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THE CONSTITUTIONAL QUESTION 1926.

WAR-TIME PROPAGANDA.

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THE CONSTITUTIONAL QUESTION, 1926

The principle features of what may fairly be called the Constitutional Question of 1926—the refusal of the Governor General to be guided by the advice of his ministers with reference to a general election—are of sufficient importance to justify reference to them in an *Independence Paper*. Indeed it is not too much to say that the episode marks a not unimportant step in the development of Canada's constitutional status. Two points were involved. First, under similar circumstances, would the King have refused to comply with the advice of his British ministers to dissolve parliament? And, second, were the relations between the Governor General and his Canadian ministers the same as those between the King and his British ministers? Both these questions may be said to have been answered in the affirmative. Later in the year, the Imperial Conference confirmed, in effect, the second of the answers. The answer had ensured the confirmation.

THE POLITICAL SITUATION.—A general election held on 17 December 1917 gave the Unionist government, at the head of which was Sir Robert Borden, 137 seats as against 93 won by the Opposition. Mr. Meighen succeeded Sir Robert on 10 July 1920. By-elections having indicated the existence of growing hostility to his government a general election was held on 6 December 1921 when the Liberals secured 117 seats; the Progressives 65; the Conservatives (Unionists) 51; and Labor 2. A new administration under Mr. Mackenzie King was formed. On 29 October 1925, general elections resulted in the return of 116 Conservatives; 101 Liberals; 25 Progressives; 2 Labor; and 1 Independent. With the assistance of the three weaker parties, Mr. King successfully repelled all attacks until June of the following year.

A special committee having been appointed by the House of Commons "to investigate the administration of the Dept. of Customs and Excise", a resolution concurring in the report—

a unanimous report—of the committee was moved on 22 June 1926. To this, Mr. H. H. Stevens (Conservative) moved that the report be referred back to the committee with instructions to add clauses condemnatory both of the Minister of Customs and the government. Mr. Woodsworth (Labor) moved an amendment to the amendment. Mr. King supported it, but (25 June) it was defeated by 117 to 115. Mr. Fansher (Progressive) moved another amendment to the amendment. The Speaker declared it to be out of order. Upon appeal to the House, government members voted to sustain the ruling while the Opposition members voted Nay. The ruling was negatived by 118 to 116. Mr. Beaubien (Liberal) moved the adjournment of the debate. Government members voted Yea and the Opposition voted Nay. The motion was lost by 115 to 114. Mr. Power (Liberal) moved the adjournment of the debate. Government members voted Yea and the Opposition members Nay. The motion was carried by 115 to 114. The government had voted three times with the minority and once with the majority. As none of the motions emanated from the government, it had not, technically, sustained defeat. Mr. Fansher's amendment was agreed to by all parties.

CHANGE OF GOVERNMENT.—On 28 June, Mr. King stated in the Commons as follows:

> "The public interest demands a dissolution of this House of Commons. As Prime Minister I so advised His Excellency the Governor General shortly after noon to-day. His Excellency having declined to accept my advice to grant a dissolution, to which I believe under British practice I was entitled, I immediately tendered my resignation which His Excellency has been graciously pleased to accept. In the circumstances, as one of the members of the House of Commons, I would move that the House do now adjourn."

Two days afterwards Mr. King said in the House as follows:

> "In being declined the right of dissolution I believe I was declined that right because His Excellency had the honest belief that some other member of this House could be found who as prime minister could carry on the business of government in this country in the way it should be carried on, befitting the dignity and honour of parliament, and which would therefore avoid the necessity of a general election."

On the 29th, Sir Henry Drayton read a statement prepared by Mr. Meighen as follows:

> "Immediately following the resignation of the late government and the adjournement of the House yesterday, His Excellency, the Governor General sent for the Right Honourable Arthur Meighen, leader of the Conservative party and requested him to form a new administration. Mr. Meighen advised His Excellency last evening that he would undertake this task, and was sworn in this morning as Prime Minister, Secretary of State for External Affairs, and President of the Privy Council.
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> "Having in mind the fact that the present session has now continued for almost six months, and is very near its close, Mr. Meighen believed it to be the first duty of any government he might form to conclude with all convenient despatch the work of the present session. Such a course, in preference to a somewhat prolonged adjournment, was demanded also by a just regard for the convenience of hon. members, especially those who come from a great distance.
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> "It was manifestly impossible to effect this result if a government was to be formed in the usual way and if ministers were to be assigned portfolios necessitating the vacating of their seats and consequent by-elections. The delay thus involved would, especially at this period of the year, have entailed unnecessary hardship. The Prime Minister accordingly decided to constitute and submit to His Excellency a temporary ministry composed of seven members, who would be sworn in without portfolio, and who would assume responsibility as acting ministers of the several departments."

After specification of the ministers and the departments, the statement proceeded as follows:

> "Mr. Meighen having accepted an office of emolument under the crown, namely that of Prime Minister, has thereby vacated his seat, and has asked me to assume temporarily the duty of leading the government in the House . . . . So soon as prorogation takes effect Mr. Meighen will immediately address himself to the task of constituting a government in the method established by

> custom. The present plan is merely to meet an unusual if not unprecedented situation."

The situation was both novel and anomalous. There was a government but no ministry. Mr. Meighen was the only minister. And he had no seat in parliament. Seven other men would be "acting ministers". As such they would take no oath of office. They therefore did not (as Mr. Meighen did) vacate their seats. They remained to participate in the voting.

RENEWAL OF PROCEEDINGS.—On the same day (29 June) Mr. Rinfret, a member of the late government moved a resolution eliminating the censurable language of the Stevens amendment, and providing for the establishment of a commission of inquiry. Sir Henry Drayton objected that the motion was out of order. The speaker overruled the obligation, and was sustained by a vote of 115 to 114. Sir Henry and his supporters were in the minority. On a division, Mr. Rinfret's motion was defeated by 119 to 107. Drayton and his supporters were in the majority. Mr. Garland (Progressive) moved an amendment to the Stevens amendment, providing that the commission should consist of the judges of the Exchequer court. The motion was carried by 119 to 109, Sir Henry and his supporters voting in the majority. The Stevens amendment as amended was then "carried on the same division".

On the next day (30th) Mr. Mackenzie King moved a resolution condemnatory of the fiscal policy enunciated by Mr. Meighen when leader of the Opposition. It was defeated by 108 to 101. Having ascertained, by personal catechizing of the "acting ministers", that they had not taken any oath as ministers, and having elicited from one of them (Dr. Manion) the avowal that "we are not the King's ministers; we are acting", Mr. King announced his intention of opposing all supply and moved that the chairman leave the chair. He was beaten by 101 to 80. Approaching, in his speech, the constitutional question in its two aspects, Mr. King said—

> "My position, and I take it in the interest of this country as a self-governing Dominion, is that the Prime Minister of Canada advising His Excellency the Governor General is in precisely the same position as the Prime Minister of England advising His Majesty the King. May I say to my hon. friend who has just spoken that any other theory of government reduces this Dominion of Canada from the status of a self-governing Dominion

to the status of a crown colony. What has been the evolution of our political institutions?"

After referring to the position of Governors of crown colonies, Mr. King said—

"That was the condition we were in in parts of Canada about a century ago. But since that time there has been a political evolution of considerable proportions in all parts of the British Empire, and what to-day are known as the self-governing Dominions are, to my mind, in precisely the same position in the management of their own domestic affairs as is the government of Great Britain with respect to its domestic affairs.

"An hon. MEMBER: We all know that.

"Mr. MACKENZIE KING: No, you don't know it, or you would not be sitting where you are. The difference between a crown colony and a self-governing Dominion is that the Governor General of a self-governing Dominion acts upon the advice of his responsible ministers. May I say this, Mr. Chairman: For one hundred years in Great Britain there is not a single instance of a Prime Minister having asked for a dissolution and having been refused it. May I add this further, that since this Dominion was formed, since confederation in 1867, there is not a single instance where a Prime Minister has advised a dissolution and has been refused it. Is there then no constitutional issue at stake?"

In the course of further debate, Mr. Cahan (Conservative) said that—

"the obvious object of the advice given by the Prime Minister at that time for a dissolution of this parliament was to prevent this parliament from exercising its duty and its responsibility of passing upon the conduct of the late administration in connection with the Customs report.

MR. MACKENZIE KING: I deny that statement absolutely . . . . May I say to my hon. friend that I have the strongest reasons not only for believing but knowing that the so-called censure that he talks about would never have been passed on this government had this government remained in office until after that vote was taken,

> and that vote was only passed because of this co-operation between a certain number of gentlemen to my left and hon. gentlemen opposite to prevent a dissolution of this parliament."

