Bill this week, and were now considering procedural problems connected with the two languages, which might prevent further progress next week.

The Prime Minister did not return to the question of contacts with Mr. Healey, but these should now presumably await the outcome of the Lord President's planned discussion with Mr. Silkin, given the

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prominence of procedural questions at this stage. If matters follow the timetable which the Lord President has in mind at present, it might be appropriate for Mr. Healey to be seen late on Monday next, or on Tuesday.

I am sending copies of this letter to the Private Secretaries to those present at today's meetings. I should be grateful if recipients could ensure that knowledge of these conversations is kept to a minimum.

Yours ever

Mike Pattison

David Heyhoe, Esq.,
Lord President's Office.

10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG
CABINET OFFICE

Canadian Constitution

The Prime Minister saw your minute of 29 January in which you sought authority to make certain points to Mr. Pitfield about the procedure for the Second Reading of the Canada Bill.

While she expressed the view that the sooner the Bill went through, the better pleased she would be, there have, as you are aware, been subsequent developments which have made the line you propose to take with Mr. Pitfield inappropriate. The matter was further discussed at an ad hoc Ministerial meeting today, a record of which will be circulated shortly.

I am sending copies of this minute to Mr. Fall and Mr. Fuller (Foreign and Commonwealth Office), Mr. Heyhoe (Lord President's Office), Mr. Maclean (Chief Whip's Office), Mr. Pownall (Chancellor of the Duchy's Office, House of Lords) and Mr. Nursaw (Law Officers' Department).

3 February 1982

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MR COLES

CANADA

We agreed that it would be helpful if I let you have a short note setting out the issues for discussion at the meeting on this subject this afternoon.

You have seen already Sir Robert Armstrong's minute of 29 January reporting his telephone conversation with Mr Pitfield; the Lord Privy Seal's minute of 1 February setting out the arguments for proceeding now to Second Reading; and Henry Steel's letter to me of 2 February giving the Attorney General's view on what might be said in the House about the legal position.

The points for decision now are:

(a) When to proceed to Second Reading
(b) What to say to the Canadians
(c) How to handle the Opposition

Among these the prime decision is of course when to proceed to Second Reading. There are three general areas which bear on this, namely international considerations, the legal position, and the Parliamentary situation. The international considerations clearly require us to move to Second Reading at the first opportunity and I believe that, subject to the Prime Minister's views, there is now

.../..

no legal impediment to doing so. This leaves the Parliamentary situation on which the position is as follows.

We know from private discussion with the House authorities that a number of Members have asked the Chair for a ruling on whether the Bill is amendable and whether the French parts of it are amendable in French. These Members claim that, if the Bill is to be properly considered in all its aspects, the House should be allowed to amend the French part of it as well as the English. The view of the House authorities is that, like any other Bill, the Canada Bill is amendable, however undesirable it would be if the Bill was actually amended. They also take the view that if amendments to the French parts of the Bill were admitted the scope for Points of Order, mischief and delay would be such that the Bill would not pass into legislation this Session.

If it is accepted - as the political arguments clearly indicate - that the option of removing the French parts of the text is not open to us, it then becomes necessary to devise Procedural means of surmounting the problem. To this end the Lord President and the Chief Whip have held urgent discussions with the House authorities yesterday and this morning. As a result of these, the position has been reached whereby a ruling might be given from the Chair that only amendments to the English text would be selected. However, it would also be necessary to effect similar safeguards to cover the proceedings in Committee, which might be done by means of a Procedural Motion to the effect that the question on the French parts of the Bill be put forthwith.

There would undoubtedly be a row in the House if this particular avenue for mischief is blocked off in the way described above. The

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Lord President's view is, therefore, that there might be a three hour Debate on the Procedural Motion after the Speaker has made his ruling and before Second Reading. The effect of this would be to enable those Members who so wish to let off steam; but would also make clear the rules of the game before the start and leave the field unencumbered by these Procedural points at the time of Second Reading.

I am sending a copy of this minute to the offices of those who will be attending the meeting this afternoon. Could I please stress the importance of preserving the confidentiality of this note.

D.H.