The next day (1 July) in the course of another speech Mr. King said as follows:

> "Now my position is this: We in Canada are a self-governing Dominion in the full sense of the word. With respect to our own domestic affairs, the government of the day stands in the same relation to the Governor General as the government of the day in Great Britain stands in relation to His Majesty the King. In those circumstances I say that the procedure that would be expected to be followed in the Old Country should be followed here."

Dr. Manion, one of the members of the Meighen government was the next speaker. Mr. King had quoted the following sentence from Professor A. Berriedale Keith's book *Responsible Government in the Dominions* (p. 180):

> "Now the imperial practice in this regard is, of course, that the minister receives a dissolution when he asks for it."

Replying to Mr. King, Dr. Manion said—

> "I happened to notice that my right hon. friend stopped at a particular point in his quotation from Keith; and I am going to give him not one but sixteen instances in the last few years where governors general have refused dissolution to outgoing governments."

Dr. Manion then read Professor Keith's view as to the "task" of colonial governors, and referred to his "sixteen instances", commencing with Canada in 1858 and ending with South Australia in 1906. On the same day (1 July) Mr. Garland (who was the best debater among the Progressives and had supported the new government by his votes) turned the course of events by adoption of Mr. Mackenzie King's and repudiation of Dr. Manion's view as to the unconstitutionality of the action of the Governor General in declining to agree to a dissolution (1). He said—

> "The issue is of immense importance because of its

(1) Mr. Cahan, a supporter of the new government said of Mr. Garland's speech that "it is one of the most eloquent, and, on the whole, most impressive addresses that we have heard during this session of parliament".

vital effect not only in our legislative relationship as between parliament and this so-called shadow government, or those who have usurped government for the moment, but because it also strikes deeper, to the very root of our whole status, and that is one of the reasons why I feel it incumbent upon me to address the House upon this subject. The tremendous constitutional effects of the recent action should, I think, with all due respect to everyone concerned, be analyzed." Dr. Manion, Mr. Garland said "quoted case after case which is utterly and completely obsolete. I admit the existence of every precedent my hon. friend quoted; certainly everyone must; but conditions change. We have passed on miles beyond that milestone in our political evolution. Would he have us go back to the aborigine days in Australia? At that time they had a tribal king who walloped everybody. The hon. gentleman smiles. He is laughing at himself.

"The question of our national status is inevitably involved in this matter, and I for one will not be a party to a retrograde step which will take from the people of the country one vestige of the authority which they have secured . . . . The issue is this: Are we now to assert that in Canada the Governor General possesses a right over the people, over the parliament of this country, that the king himself does not possess in Great Britain?

"I congratulate the right hon. leader of the opposition in this, that he has brought to the attention of the House and the country, in most eloquent terms, in most convincing sentences, in most reasoned arguments, one of the most important questions that has ever faced the Dominion, that in my opinion has ever faced the parliament in which I have sat for five years."

Mr. Robb, a member of the late government then moved the following.

"That the actions in this House of the hon. members who have acted as ministers of the crown since the 29th of June, 1926, namely the hon. members for West York, Fort William, Vancouver Centre, Argenteuil, Wellington South, and the hon. senior member for Halifax, are a violation and an infringement of the privileges of this House for the following reasons:

1. That the said hon. gentlemen have no right to sit in this House, and should have vacated their seats therein, if they legally hold office as administrators of the various departments assigned to them by order in council.

2. That if they do not hold such offices legally they have no right to control the business of government in this House and to ask for supply for the departments of which they state they are acting ministers."

The motion was carried as against the government by 96 to 95. Immediately afterwards Mr. Bird who voted in the majority explained that having been paired, he ought not to have voted. Had he refrained, the votes would have been equal. Mr. Garland and three others of his group voted with the majority thus turning the governments previous majority of seven into a minority of one. The House sat until 2.15 a.m. (2 July) and then adjourned—

"in order to consider the position in which the government finds itself in view of this vote".

DISSOLUTION.—When in the afternoon the members returned they found the House closed, and learned that parliament had been dissolved. That was a departure from custom. While parliament is in session, dissolution by proclamation would be an affront to it. The proper course is for the Governor General or his Commissioner personally to prorogue (meaning to discontinue for a time) parliament and afterwards, the House being out of session, to dissolve by proclamation (2). It was urged in defence of the method of dissolution adopted by Mr. Meighen that he followed the precedent set by Sir Wilfrid Laurier in 1911. On that occasion however, the Senate was under adjournment, and it was impossible for the Governor to attend parliament. Sir Wilfrid did not breach the rule as above stated.

MR. EWART.—On the afternoon of the day on which Mr. King resigned, *The Globe* (Toronto) obtained from Mr. Ewart, the following interview:

"If Mr. Meighen asked for dissolution it is almost certain that the Governor would refuse it. He would say to Mr. Meighen: I have refused a dissolution at the request of Mr. King. I cannot grant it to you for that

(2) Mr. Guthrie issued a statement declaring that "the form and procedure used followed precisely the same as those prepared and proposed by Mr. King himself just four days previously when he himself sought dissolution of parliament" (*The Citizen*, 6 July 1926). Mr. King declared that that assertion was untrue.

would be an act of political partisanship of which—you will excuse me—I cannot be guilty.

"In the case you suggest, of the Governor possibly granting a dissolution to one party leader a few days after refusing it to another, it would leave him open to a charge of partisanship from which it would be very difficult for him to relieve himself. What has frequently happened is that the retiring Minister (Mr. King) is recalled and things go on as though the interlude had not occurred.

"It would automatically go back to the Liberals?" Mr. Ewart was asked.

"Not automatically," replied Mr. Ewart, "but by decision of the Governor-General, who would refuse a dissolution to Mr. Meighen, accept his resignation, and call back Mr. King."

"But the assumption is that the Conservatives were contending for the election machinery, and that now they have won it?"

"Mr. Ewart—No, no. That would be shocking.

"What about the point raised by the Conservatives that Mr. King, having had one dissolution, is not entitled to a second one?"

"Mr. Ewart—The only dissolution Mr. King had before was not a special dissolution. It was in the ordinary course, because it is in the ordinary course that parliaments do not run out their full period of time. So that was not a special application for dissolution. It was just according to usual and customary practice. There was no concession to Mr. King at all, and therefore you cannot speak of it as 'having been given one, he cannot be given another'. He wasn't given one special one.

"Dissolution, then, comes back to the Liberals if Mr. Meighen finds himself unable to carry on?"

"Mr. Ewart—It ought to. What the Governor will do I don't know.

"Would you hazard an opinion as to the likelihood of Mr. Meighen being able to carry on the Government?"

"Mr. Ewart—I think it is generally agreed he cannot do it. But really I would not express an opinion. It is not in my line. I take no interest in party politics.

"Mr. Ewart traced for *The Globe* a probable course of events, with sidelights on historic parallels and legalities. With Mr. Meighen sworn in as Prime Minister and being precluded from sitting in the House, his friends would move an adjournment of the House for a period sufficient to enable a ministry to be formed and to secure their re-election. It would be in order, then, for the retiring premier to decline to agree to that adjournment, in which case there would be a vote of the House, and whether it carried or not would, of course, depend once more on the Progressives. If it carried, then Mr. Meighen's way would be made, for the time at all events, more easy. If it failed, he would be very much embarrassed, because, with a practical equality of parties and the uncertainty as to each vote, he could not afford to withdraw, from the voting power of the Conservatives, the necessary twelve or fourteen members whom he might ask to join his Cabinet.

"Obviously, if that number of Conservatives left the House temporarily the Government would almost certainly be defeated, and we would have somewhat of the situation of the 'double shuffle' episode when the Brown-Dorion Government had similar experience, and lost their new position as his Excellency's advisers after having enjoyed it for a few days only."

"How long," Mr. Ewart was asked, "could Mr. Meighen avoid the necessity of by-elections for his Ministers by appointing them ministers without portfolio?"

"Mr. Ewart—The avoidance of the appointment of ministers with portfolios would be such a flagrant violation of constitutional practice that I feel certain Mr. Meighen would not attempt it.

"Q.—Nevertheless, it would be a legal way out?

"Mr. Ewart—When you speak of legal, you must remember that the phrase is not quite applicable to constitutional practice, and that what holds with regard to subjects such as we have been discussing is not the law administered by the courts, but constitutional practice determined by constitutional precedent."

THE ISSUES.—Speaking broadly it may be said that although durng the elections such subjects as tariff, immigration etc. were

by no means neglected, the Conservatives pressed principally their attack upon the customs administration, while the Liberals stressed, in its double aspect, the unconstitutional actions of the Governor General for which Mr. Meighen had assumed the responsibility

MR. MEIGHEN'S STATEMENT.—On the day of dissolution there appeared in the newspapers an exposition from Mr. Meighen of his views on the constitutional question as follows:

> "While it is highly undesirable that a controversy should arise with regard to the conduct of the governor general in respect to a matter upon which his duty compelled him to give a decision according to his best judgment, yet the attacks promulgated by, or under the direction of the late prime minister ought not to pass unnoticed. A reasonable consideration of the fact that His Excellency by virtue of his office can himself make no defence warranted surely a word on his behalf.
>
> "There are several classes of cases in which the crown must exercise discretion in granting or refusing the advice of a prime minister asking for an appeal to the people. The only class to which attention need be directed at the moment is that in which a prime minister, having asked for and obtained dissolution, has failed to secure a majority. It is indisputable that in such a case a prime minister continuing in office is not entitled, during the ordinary course of parliament, to demand a second dissolution merely on the ground that he is unable to command a majority in the House of Commons. This principle is of a special force in the early stages of a new parliament.
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> "More emphatically is it true that, in the class of cases stated above, if not indeed in any case whatsoever, a government is not entitled to dissolution while a motion of censure against that government is under discussion in the House. A dissolution very manifestly should not be granted when its effect is to avoid a vote of censure. This was precisely the case in the present instance.
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> "Early last autumn and more than a year before the expiration of the parliamentary term, Mr. King advised His Excellency that a new parliament should be summoned. He publicly declared that under then existing conditions he could not carry on the affairs of the country efficiently,

and that his appeal to the people was based upon the necessity of a reasonable working majority. Dissolution was granted by the Governor General; a new election was held; and in the new parliament Mr. King found his party in a minority.

"Having advised the crown that notwithstanding his defeat he could carry on with the aid of the Progressive party, he was permitted to continue a task which, under more favorable conditions, he had declared to be hopeless. For several weeks his attempt appeared to succeed, but finally he found himself faced with a vote of censure based on serious charges of maladministration which, as the result proved, would have called for his immediate resignation.

"To avoid the impending censure, Mr. King again advised dissolution in the midst of a session and before necessary provision had been made for the public service. His advice was properly and constitutionally declined by His Excellency. If it had been granted, Mr. King, again appealing to the people and finding himself once more in a minority, could with equal reason apply at the next session for a third dissolution and so on indefinitely.

"It is manifest that His Excellency could not for a moment entertain a principle involving such extraordinary and unconstitutional results. His plain duty was to decline the advice which Mr. King had tendered on this subject and to accept that gentleman's resignation.

"In November last the Governor General's attitude to Mr. King was extremely considerate, having regard to the results of the last election. His conclusion in refusing a second dissolution is justified not only by plain common sense, but by a long list of precedents and authorities which cannot be gainsaid.

"Many authorities recognize the discretion of the Crown to grant or refuse dissolution. Among them that of Mr. Asquith (now Lord Oxford), may be emphasized. His words are as follows:

> 'The dissolution of parliament is in this country one of the prerogatives of the Crown. It is a mere feudal survival but it is a part, and, I think, a useful part, of our constitutional system. It does not mean that the Crown should act voluntarily and without the advice of responsible ministers,

> but it does mean that the Crown is not bound to take the advice of a particular ministry to put its subjects to the tumult and turmoil of a series of general elections so long as it can find other ministers who are prepared to give it a trial. The notion that a minister who cannot command a majority in the House of Commons is invested with the right to demand a dissolution is as subversive of constitutional usage as it would, in my opinion, be pernicious to the general and paramount interests of the nation at large.'

"This opinion of a great Liberal statesman and leader will hardly be questioned. Thus it is clear that Lord Byng possessed a discretion which he was bound to exercise according to his best judgment. His entire impartiality, his high sense of duty, and his perfect sincerity in reaching a conclusion will not for a moment be questioned by the Canadian people."

It will be observed that Mr. Meighen's first public appeal dealt entirely with the constitutional question. And he supported the Governor General's action upon two grounds: first that Mr. King having already asked for and been granted one dissolution, he was properly refused another; and second that "a government is not entitled to dissolution while a motion of censure against that government is under discussion in the House."

Everyone agrees that the right of the king to refuse to be guided by ministerial advice remains in theory, but is controlled in practice by convention, and it is not difficult to imagine circumstances in which the right would override the convention.

> "For instance, a Ministry defeated in the Commons asks for a dissolution, and its request is granted. After the general election the Ministry still finds itself in a minority. The Prime Minister advises a second dissolution. It is common ground among authorities on the constitution that such a request would be grossly improper" (3).

And if a convention be invoked for a "grossly improper" purpose, many would agree that it ought to be disregarded. But it is in the distinction between the case thus stated and the Mackenzie King case that the grossness becomes apparent. For first the Canadian election of October 1925 was one which occurred in the usual course of things, namely, by the approaching effluxion of four years of the legal five year limit. It was not in the least abnormal. And Mr. King, therefore, was not asking for a second dissolution. And, secondly, his ministry had not been defeated.

(3) *The Round Table*, December 1929, p. 43.

MR. EWART—To Mr. Meighen's statement, Mr. Ewart published the following reply (*The Star*, Toronto):

"There are two standpoints from which the recent action of the Governor General may be considered—British practice and colonial practice. Unfortunately for the sake of lucidity, Mr. Meighen in declaring that—'There are several classes of cases in which the Crown must exercise discretion in granting or refusing the advice of a prime minister asking for an appeal to the people', did not make the necessary distinction in this respect.

"If by this statement Mr. Meighen intended to indicate that there are several classes of such cases in British constitutional practice, he was quite wrong. There are in British practice no classes of such cases. There are no cases. There is not a single case in British history during the last hundred years.

"Mr. Meighen asserted that "many authorities recognize the discretion of the Crown to grant or refuse dissolution." He refers to only one, and cannot make up the "many" by citations of others. Mr. Asquith, in the course of a public speech adapted to existing party exigencies, is reported to have said what Mr. Meighen attributes to him. But an occasion of that kind is not of the sort to which we look for impartial and considered opinion. Mr. Asquith's pronouncement, moreover, was immediately challenged by Professor Swift MacNeill, a gentleman whose right to be regarded as an authority in that respect is indisputable.

> 'That doctrine,' the Professor said, 'is contrary to the fundamental principles of constitutional morality, is absolutely unsupported by usage, and has never been reduced to practice since the era of parliamentary government. 'There was', he added, 'no precedent, and nothing that could be tortured into a precedent, in support of a position calculated to lower the dignity of the Crown by the participation in party politics of its wearer.'

"The constitutional right of the King in British practice to refuse a dissolution still persists in theory, just as does his right to veto bills sent to him by the two houses of parliament. But the theoretical right of veto has not been exercised since the reign of Queen Anne; and the theoretical right to refuse a dissolution has not

been exercised since the reign of George the Third. The right of veto is as dead as Queen Anne; and the right to refuse a dissolution is, in the United Kingdom, as dead as George the Third.

"In the colonies there are many cases in which the Governor, in the exercise of gubernatorial powers, has refused to sanction dissolution. Originally, the Governor, was a complete autocrat. He was sent 'out' to govern. And he did. But gradually he suffered loss of his prerogatives in precisely the same way as that in which the King lost his. And the recent action of the Governor General is therefore equivalent to an assertion that Canada's political status is still that of a colonial nursling. To that, Canadians must make clear and unequivocal reply, and, fortunately, they have with them the important pronouncements of Sir Robert Borden. In his *Canadian Constitutional Studies* is the following:

> 'In the discussion of executive competence it is important to examine the status and functions of the Governor General. Before 1848 he was regarded as an Imperial officer responsible primarily to the British government through the Colonial Office. With the progress of responsible government, there came a necessary change in his relation to the administration of public affairs. In Canada this relation is the same in all essential respects as that of the King in Great Britain.'

"In his address at Yale University in 1923, Sir Robert said as follows:

> 'The Governor General had lost the quality of Imperial officer, through which at first he exercised a distinct influence upon public affairs, and he had become in effect a nominated president whose duties and powers in relation to Canada were practically the same as those appertaining to the Crown in the British Islands.'

"If Sir Robert's statement is accurate—and probably no one of Mr. Meighen's friends will dispute it—then the Governor General had no right to refuse Mr. King's request. In refusing it, he did something which no sovereign in England has done during the last hundred years. Attempt to uphold his action can be based only upon the ground that he has in Canada an authority which the British King himself would not pretend to were he himself in Canada.