3 February 1982

With the Compliments of the
Assistant Legal Secretary

H. STEEL

Attorney General's Chambers,
Law Officers' Department,
Royal Courts of Justice,
Strand. W.C.2A 2LL

01 405 7641 Extn. 3229

01-405 7641 Ext. 3229
Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

2 February, 1982

Dear David,

CANADA BILL

1. At yesterday afternoon's meeting the Attorney-General promised to give further thought to the exact formula which could be used in assuring the House that there was no impropriety in proceeding with the Bill despite the pending litigation. Having looked again at the exact circumstances of the 1949 Newfoundland precedent - and these were indeed rather special - and in the light of an informal discussion which I had with the Clerk to the Table Office, the Attorney-General now considers that it would not be advisable for him to use the formula which he originally had in mind, ie that "he is satisfied that the outstanding cases have no reasonable prospect of success". He does not regard himself as technically precluded (ie by the rules of order relating to matters that are sub judice) from saying that, but he has now come round to the Chief Whip's view that his doing so would be counter-productive in that it would excite a whole string of questions and points of order and might also irritate some of the judges by whom the cases in question are due to be heard.

2. Accordingly, the Attorney-General has now devised an alternative formula which should equally serve our purposes but which should not give rise to these problems. This formula, expressed in the terms which would be appropriate if the Attorney-General himself were addressing the House, is as follows:

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ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

> "I have carefully considered all the issues raised by the respective plaintiffs or applicants in the various cases touching on the Canadian Constitution that are now pending, at one stage or another, before the courts in this country and in Canada. Having regard, among other things, to the nature of those issues, to the way in which they have been presented to the courts and to what the courts themselves, both in this country and in Canada, have already said on the matter, I am satisfied that it is in no way improper for Parliament to proceed with this Bill without further delay and in particular without waiting for these cases - or any others that ingenuity may devise - to be disposed of by the courts."

3. This is as far as the Attorney-General considers that he can go in public, although his advice to colleagues remains that there is no reasonable prospect of success for the plaintiffs in any of the cases pending in the English courts. If the statement is to be used by some other Minister, it must be on the basis that this is the speaker's* understanding of how the Attorney-General will advise the House if asked and not how he has in fact advised colleagues. The Attorney-General attaches considerable importance to this distinction being preserved since he does not wish to weaken in any way the convention that the advice given by the Law Officers to their colleagues is not normally disclosed. The Attorney-General hopes that it is also understood that neither he himself nor any other Minister using this formula can allow himself to go beyond it or to be drawn on its implications. To an intelligent listener the implications should in fact be clear enough, namely, that the Attorney-General does indeed consider that the litigation stands no chance of success.

* i.e. that Minister's

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ATTORNEY GENERAL'S CHAMBERS,
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LONDON, W.C.2.

4. You will see that the first sentence of the suggested passage refers to litigation pending in Canada as well as in this country. The reference to Canadian litigation is a reference to the proceedings before the Supreme Court of Quebec. The Attorney-General has said that he would like to be briefed (at least in outline) about that case and about any other current cases before the Canadian courts. I assume that we can look to the FCO Legal Advisers for this.

5. I am copying this letter to the Private Secretaries to the Prime Minister, the Lord Privy Seal, the Lord Chancellor, the Chancellor of the Duchy of Lancaster and the Chief Whip and also to Sir Ian Sinclair (FCO).

Yours ever,

Henry Steel

H. STEEL

D Heyhoe Esq
Private Secretary to
The Lord President of the Council
Privy Council Office
London SW1

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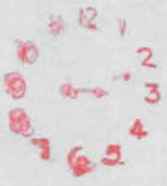


MR WHITMORE

cc:- Mr Pattison

CANADA BILL

The Lord Privy Seal hopes to see Mr Healey at 1730 hrs today (Mr Healey is on his way back from Copenhagen). I have asked that if the meeting takes place as planned we should be given an immediate oral report on the outcome.

I understand that the Lord President may wish to speak to Mr Silkin at about the same time.

I have agreed with Mr Heyhoe and Mr Wright that in these circumstances there is little point in a meeting between the Prime Minister and the Lord President at 1530 hrs today. Since there is little prospect of a meeting during the evening (the Prime Minister's programme is full), I have suggested that the Lord President should think in terms of sending the Prime Minister a minute tonight setting out his views on Parliamentary handling and what should be said to the Canadians.

I have also agreed with Mr Wright, who is consulting Sir Robert Armstrong, that if the latter feels he must speak to Mr Pitfield today he could say that it will be clear to him that we have not been able to meet the Canadian request to hold the second reading this week, that the idea of the second reading taking place next week is being sympathetically considered and that he (Sir Robert Armstrong) hopes to ring Mr Pitfield again tomorrow on this point.

A.J.C.