"To Mr. Meighen's assertion that one class of cases in which the Crown has refused a dissolution is—

> 'that in which a prime minister, having asked for and obtained a dissolution, has failed to secure a majority,' and afterwards asks for 'a second dissolution merely on the ground that he is unable to command a majority,'

I reply that, so far from this being 'one class of cases', I doubt if there is record of a single case of that kind. The statement, moreover, is misleading: (1) The October election was not one specially requested. It took place, according to custom, at the end of four years. (2) It is true that in the election Mr. King did not obtain a majority. But neither did Mr. Meighen, nor anybody else. As between Mr. King and Mr. Meighen, it was indisputable that Mr. King had a better chance of carrying on the government without a dissolution than had Mr. Meighen. It would therefore have been absurd for Mr. King to resign in favor of a man who was less able than himself to carry on the government. The result of the election was nobody's fault. It produced a difficult situation. That situation was properly met by Mr. King carrying on as well as he could. But, as the result proved, the situation was such that only by a new election could the difficulty be solved.

"Even if we are yet in colonial swaddling clothes—even if the Governor General has still the right of exercising a parental control over us—the question remains, What principle ought to guide his action? To that the simple reply is, that he ought to be governed by one consideration, and one only, namely this: Was the political situation such as required for its remedy a dissolution of the House of Commons? If that was the only remedy for the situation, then the Governor General was absolutely wrong in declining to agree to the employment of that remedy, when asked by Mr. King. The necessity for an election was there. The advice of the prime minister was before him. The only ground upon which his refusal could be justified was that, for remedy of the situation, there was some method of procedure other than a recourse to an election. It may be believed that His Excellency thought that an election could be avoided by calling upon Mr. Meighen to form a government. And it may be that

His Excellency can say that he so believed because of the assurance given to him in that respect by Mr. Meighen. That is all possible. But it is very difficult to believe that Mr. Meighen's opinion as to the remedy for the situation was different from that of almost everybody else; or that he was able to persuade the Governor General to accept a view that was held by nobody outside Government House. One has only to look at the newspapers in order to see what the general belief was. For example, the *Montreal Gazette*, in its issue of Tuesday, 29th June—that is, immediately after Mr. Meighen had accepted office—stated as follows: 'The electors will now have the opportunity to end the state of uncertainty that has continued so long.' The *Gazette* even formulated the 'two main issues before the electorate', and wished well to the Conservative party.

"Disregarding constitutional discussion, the point, I feel sure, that will appeal to popular opinion, is the unfairness of the Governor General's action. On Monday when requested by the leader of one political party to sanction a dissolution, he refused. On Friday, when requested by the leader of the other political party to sanction a dissolution, he agreed. From all of which emerges one very important lesson: In discussions relative to the Governor Generalship, an argument in favor of the exclusion of Canadians from the highest Canadian office, and the filling of that office by a series of able and amiable, but nevertheless extraneous, gentlemen, has been that in times of crisis we should be sure that our highest executive officer would act in a perfectly impartial and constitutional manner. The record of June–July, 1926, ought to make impossible the repetition of such a argument.

MR. MEIGHEN.—In a speech at Ottawa on the following 20 July, Mr. Meighen said—

"No one understands better than Mr. Mackenzie King himself; that is why he seeks desperately for some other issue to engage the people's minds. It is only natural that he would come to the conclusion that any issue in the world would be better for him than the issue raised by the Customs committee. Not unnaturally he likes a constitutional issue, and today he struggles

to convince his Liberal followers that some great constitutional issue has arisen, and that the people do not need to think about the Customs scandal any more.

"The name of His Majesty's representative is dragged into the arena—something never done before in the history of elections in Canada. The conduct of His Majesty's representative was challenged flatly by Mr. Mackenzie King on the floor of Parliament. From this challenge his party now seeks to escape and from that challenge I think Mr. Mackenzie King himself would now like to escape.

"Nothing could be worse for Canada than to impeach the conduct of the representative of the throne and bring the great and revered link of Empire into the turmoil of political strife. Nothing could be more indefensible, nothing indeed more censurable than that such a step should be taken in the presence of the admitted truth that the representative of His Majesty acted with scrupulous honesty. This fact everybody admits.

"As a matter of truth, there is no constitutional issue. Are there any people in Canada really of opinion that the late Government or any Government at any time was entitled to dissolve a Parliament while a vote of censure was under review? Some one says that advice to dissolve Parliament has not been refused in England by His Majesty the King in the space of one hundred years. What I would like to say is: Has any Government in the space of one hundred years in England or in any of the British Dominions ever asked for dissolution of Parliament while a vote of censure was under debate? I give the answer myself. It can be definitely stated that never within a century, never in the history of Parliamentary Government as we have it today has any Prime Minister ever demeaned himself to ask for dissolution while a vote of censure on his own Government was under debate.

"In the present case that happened. For some days the motion to adopt the report of the Stevens committee was before the House; an amendment moved by Mr. Stevens was under discussion. The Government sought by supporting a sub-amendment of one of its friends, to get that sub-amendment adopted and thereby prevent the House from voting on the Stevens amendment of

censure. The Government failed in this attempt. Its advice to the House to accept that sub-amendment was rejected by a majority of two; the same night the advice of the same Government was rejected again.

"A third time its advice was rejected, and after those three reverses Ministers clearly saw that, when the vote of censure itself would come up, the days of the administration would be numbered, it then decided to change the jury. It did not like to be defeated; so the Prime Minister said to His Excellency: 'This jury must disappear; this Parliament must be dissolved.' The effect of that advice was simply this: 'If Parliament shows signs of going against me, even if that Parliament was elected on my own appeal, that Parliament must not live.' If such advice must always be accepted, then no Parliament could ever censure a Minister. If such advice must always be accepted, then the supremacy of Parliament would be over and the Prime Minister would be supreme himself.

"In the last one hundred years in England there have been thirty-four administrations. Of these administrations nineteen resigned, they advising dissolution simply because they could not command a majority in Parliament (4) Such is the course the late Prime Minister should have taken. During the same period there have taken place twenty-five dissolutions, followed by general elections; of those twenty-five not less than thirteen were granted to Governments which came into office since the previous general elections, just as did the Government of which I have the honor to be the head.

"Disraeli, in 1869, made it absolutely clear, as have other Prime Ministers many a time, that a Government so coming into office has a right of dissolution. But even a government coming into office after a general election held under the auspices of another, even such a Government would not have any right of dissolution in the midst of a debate on a vote of censure. To demand such a right is not to plead for responsible government; it is to plead for irresponsible government; to demand such a right is not to uphold our parliamentary institutions; it is really to

(4) The latter part of this sentence is as reported, but it probably does not accurately indicate what Mr. Meighen said.

stifle those institutions; to demand such a right is not to plead the cause of parliament, it is in effect to choke and strangle and prevent parliament from expressing its will.

"Under representatives of the Crown such as those who have honored this Dominion as Governor-General there need never be any fear for responsible government in Canada. The sphere of discretion left to a Governor-General under our constitution and under our practice is a limited sphere indeed, but it is a sphere of dignity and great responsibility. Within the ambit of discretion residing still in the Crown in England, and residing in the Governors-General in the Dominions, there is a responsibility as great as falls to any estate of the realm or to any House of Parliament.

"With all deference and in no spirit of controversy I say that within the sphere of that discretion the plain duty of the Governor-General is not to weaken responsible government, not to undermine the rights of parliament, not at all, it is to make sure that responsible government is maintained, that the rights of parliament are respected, that the still higher rights of the people are held sacred. It is his duty to make sure that parliament is not stifled by government, but that every government is held responsible to parliament, and every parliament held responsible to the people."

MR. EWART.—To these statements, Mr. Ewart published in *The Citizen* (Ottawa) the following:

"I gather from Mr. Meighen's speech of last night that the only ground upon which the action of the Governor General in declining a dissolution at the request of Mr. Mackenzie King can be attempted to be defended is, that no British government, during the last hundred years, had 'asked for dissolution of parliament while a vote of censure was under debate.'

"That may be true, but it is merely an example of the wider truth that no dissolution was ever asked for on precisely the same ground as any prior dissolution. And the sufficient reply is that there are several instances in which governments have not only been afraid of censure, but have actually been censured by parliamentary vote

and yet have asked for and obtained dissolution of parliament.