2 February, 1982

LORD PRESIDENT OF THE COUNCIL

SECOND READING OF THE CANADA BILL

1. You will know that the Court of Appeal unanimously rejected the claim of the Alberta Indians that the British Government still retained obligations towards them.

2. The Court refused the applicants leave to appeal to the House of Lords. It is open to them within the next 28 days to petition the Appeals Committee of the House of Lords to be heard, and we expect them to do this. However, the FCO Legal Adviser considers that such a petition is unlikely to succeed.

3. In terms of Anglo-Canadian relations there is every reason to proceed as fast as is reasonably possible. We are under strong pressure from the Canadian Government not to delay the Second Reading. In his letter of 13 January to the Prime Minister, Mr Trudeau specifically asks if Royal Assent could be given to the Canada Bill by 15 March when the Quebec Court of Appeal begins to hear the case filed by the Province of Quebec in which they claim to have a veto over the constitutional proposals. While it may be very difficult to meet this request, there would be advantage in at least having made substantial progress by that date. Furthermore, the British Government has undertaken to proceed as rapidly as is feasible.

4. Against this background my view is that we should proceed to Second Reading, and make the announcement on Thursday next, for the following reasons:

(i) The decision of the Court of Appeal was unanimous in holding that any obligations to the Indians were now Canada's and that the British courts therefore had no jurisdiction;

(ii) The Court of Appeal refused the Indians leave to appeal;

(iii) The Foreign Affairs Committee (FAC) in its First Report concluded that Indian rights and interests were among the many topics connected with the welfare of Canada and its peoples which could not rightly be made the subject of deliberation by the UK Parliament in dealing with a request for amendment or patriation of the BNA Acts. They confirmed this view in their Third Report;

/(iv)

(iv) In relation to Quebec the Third Report of the FAC published on 18 January confirmed the views expressed in the First Report and concluded that ''We consider that it would be proper for the UK Parliament to enact the proposals, notwithstanding that they will directly affect the powers of the Canadian provinces and are dissented from by one of these provinces, Quebec'';

(v) The agreement of nine out of the ten provinces amply meets the test imposed by the Supreme Court of Canada as to a substantial measure of provincial consent for Canadian legal and constitutional purposes;

(vi) Indian groups from British Columbia and Saskatchewan have taken the first steps to initiate further legal proceedings in this country. It is not impossible that still further groups may seek to do so. A decision to await the outcome of all further litigation would delay matters indefinitely; and, subject to the views of the Attorney-General, the proceedings instituted by the Indian groups from British Columbia and Saskatchewan stand no reasonable prospect of success in the courts.

5. Against these arguments for going ahead there is the outside chance that any application made to the Appeals Committee of the House of Lords for leave to appeal to the House of Lords would be granted. Since the appellants could decide to wait the full 28 days before even applying to the Appeals Committee and given the legal advice that the application would be likely to fail I do not think that we would be justified in delaying merely against that eventuality. Discreet soundings indicate that the earliest that a petition to appeal to the House of Lords could be heard is 22 February, and that the end of March is a more likely date. In my view the prospect of delay of this order strengthens the case for proceeding now with Second Reading. If an application for leave to appeal were, contrary to expectations, granted, we could consider the possibility of deferring the next stage in the Parliamentary procedure.

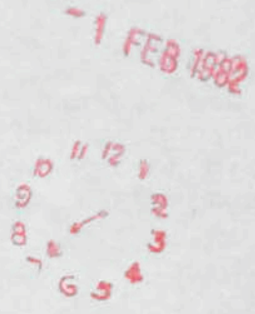
6. You will know that apart from some backbench opposition to the Bill on both sides of the House the Opposition leadership has expressed the view that we should not proceed with legislation until all possibilities of appeal (implicitly in the Alberta case) have been exhausted. That was of course before the decisive judgement of the Court of Appeal. If colleagues agree that we should go ahead with Second Reading, it would however clearly be desirable at an early stage for one of us to have a word privately with Denis Healey.

/7.

7. I am copying this minute to the Prime Minister, Lord Chancellor, Chancellor of the Duchy of Lancaster, Chief Whip and Attorney-General.

1 February 1982

PS I have just seen a copy of Sir Robert Armstrong's minute of 29 January regarding his telephone conversation with Mr Pitfield. I do not think this alters any of the points above but it serves to show the strength of pressure the Canadians are bringing to bear on us to make progress.


1 FEB 1982

Prime Minister ①

You may like to have a word about this with the Lord President and Chief Whip when you see them on Monday.