"In other words, if Mr. King had been defeated on the Stevens censure motion, that would not have effected in any way his right to ask for a dissolution. Mr. Meighen's researches have no doubt familiarized him with the validity of that statement; and as examples of defeated ministries asking for and obtaining dissolution, I refer to the occasions of 1831, 1841, 1859, 1886 and 1924.

"In 1831, the ministry had been defeated in the most significant manner, namely, by the refusal of supplies, yet it asked for and obtained a dissolution. Such a case had never happened before.

"In 1886, a parliament that had commenced only in 1885, was dissolved at the request of a ministry that had suffered defeat.

> 'It was the shortest and, so far as regards legislation the most barren parliament of the reign.—(*The Political History of England*, vol. XII., p. 384.)'

"Such a case had never happened before. The circumstances of the Baldwin elections of 1923 and the Ramsay Macdonald elections of 1924 are particularly instructive. The elections of 1922 had given the Conservative party, under Mr. Bonar Law, a confortable majority. A few months afterwards, Mr. Baldwin succeeded Mr. Bonar Law in the premiership, and, merely for the purpose of disengaging the Conservative party from a tariff pledge given by Mr. Law in the 1922 elections, he advised the King to dissolve parliament. Such a case had never happened before, nevertheless the King assented to dissolution.

"The new elections were a surprise to their originator. His majority was greatly reduced, with the result that, when the Labor and Liberal parties combined shortly after the opening of parliament, he was beaten. That was in the early part of 1924. Mr. Ramsay Macdonald of the Labor party, was entrusted with the reins of government, but before the year was up he sustained a heavy defeat (364 to 198 votes) by a combination of Conservatives and Liberals. Thereupon Mr. Macdonald asked for and obtained a dissolution. It was the third request within two years. It was made by, and granted to a man

who not only had been afraid of defeat, but had been overwhelmingly defeated.

"A further point in that connection must be noted: Mr. Macdonald's defeat was upon a motion of censure based upon a much more serious assertion than was contained in the charges against the King government. An article of extremely seditious character had appeared in *The Weekly Worker*, a communist paper. The editor, one Campbell, was arrested and put upon trial; but before the proceedings had gone very far the prosecution was withdrawn under the direction of the Attorney General.

"The charge against the government was that the withdrawal was dictated by the communistic wing of the Labor party; and Mr. Macdonald having treated a resolution providing for inquiry as one of want of confidence, the vote adverse to him was of highly condemnatory character. One might be induced to say that his position was very much worse than Mr. King's. From a constitutional point of view, it was not worse. It was not better. It was the same. For a ministry, whether anticipating defeat or actually defeated, is nevertheless in a position to tender advice to the Sovereign. Such a case as Mr. Macdonald's had never happened before.

"Upon another point Mr. Meighen's view of constitutional history must be said to be inaccurate. As reported, he said that the name of His Majesty's representative is dragged into the arena—something never done before in the history of elections in Canada. It would be much nearer the truth to say that down to the time of Lord Elgin there was hardly ever an election in Canada in which the name of the Governor was not brought more or less into the discussion, and if we cannot now escape from referring to the action of the present Governor, the blame attaches to those who have assumed responsibility for it. Mr. Meighen cannot surely have forgotten the elections of 1844, which followed upon Governor Metcalfe's assertion of a prerogative-right to appoint government officials. In those elections, the Governor was vilified in most unsparing fashion. It would not now be fitting that any personal attack should be made upon Lord Byng. He gets general credit for acting upon proper

motives. But his action must be attacked. In my view it is subversive of the principles of responsible government.

MR. MEIGHEN.—An extract from Mr. Meighen's Ottawa speech of the following 6 September is all that is necessary to make clear Mr. Meighen's position:

> "It is quite true that no Government in England has been refused dissolution in 100 years, but did England ever have a Government like the Mackenzie King Government? (Applause) No Government or Prime Minister of England or of any Dominion ever asked for dissolution in the whole history of responsible government, in the whole history of Parliaments, while there was a motion of censure, or even of want of confidence, hanging over its head in the House of Commons."

It was in this speech that Mr. Meighen when upholding the validity of his orders-in-council, turned upon Mr. Ewart with the following:

> "I defy, I dare Mr. King and all the Liberal party, or that great jurist Mr. Ewart, of the city of Ottawa, to go to the courts. Do not be haranguing Progressives in the quiet of your parlor, doing chore work for the Liberal party. Go to the courts if you really believe that our Government was not legally constituted."

MR. EWART.—To that speech, Mr. Ewart published the following reply:

> "Believing as I do that the constitutional question is the only one of any importance, I cannot allow Mr. Meighen's treatment of it to pass without comment. His only defence of the refusal of the Governor-General to act upon Mr. King's advice to dissolve parliament is, that Mr. King asked for dissolution 'in order to prevent the House from expressing its opinion of his government.' That being so, Mr. Meighen contends that Mr. King 'had no right to ask for it, and had no right to get it.' To that view there are several replies:
>
> 1. Mr. King has said that the ground suggested by Mr. Meighen for his request for dissolution did not exist. Mr. Meighen, in reply, says that Mr. King is not telling the truth. Into that controversy I do not enter.

"2. Mr. King has said that in his conversations with His Excellency, prior to the refusal to dissolve, no reference was made to the Stevens' motion pending in the House. Mr. Meighen knows whether that statement is or is not true. His conversations with His Excellency must have satisfied him as to it. And I am not aware that he has questioned its truthfulness. If it be true, it makes clear that His Excellency did not base his refusal upon the ground suggested by Mr. Meighen—indeed, that he did not think that the pendency of the motion was ground upon which refusal could be based. If he had thought otherwise, he would have referred to it in one of the conversations. Mr. Meighen's suggestion, therefore, that an endeavor to escape a vote of censure was the ground upon which His Excellency based his refusal is but a mere suggestion of Mr. Meighen. It does not accord with the facts.

"3. Admitting that 'no government in England has been refused dissolution in a hundred years,' Mr. Meighen said that:

> 'No government or Prime Minister of England or of any Dominion ever asked for dissolution in the whole history of responsible government, in the whole history of parliaments, while there was a motion of censure or even of want of confidence, hanging over its head in the House of Commons.'

"In my criticism of Mr. Meighen's previous Auditorium speech (*The Citizen*, 22 July last) I pointed out that the pendency of an adverse motion was quite immaterial. Without exhausting the instances, I referred to the occasions of 1831, 1841, 1859, 1886, and 1924 as cases in which an adverse motion had not only been made, but had actually been passed by the House and become a resolution of censure, and yet the respective ministries had asked for and obtained dissolutions."

After calling particular attention to the Ramsay Macdonald case of 1924 (referred to previously) Mr. Ewart proceeded as follows:

"I think it is probable that no case of a government in England being refused a dissolution ever occurred. It is admitted that there has not been one within a hundred years. I have not been able to find that there was ever one. And the reason is clear, namely, that of all the

prerogatives attributed to the King, the most indefensible would be a right to prevent a reference to the people of some subject or some political situation. No sovereign in England would dare any such interference and if (as I take it) Mr. Meighen agrees that the Governor-General here occupies the same position as the King in England, he was wrong in advising His Excellency to persist in his refusal of Mr. King's request.

"Referring to somebody's allegation of the invalidity of certain orders-in-council of the present government, Mr. Meighen challenges me to take a case to the courts instead of 'haranguing Progressives in the quiet of your parlor, doing chore work for the Liberal party.' Not only do I decline the challenge, but I add that, not having considered the question, I have no opinion, and have not expressed any, upon it. If, without study of it, I should hazard a surmise, I should say (a bit of a chore for the Conservative party) that upon that point Mr. Meighen is right. I make no complaint, however, of his reference to me. At a time when, by general consent, the injunction of the ninth Commandment has been temporarily suspended, and floods of vilification been substituted for argument, everyone must be content to absorb more or less of the incidental splashing.

MR. MACKENZIE KING.—Mr. Meighen's speech of 20 July was replied to by Mr. King on the 23rd. The more important portions of the reply were as follows:

"I have spoken of British justice; let me come now to a consideration of British usage, British practice and British law in their bearing upon events of the past few weeks, which events touch the very heart of our parliamentary institutions and traditions, and go to the very root of the system of responsible self-government, which, under the British Crown and the British flag, we believe it to be our rightful inheritance and our great privilege to enjoy.

"When, as I have already mentioned, I became convinced that the late parliament could not last, that no leader could so control the business of the House as to enable government to be carried on in a manner befitting British parliamentary institutions; in other words, that

the government of the country could not be conducted with the authority which should lie behind it, I so informed His Excellency the Governor General, and advised an early dissolution, to which, in accord with British practice, I believed I was entitled. Please note, I was not seeking to be continued in office, I was not asking His Excellency to declare that the government of which I had the honor to be the head had the right to govern, I was simply asking that the people who are, or who, at least, ought to be a sovereign power in the nation, might in the necessity of the circumstances, be given an opportunity of themselves deciding by whom they desired their government to be carried on.

"The first question I should like to ask is this, was I right, or was I wrong in the advice I tendered His Excellency; in saying that dissolution was necessary and inevitable? If, on Monday, I was wrong in advising dissolution, as the only solution of the existing situation, why was the same advice considered sound when coming from Mr. Meighen on Friday of the same week.

"When I advised His Excellency that in my opinion a dissolution of parliament was necessary, my colleagues and I enjoyed the confidence of the House of Commons. I had been prime minister throughout the whole of the session then near its close, and had been prime minister throughout the whole of the preceding parliament for four years and a half, in a very difficult period of that high office and never once as prime minister had I encountered defeat. I was in every particular entitled to advise, and according to British practice, I was entitled, I believe, to have my advice accepted.

"When, not quite four days later, Mr. Meighen, as the leader of another political party, gave the same advice to His Excellency, and was granted dissolution, he was the sole sworn member of a ministry that had been declared not to possess the confidence of the House of Commons. He had been prime minister for not quite three days, the House of Commons in that period of time had not only censured but had condemned his ministry in the most emphatic manner, declaring by formal resolution that its members had either no right to sit in the House

or to control the business of government, and that their actions constituted a violation and an infringement of the privileges of the House, a statement in so many words that the ministry had no right to exist."

"The second question I should like to ask is whether I was right or wrong in stating to His Excellency that if, as Prime Minister, I could not carry on in a manner befitting the honor and dignity of parliament under conditions as they existed in the House of Commons, neither Mr. Meighen nor any other member of the House could? If I was wrong, why did Mr. Meighen end the session in such a summary fashion, not even waiting to arrange for a formal prorogation?"

"In his speech in this auditorium on Tuesday evening the present prime minister ventured to express what he termed were the reasons why my advice was not accepted by His Excellency. He sought to have it appear that this was because of a vote of censure was under debate at the time. He even went so far as to put into my mouth words which I was supposed to have addressed to the Governor General, and, as if this were not enough, he had these words inserted in quotation marks in the copy of his speech given to the press and they so appear in the papers all over this country.

"In these circumstances, whether I might wish to do so or not, I am obliged to make perfectly clear what were the grounds on which His Excellency and I differed.

"I think I do full justice to His Excellency when I say that he conceived it to be his duty in the circumstances of the late parliament to act as a sort of umpire between the political parties in Canada. Indeed, I think I use His Excellency's own words when I say that he held the view that I had had a chance to govern and that Mr. Meighen had not been given a chance of trying to govern or saying that he could not do so, and that all reasonable expedients should be tried before resorting to another election. Holding this view and believing the prerogative of dissolution was his to exercise, His Excellency was unwilling at the time to grant a dissolution.

"I took the position which I have mentioned here tonight that Mr. Meighen's chances to govern had all along

been quite as good as my own, and that throughout the session the House of Commons had consistently declined to give him its confidence, and I did not see how it could now be expected to give its confidence to any ministry he might attempt to form; that as to which political party had the right to govern, was a matter which, as I had pointed out after the last general elections, it was for parliament to decide, if parliament were in a position so to do; that when parliament ceased to be in a position to make a satisfactory decision as to which party should govern, it was then for the people to decide.

"In neither case, I maintained, was it a duty or a responsibility of the Governor General to make the decision. I stated that in my humble opinion it was not for the Crown or its representative to be concerned with the differences of political parties, and that the prerogative of dissolution, like other prerogatives of the Crown, had come under British practice to be exercised by the Sovereign on the advice of his prime minister. It was for the Crown's adviser to say whether or not dissolution was necessary and for the Crown's adviser to take the responsibility of the advice tendered. Once a dissolution was granted, the people would soon say whether in the circumstances the advice tendered was or was not in accord with their wishes. In a word, the position I took was that in Canada, the relation of prime minister to Governor General is the same in all essential respects as that of prime minister to the King in Great Britain.

"That, may I say, is the position for which I now stand and for which the Liberal party in Canada stands. It need not involve His Excellency in any particular. I am prepared to accept all that is implied in the maxim, 'The King can do no wrong' and to say that it applies equally to His Majesty's representative in Canada. The present prime minister has fully accepted responsibility for the action of the Governor General in refusing to accept my advice. The issue, as respects the constitutionality of the Governor General's course of procedure is not between His Excellency and myself, but between the political parties represented by Mr. Meighen and myself, since, in the name of the parties we respectively lead, we have ac-

cepted full responsibility for views which are diametrically opposed as to what in a situation such as has arisen is the right constitutional position. In this matter, it is through their support of the respective political parties that the people of Canada have now the opportunity to make their opinions and wishes known.

"As to my right of dissolution, all I wish to say is that not for over one hundred years in Great Britain, and never since Confederation in Canada, has a dissolution been denied a prime minister who has requested it. It is true the prerogative of dissolution is a royal prerogative, and as such is rightly assumed to attach to the Sovereign's representative in a self-governing Dominion. But as with other royal prerogatives, the discretionary power of the Crown, with respect to dissolution, is supposed to be exercised upon the advice of a responsible ministry, and the Sovereign who would be unwilling to accept advice so tendered him would, unless he wishes to place his crown and throne in jeopardy, have to be very certain of finding a prime minister who would not only be willing, but also would be able to take the responsibility for his refusal of the advice tendered.

"That would mean, in the case of a refusal of dissolution, a prime minister who not only was willing, but who was able to demonstrate his ability when parliament was in session to carry on its proceedings. As prime minister, Mr. Meighen was unable to carry on the proceedings of the late parliament for the space of three days. The moment the right to existence of his ministry was challenged, that moment its every member foresaw its inevitable doom."

Mr. King then quoted the opinion of Professor Berriedale Keith as it appears *infra*, p. 211. But he followed it with the following unexpected admission:

"Though I am unable to admit that either the refusal to myself of a dissolution or the granting of a dissolution immediately thereafter to Mr. Meighen was a constitutional course of procedure, I am prepared to say that there may be circumstances in which a governor-general might find subsequent justification for a refusal to grant a dissolution of parliament. Such might be the

case where parliament is in session and the leader of another party having accepted the responsibility of the refusal of dissolution demonstrates after compliance with all constitutional obligations that he is able to carry on the business of parliament by the majority he is in a position to command in the House of Commons. Clearly any such possibility was not the case in the present instance.

"Mr. Meighen says there is no constitutional issue. Let me tell the present prime minister that he will find before the present campaign is over that there is a constitutional issue greater than any that has been raised in Canada since the founding of this Dominion. It is a constitutional issue not raised by His Excellency the Governor General, but by Mr. Meighen himself, and Mr. Meighen has only himself to thank that the issue has been raised, and that it overshadows everything else."

Mr. King dealt at some length with the proceedings in the Commons, and with the methods adopted by Mr. Meighen in forming his government and dissolving parliament.

SENATOR LYNCH-STAUNTON.—Senator Lynch-Staunton published in *The Globe* of 14 August a letter in which he said, in part as follows:

"To my mind there is no justification for stating that, since responsible government has been granted to the colonies, there is any difference of any kind between the power, or assumed power, or practice of the Governors-General and His Majesty the King." The sovereign "still has the ancient right of refusing dissolution if in his uncontrolled discretion he deems it in the best interests of the country."

He claimed that neither the King nor the Governor had lost his prerogative right to dissolve parliament:

"Mr. Rowell, to establish that the royal prerogative no longer exists, cites the fact that for one hundred years the Sovereign in England has not refused a dissolution to a Prime Minister. If it were shown that a Judge had for the greater part of his judicial life never refused judgment to the plaintiff, would it lie in the mouth of a disappointed plaintiff to assert that because he had always

favored the plaintiff he had no power to refuse him judgment? To make this statement an authority Mr. Rowell should have gone further and shown some case where the King had considered the reasons for his Minister's advice unacceptable and had in fact dissolved Parliament against his own judgment, because he believed he was bound to do so. That, and that alone will be a precedent.

> "I cannot appreciate why any person who has regard for the independence of Parliament should wish to be under the heel of a partisan prime minister. To give any prime minister a Cromwellian control over the House of Commons would in my mind be disastrous and most deplorable, and what possible benefit could arise from transferring the power from the Sovereign to the minister?"