A.J.C. 29/1

Ref: A07282

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MR. COLES

Canadian Constitution

Within hours of the unanimous judgment handed down by the Appeal Court yesterday in the Albertan Indians' case the Canadian Government have been in touch to find out when we will be arranging for the Second Reading of the Canada Bill, and to urge that we arrange for it this coming week - rearranging business in the House if need be. The Canadian Secretary of the Cabinet, Mr. Michael Pitfield, telephoned me about this yesterday evening, I also received a call yesterday afternoon from the Canadian High Commissioner's special counsellor for the constitution, Mr. Reeves Haggan.

2. Both Mr. Pitfield and Mr. Haggan expressed satisfaction with the unanimous judgment, particularly for its clarity and lack of ambiguity. The absence of the defence counsel, Mr. Louis Blom-Cooper, in court yesterday meant that the question of an appeal to the House of Lords was not raised, but an application for leave to appeal to the House of Lords was made and refused today.

3. The Canadians will now be looking to the earliest possible Second Reading of the Bill. They hope that this need not be held up either to await the outcome of an application by the Alberta Indians to the Appeals Committee of the House of Lords, or to allow the case which is being brought in the Chancery Division by the British Columbia, Manitoba and Ontario Indians to take its course. I have explained to both Mr. Pitfield and Mr. Haggan that, before a decision can be taken on the date of Second Reading, the Government will have to examine the judgment, and assess its effect on feeling in the House. In the light of these factors, the Business Managers will have to decide how they think they can best assure the Bill of a smooth passage through its Second Reading. I have also pointed out that the business of the House for next week has already been agreed with the Opposition and announced in the House. This would seem to point to the week of 8th February as the earliest possible timing for the Bill's Second Reading.

4. Both Mr. Pitfield and Mr. Haggan have asked if it would be possible for exceptional measures to be taken to include the Second Reading in next week's business. Mr. Pitfield said that there were four reasons why the Canadian Government hoped that, even though business had been announced, it might still be possible for the Second Reading of the Bill to take place next week. These were:-

(a) President Reagan's economic policies and United States interest rates were causing such trouble for the Canadian economy that the Canadian Government were likely to summon a National Economic Conference at the end of February. The NEP was likely to resist, and to seek to persuade the trade unions to resist, an invitation to participate in such a Conference. The Federal Government were expecting acute difficulties in the Canadian Parliament, and would like to have the Constitution Bill well and truly out of the way before they were faced with these problems in late February or early March.

(b) For symbolic reasons, the Canadians would like to mark Canadian Flag Day (formerly Heritage Day) on 15th February with the patriation of the Constitution.

(c) The Canadian Government remained very keen that The Queen should visit Canada for the formal patriation of the Constitution. They knew that The Queen would be free to visit Canada for this purpose on 15th February. Thereafter a visit by The Queen might be more difficult.

(d) It was crucial for internal constitutional reasons (the relationship between the Federal Government and the Provinces) that patriation should take place before the Quebec Court case on the right of veto of the Quebec Government. This was due to begin on 15th March. It might be very difficult to find a time after 15th February, but before the Quebec case began, when patriation could take place and when The Queen would be able to visit Canada.

5. Mr. Pitfield explained that for all the reasons, the Canadians hoped that it might be possible to avoid delay and arrange for the Second Reading next week. I emphasised that this would be most exceptional, that Parliamentary time was already committed to Bills which had a tight timetable and that the Business Managers had always believed that the Bill was likely to have a smoother passage if there were no attempt to rush it. I thought it virtually impossible to complete the Bill in time for The Queen to visit Ottawa for a patriation proclamation on 15th February. But I undertook to convey the Canadians' wish to both the Prime Minister and the Lord President so that they could be considered. I said that I would let Mr. Pitfield know the British Government's views as soon as possible.

6. I have learnt from the Palace that, if (as they accept) the proclamation ceremony cannot be held on 15th February, The Queen and the Duke of Edinburgh could not conveniently go to Canada before 22nd March.

7. I do not suppose that there can be any question of changing next week's Parliamentary business, and I do not think it reasonable of the Canadians to ask for that. But I can see their reasons for hoping that the proceedings at Westminster will be complete before the Quebec case in the Supreme Court of Canada begins on 15th March. I wonder whether I might be authorised to say to Mr. Pitfield:

(1) It is not now possible, and would not help progress on the Canada Bill, to change next week's business and rush Second Reading next week.