If the analogy of the judge and his judgments cannot be accepted as a very convincing argument, the admission as to the power of the Governor General being the same as that of the King, is of some value. For the Senator was and is a very pronounced Conservative.

MR. R. E. GOSNELL.—In the election discussions, newspaper and platform, some of the Conservative contributors confined their observations to the constitutional practice in the United Kingdom, while others following Dr. Manion's lead urged colonial precedents. Among these last was Mr. R. E. Gosnell who, in a newspaper letter of 25 July, referred to the Letellier incident in Quebec in 1876 and those in British Columbia in 1899, 1900 and 1902. Why, he asked, does not Mr. Ewart who—

> "is intensely pro-Canadian, as in the same sense he is anti-British . . . . take Canadian home-made precedent, with which as a constitutional lawyer, he must be very familiar."

In reply, Mr. Ewart wrote as follows:

> "If when Mr. Gosnell said that I am anti-British, he meant that I am opposed to Canada's continuation of her present humiliating political association with the United Kingdom, he was right. If he meant that I am opposed to Canada engaging in the next British war merely because the United Kingdom is engaged in it, he was right. If he meant that I am anti-British in any other sense, he was

wrong—stupidly or maliciously wrong. I do not know which.

"I did not refer to the early Canadian cases, because, in my opinion, they have no bearing upon the matter in hand. Justification of actions of a Governor-General of Canada when in the enjoyment of a status which has recently been referred to by Sir Arthur Balfour and Mr. Amery as equal to that of the United Kingdom itself, cannot be founded upon the fact that Governors in our baby days acted in somewhat similar fashion. The fact that we were treated as incompetent in our youth is no reason why the treatment should be continued in our adult years."

MR. N. B. GASH, K.C.—Declaring that—

"the best and most satisfactory way of dealing with this controversial matter is to give you verbatim quotations with exact references from the well-known works of the two outstanding and generally recognized authorities on Parliamentary practice and procedure in Canada."

Mr. Gash published in *The Mail and Empire* (24 July) long extracts from Bourinot's *Parliamentary Procedure and Practice in Canada* and Todd's *Parliamentary Government in the British Colonies*.

MR. EWART.—In reply, Mr. Ewart published in *The Globe* (18 August [5]) the following:

"The extracts from Bourinot and Todd supplied by Mr. Gash to *The Mail and Empire* were fairly extracted and without the comment which can easily be applied to them, they would appear to contain strong support for the action of the Governor-General. Bourinot did say in the first edition of his work that—

> 'The responsibility of deciding whether in any particular case a dissolution should be granted must, under our Constitution, 'rest absolutely with the representative of the Sovereign' ";

but his foot-note to those words indicates that his opinion was wrongly based upon Clause 5 of the Letters Patent constituting the office of Governor-General, which is as follows:

[5] *The Mail and Empire* refused to publish the article. Hence the delay.

> 'And we do further authorize and empower our said Governor-General to exercise all powers lawfully belonging to us in respect of the summoning, proroguing or dissolving the Parliament of our said Dominion.'

Not observing that all other grants of authority (for example, appointments to office) were also to the Governor-General, Bourinot appears to have thought that Clause 5 applied to the Governor personally, and not to him with the advice of his ministers. Bourinot, afterwards, learned his mistake, and, in the last edition of his work, the paragraph which Mr. Gash quoted is not to be found.

"Mr. Gash's long quotations from Todd were useful when the book was published—32 years ago. They are now out of date. They applied to a colonial Canada, not to an almost emancipated Canada. The title of Todd's book is *Parliamentary Government in the British Colonies*. Were he alive he would not now say that the Governor-General is 'the source and warrant of all executive authority,' for he is now the source of nothing and he warrants nothing. Todd would not now say either that the Governor is 'the pledge and safeguard against all abuse of power by whomsoever it may be proposed or manifested.' Nor would Todd now speak of the Governor dismissing his ministers as old-time Governors were wont to do. I am satisfied that Todd would agree with the view expressed by Sir Robert Borden in his *Canadian Constitutional Studies*, as follows:

> 'In the discussion of executive competence it is important to examine the status and functions of the Governor-General. Before 1848 he was regarded as an Imperial officer, responsible primarily to the British Government through the Colonial Office. With the progress of responsible government, there came a necessary change in this relation to the administration of public affairs. In Canada this relation is the same in all essential respects as that of the King in Great Britain. The administration of public affairs is conducted by Ministers responsible to Parliament, and the Governor-General acts by their advice.'

"If that be correct (and I have not observed that Mr. Meighen quarrels with it), then, undoubtedly, the Governor-General was wrong when he refused to act upon the advice of his ministers. No British King during the last hundred years has so refused. Even if the

Governor-General assumed to resuscitate and act upon an expired prerogative power, he ought not to have withheld his assent unless the circumstances brought him within the limits prescribed by Todd as follows:

> 'If he believes that a strong and efficient Administration could be formed that would command the confidence of an existing Assembly, he is free to make trial thereof, instead of complying with the request of the Ministers to grant them a dissolution as an alternative to their enforced resignation of office.'

"The Governor-General did not so believe. Nobody so believed. Mr. Meighen lasted four days."

MR. N. B. GASH, K.C.—In a reply to Mr. Ewart, published in *The Mail and Empire* (26 August), Mr. Gash said that Bourinot's omission in later editions of his book, of the statement quoted by Mr. Gash ought to be attributed not to the discovery of Bourinot's mistake but to the fact that the introduction in which it had appeared was—

> "rewritten and much condensed, and there is no discussion in his later editions as to the principles governing the exercise of this prerogative right."

After extracting further quotations from Bourinot proving that this statement was inaccurate, Mr. Gash complained of Mr. Ewart having raised a "quibble" about the word "colonial"; referred to three instances in Australia (1904, 1905 and 1909) in which the Governor refused to dissolve parliament upon the advice of the ministry; and cited Keith, Lefroy and Judge Riddell as authorities in support of his views.

MR. EWART.—Mr. Ewart replied in *The Globe* (3 September) as follows:

> "I suppose it is to lack of lucidity on my part that must be attributed the character of Mr. Gash's letter. He, no doubt, regards his letter as a reply to mine, but, apart from an attempted explanation of a paragraph in Bourinot, it has no relation to what I said. I must try again.
>
> "1. Speaking generally, I am willing to grant the correctness of everything that everybody has said with regard to a Canadian Governor-General's position prior to, say, the war.
>
> "2. Mr. Gash has satisfied himself with quoting a

number of such authors—particularly Todd, whose book was published 32 years ago. As far as I am concerned, he is welcome to all his quotations. In my previous letter I said that the views of such writers 'are now out of date. They applied to a colonial Canada, not to an emancipated Canada.' Nevertheless, completely misunderstanding my statement, and thinking that my objection was to the use of the word 'colonial', Mr. Gash continues to pile up old quotations.

"3. My point is that such quotations apply to a period in the history of our political development in which we were spoken of, with sufficient correctness, as a colony, whereas now our status is acknowledged to be something much more respectable. (Incidentally, Mr. Gash is wrong about the Secretary of State for the Colonies).

"4. There is no doubt that, in the earlier stages of our history, our Governors-General had, and exercised, large powers of government—very much larger powers than were exercised by the King in the United Kingdom. And the fundamental question for discussion upon this occasion is whether the Governor still retains that position or whether his relationship to his ministers is not now the same as the relationship between the King and his ministers.

"5. Sir Robert Borden, Senator Lynch-Staunton, and I think I may safely add Mr. Meighen, agree that at the present time the relation of our Governor to his ministers is the same as the relation of the King to his Ministers

"6. If that be true (and I do most heartily believe it to be true), then all quotation of writers with reference to what I may call our colonial period is irrelevant.

7. I illustrate that by saying that if our Governor undertook to appoint some members of the civil service, his action could not be supported by quotation of authors of the time of Lord Metcalfe, the Governor who quarrelled with his ministers on that point.

8. The difference between Mr. Gash and me is noticeable also in the fact that he, when quoting from Professor Keith, gives us extracts from a book published

in 1912, whereas the subsequent development of Canada's political status having been well recognized by Professor Keith, he stated publicly last July as follows:

> 'Lord Byng, in refusing the dissolution of Parliament advised by Right Hon. Mackenzie King, has challenged effectively the doctrine of equality in status of the Dominions and the United Kingdom, and has relegated Canada decisively to the colonial status which we believed she had outgrown . . . . The whole weight of Dominion precedent since the Imperial Conference of 1911, when the Dominions first appeared on equal terms with the United Kingdom, tells directly against Lord Byng's decision.'