(2) The present intention is to take Second Reading early in the week beginning 8th February, and to complete remaining stages in the House of Commons as soon as possible thereafter.

(3) It will not be possible to complete the passage of the Bill in time for a proclamation in Canada on 15th February.

(4) We obviously cannot commit ourselves at this stage to a definite or precise prediction on the Bill's progress at Westminster; we have to see how Second Reading goes. But we see the desirability, from the Canadian point of view, of getting the Bill through all its stages here if possible, or at least as far advanced as possible, by 15th March when the Quebec case comes before the Supreme Court of Canada, and our aim will be to complete the Bill with those considera-

tions very much in mind, and as quickly as is consistent with its smooth passage.

(5) My understanding is that, if Westminster can complete the Bill by the middle of March, that would be consistent with The Queen's availability to come to Canada (though that is of course nothing to do with the British Government).

8. I am sending copies of this minute to Mr. Fall and Mr. Gomersall (Foreign and Commonwealth Office), Mr. Heyhoe (Lord President's Office), Mr. Maclean (Chief Whip's Office), Mr. Pownall (Chancellor of the Duchy's Office, House of Lords) and Mr. Nursaw (Law Officers' Department).

RHA

Robert Armstrong

Agreed - furthermore we do not want it to take up very much Parliamentary time because our programme is already big. The sooner it goes through the better pleased I shall be.

MT

29th January 1982

This was not acted upon because the situation changed. See later paper. MT 3.2

Canada

GRS 732
UNCLASSIFIED
FM FCO 281930Z JANUARY 1982
TO IMMEDIATE OTTAWA
TELEGRAM NUMBER 34 OF 28 JAN
MIPT
EX PARTE INDIAN ASSOCIATION OF ALBERTA

1. THIS MORNING THE COURT OF APPEAL, COMPOSED OF DENNING MR, KERR LJ AND MAY LJ, UNANIMOUSLY REFUSED THE INDIAN ASSOCIATION'S APPLICATION FOR A DECLARATION THAT OBLIGATIONS UNDER THE INDIAN TREATIES AND THE ROYAL PROCLAMATION OF 1763 WERE OWED, OR WERE STILL OWED, BY HMG IN THE UK. THE GROUNDS OF THE THREE JUDGMENTS DIFFERED IN DETAIL.

2. DENNING MR'S VIEW WAS THAT OBLIGATIONS UNDER THE TREATIES AND UNDER THE ROYAL PROCLAMATION WER OWED BY HMG IN THE UK AT LEAST UNTIL THE TIME OF THE BALFOUR DECLARATION IN 1926, NOT-WITHSTANDING THE TRANSFER OF EXECUTIVE AND LEGISLATIVE POWER BY VIRTUE OF THE BRITISH NORTH AMERICA ACT 1867 AND IN PARTICULAR SECTION 91(24) WHICH RELATES TO INDIANS AND LAND RESERVED FOR INDIANS. HE HELD THAT THE TRANSFER WAS CONFIRMED BY THE STATUTE OF WESTMINSTER 1931. HE CONCLUDED THAT IT WAS NOT PERMISSIBLE TO BRING AN ACTION IN THE UK ON OBLIGATIONS WHICH WERE NOW OBLIGATIONS OF CANADA. EVEN IF CANADA WAS NOT COMPLETELY INDEPENDENT BECAUSE OF THE RESIDUAL POWER TO AMEND THE BRITISH NORTH AMERICA ACT CONTAINED IN SECTION 7 OF THE STATUTE OF WESTMINSTER, THE CANADA BILL, WHICH WAS DESIGNED TO GIVE COMPLETE INDEPENDENCE TO CANADA, DID CONTAIN SAFEGUARDS FOR THE STILL SUBSISTING OBLIGATIONS TOWARDS CANADIAN INDIANS WHICH SHOULD BE HONOURED 'AS LONG AS THE SUN RISES AND RIVER FLOWS'.

3. KERR LJ, WITH WHOSE JUDGMENT MAY LJ'S JUDGMENT BROADLY COINCIDED, SAID THAT THE QUESTIONS RAISED BY THE APPLICANTS RELATED NOT JUST TO ALBERTA, NEW BRUNSWICK AND NOVA SCOTIA, BUT APPLIED THROUGHOUT CANADA AND THE IMPORTANT ISSUES WERE THE PATTERN OF THE TREATIES AND THE 1763 PROCLAMATION. HE SAID THAT ALL SIDES ACCEPTED THE BINDING EFFECT OF THESE INSTRUMENTS AND

/THAT

THAT THE OBJECT OF THE PROCEEDINGS WAS THEREFORE PRINCIPALLY POLITICAL. NEVERTHELESS, THE PARTIES WERE READY TO HAVE DETERMINED THE QUESTION WHERE THE RECOGNISED OBLIGATIONS RESIDED. HE SAID THAT IT WAS SETTLED THAT ALL RIGHTS AND OBLIGATIONS OF THE CROWN CAN ONLY ARISE IN RESPECT OF GOVERNMENT IN A PARTICULAR TERRITORY. HE APPROVED THE VIEW THAT THERE COULD BE SAID TO HAVE BEEN LOCAL ADMINISTRATIONS HAVING OBLIGATIONS TOWARDS INDIANS EVEN BEFORE THE 1867 ACT, BUT SUBSEQUENT DEVELOPMENTS PUT THE ISSUE BEYOND DOUBT. SPECIFICALLY, THE BRITISH NORTH AMERICA ACT TRANSFERRED RESPONSIBILITY FOR EVERY ASPECT OF INTERNAL GOVERNMENT TO CANADA. MAY LJ SUPPLEMENTED THESE LINES OF ARGUMENT, SAYING THAT THERE WAS A FUNDAMENTAL MISUNDERSTANDING OF THE CONSTITUTIONAL POSITION: THE CROWN WAS NO LONGER INDIVISIBLE AND SINCE WE WERE CONCERNED WITH A CONSTITUTIONAL MONARCHY, THE REFERENCE TO THE CROWN IN RIGHT OF A PARTICULAR TERRITORY WAS IN FACT A REFERENCE TO THE GOVERNMENT OF THAT TERRITORY. HE TOO THOUGHT THAT SEPARATE GOVERNMENT IN CANADA HAD BEEN RECOGNISED RELATIVELY EARLY, BUT THAT THE ISSUE WAS IN ANY EVENT SETTLED BY THE 1867 ACT. HE WENT ON TO SAY THAT IN HIS VIEW, THE UK COURTS HAD NO POWER TO ADJUDICATE ON OR INTERFERE IN CANADIAN AFFAIRS. ENFORCEMENT OF INDIAN RIGHTS COULD ONLY BE WITHIN CANADA AND THE MERITS HAD BEEN DEALT WITH IN EFFECT ONLY SO THAT THE INDIANS COULD FEEL THAT THEY HAD HAD THEIR DAY IN COURT. IN SUMMARY, THE COURT DECIDED TWO TO ONE THAT RESPONSIBILITIES FOR INDIAN RIGHTS UNDER THE PROCLAMATION AND THE SUBSEQUENT TREATIES WERE CANADIAN OBLIGATIONS AT THE LATEST WITH THE BRITISH NORTH AMERICA ACT 1867, OR ALTERNATIVELY, ACCORDING TO DENNING M WITH THE STATUTE OF WESTMINSTER 1931. THE COURT CONCLUDED UNANIMOUSLY THAT ANY REMEDIES IN RELATION TO THESE OBLIGATIONS WHICH WERE NOW CANADA'S, MUST BE SOUGHT IN THE CANADIAN COURTS. DENNING MR'S JUDGMENT GAVE SOME CONSIDERATION TO THE CANADA BILL, FINDING THAT INDIAN RIGHTS WERE IN FACT SAFEGUARDED.

CONCLUSION

4. THIS JUDGEMENT DOES NOT DISPOSE OF THE APPLICATION BY MANUEL ET AL IN THE CHANCERY DIVISION WHICH RAISES ISSUES ABOUT

/CONSENT

CONSENT OF VARIOUS PARTIES IN CANADA TO REQUESTS FOR PATRIATION. COUNSEL FOR MANUEL ET AL MADE IT CLEAR THAT HIS CLIENTS INTENDED TO PURSUE THEIR OWN REMEDIES, NOTWITHSTANDING THE DECISION OF THE COURT OF APPEAL. INDEED, THEIR ACTION IS MORE AKIN TO A REPLAY OF THE CASE BEFORE THE CANADIAN SUPREME COURT LAST YEAR. NEVERTHELESS, PASSAGES IN ALL THREE JUDGMENTS IN THE ALBERTA CASE TO THE EFFECT THAT CANADIAN OBLIGATIONS CAN BE LITIGATED ONLY IN CANADA SHOULD BE HELPFUL IN DEALING WITH THE CHANCERY ACTION.

CARRINGTON

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