9. To me it appears very clear that if Canada is still in the colonial stage something can be said in support of the Governor's action. But if our Governor's relation to his ministers is the same as that of the King to his ministers, then, if his action is to be supported, it must be by precedent, or at least by argument, which would apply to the position of his Majesty himself. Precedent or argument of that sort, Mr. Gash does not offer."

MR. N. B. GASH, K.C.—The following letter (in part) from Mr. Gash appeared in *The Globe* of 11 September—

"I had no idea of being drawn into a controversy over this question when furnishing my article of authorative quotations at the request of *The Mail and Empire* in July last, but I cannot allow Mr. Ewart's latest comments on my references to pass unchallenged.

"The sole authority cited by Mr. Ewart is a statement attributed to Professor Keith since dissolution of Parliament and obviously at the time without knowledge of the facts. Keith's casual statement, if correctly reported, is so directly contradictory to the quotations given by me from his work on '*Responsible Government in Dominions*', published in 1912, and repeated in the latest edition of 1925, that it may be passed over as mere idle and inconsiderate comment.

"This author, in still another work, '*Dominion Home Rule in Practice*,' published as late as 1921 (the title or date of which Mr. Ewart will scarcely dare to cavil at), confirms his views so clearly pronounced in his other work referred to. At p. 10 he states:

> 'Constitutional usage still permits a Governor to decline to accept the advice of his Ministers, if he thinks that he can procure other advisers to take their place in the event of their resignation. In particular, a Governor is expected, in the event of a request from a Ministry for a dissolution on a reverse in Parliament, to withold his assent if he considers that an alternative Government can be formed to carry on business.'

"Lord Asquith, late Liberal Premier of Great Britain, and a brilliant constitutional lawyer, whose authority no one can doubt, has pronounced emphatically upon this question as follows:" (This pronouncement may be seen *supra*, p. 187.) The whole weight or practice, usage and authority so consistently support the Governor-General's action as to lead to the conviction that this whole issue was raised as a mere subterfuge with some ulterior and sinister motive, and what that motive is may well be surmized in the shocking details of the customs scandals and wholesale election frauds, as established by the report of the parliamentary committee and judicial proceedings.

"Impartial British editors of both political stripes endorse the Governor's action as being the only one possible under the circumstances. *The English Review*, August number, concludes some interesting comment thus:

> 'The late Prime Minister's sour attack on an honest and plainly impartial umpire will not gain him many supporters and the talk of 'military pro-consuls reducing Canada to the level of a Crown colony' would be written off as sheer nonsense if it were not so essentially mischievous.'

"So also, *The National Review*, August number, after setting out the facts, states that the Governor-General had no other recourse than call on Mr. Meighen, and, the possibilities of this situation being exhausted, grant him a dissolution, and ends by referring to Mr. King's so-called constitutional issue in this way:

> 'We refuse to believe that such claptrap will go down with Canadian people, who will rate those who resort to it at their proper value, and will keenly resent any and every attempt to treat the Governor-General as a 'partisan'. Is this an unscrupulous effort to play up to the U.S.A. in the interests of reciprocity?' "

It will be observed that Mr. Gash makes no reference to Mr. Ewart's statement that—

> "Sir Robert Borden, Senator Lynch-Staunton, and I think I may safely add Mr. Meighen, agree that at the present time the relation of our Governor to his ministers is the same as the relation of the King to his ministers."

And the authority of these men did not prevent Mr. Gash continuing his quotations from Keith as to the special position of Governors.

MR. ARTHUR E. O'MEARA.—Mr. O'Meara (of Osgoode Hall, Barrister,) in a letter to *The Globe* 3 September contended, in part, as follows:

> "The Sovereign, in exercising this prerogative power of dissolution, which he holds in trust for the nation, is not only entitled, but bound, to judge according to all material circumstances of the particular occasion, and all grounds presented for his consideration, whether by the Committee of the Privy Council, known as the Cabinet, or by the Prime Minister."

In support of this view, Mr. O'Meara quoted at length from a book by Earl Grey, and declared that—

> "the British Parliament deliberately conferred upon the Governor-General, as representative of the Sovereign, the same full authority relating to dissolution of the Canadian Parliament possessed by the Sovereign in relation to dissolution of the Parliament of Great Britain."

But Mr. O'Meara spoiled that by arguing that the Canadian constitution clearly provided that some powers of the Governor were to be exercised "with the aid and advice of the Privy Council for Canada", while as to others there is "no provision for the aid and advice of the Privy Council of Canada." These considerations in Mr. O'Meara's opinion, settled the matter and rendered "immaterial matters which have been the subject of much discussion."

MR. EWART.—In *The Globe* of 10 September, Mr. Ewart published the following reply:

> "Like some others of the debaters, Mr. O'Meara contends that 'no constitutional question exists.' But his reason is new, namely, that 'the question involved is settled by the British North America Act,' that statute rendering immaterial 'matters which have been subject to much discussion.' Notwithstanding the absence of anything

to discuss, Mr. O'Meara proceeds to discuss it at very considerable length, and supplies a long quotation from a writer of 62 years ago, for the purpose of showing what British practice really is. He ignores all subsequent writers, and quite consistently declares that 'the practice usually followed by British Sovereigns' is one of the immaterial matters. To me, that is all very confusing.

"The argument which Mr. O'Meara bases upon the British North America Act is, as I think, extremely crude. He points out that by Section 38 it is—

> 'The Governor-General who summons the House of Commons for business, and that, by Section 50, the Commons continues for five years, subject to be sooner dissolved by the Governor-General.'

"And he seems to believe that by these sections the power of summoning and dissolving the Commons is vested in the Governor-General personally. That appears to me to be not only an impossible interpretation, but one that I feel sure Mr. O'Meara himself would shrink from were he to consider its implications.

"It is, in the first place, opposed to all practice. Nor for very many years, either in England or in Canada, has there been a dissolution of Parliament save upon the advice of ministers. The invariable practice is that the ministers advise, and that the Sovereign or Governor-General acts upon that advice. The dissolution of two months ago was not the personal act of the Governor-General. It was in reality the act of Mr. Meighen, and that gentleman has frankly accepted responsibility for it.

"Were it otherwise—were Mr. O'Meara's view the right one—the attack upon constitutional grounds during the present election would be directed at the Governor-General instead of at Mr. Meighen. Only if there be no escape from such an interpretation of our constitution shall we accept that view.

"What, then, is the true interpretation? Reply is not difficult. Let us look at some other sections of the statute and consider what the words 'the Queen' and 'the Governor-General' means in them:

"Section 9 states that—

'the Executive Government and Authority is hereby declared to continue and be vested in the Queen.'

Section 15 provides that—

'the Command-in-Chief of the Land and Naval Militia, and of all military and naval forces of and in Canada, is hereby declared to continue and be vested in the Queen.'

"Section 24 provides that—

'the Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate . . . .'

"Section 34 provides that—

'the Governor-General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.'

"Section 54 provides, with reference to money votes, for previous recommendation by 'the Governor-General'.

"Section 59 provides that—

'a Lieutenant-Governor shall hold office during the pleasure of the Governor-General . . . .'

"Section 96 provides that the appointment of Judges in all the Provinces shall be made by 'the Governor-General'.

"Nobody would suggest that it is in the Sovereign personally that is vested 'the Executive Government and Authority' in Canada; that it is the Sovereign personally who has 'the Command-in-Chief'; that the Governor-General personally makes appointments to the Senate and to the Bench; that the Governor-General personally appoints and removes the Speaker of the Senate; that it is the Governor-General personally who recommends money votes; that it is the Governor-General personally who has power to dismiss Lieutenant-Governors. Everybody agrees that, in all these cases, the titular head of the Executive acts upon the advice of his ministers and that he would not dare to do otherwise. If that is beyond dispute, why must we say that in the sections of the statute relating to the summoning and dissolving of the Commons the words 'the Governor-General' mean the Governor General personally?

"The true interpretation undoubtedly is 'the Governor-General' in his constitutional, and not in his personal,

> capacity. And that necessarily raises the question which Mr. O'Meara says does not exist, namely: What is the Governor-General's constitutional position? Upon that point, the British North America Act is very properly silent. It would have been very foolish to have stereotyped, in our constitution in 1867, Canada's political status as of that date. Thank heaven, we have since then made some very remarkable advances. Sir Robert Borden was undoubtedly right when he said as follows: (The quotation may be seen *supra*, p. 190.
>
> "Will Mr. O'Meara be good enough to tell me whether a British Sovereign ever—ever—ever refused to dissolve parliament when advised to do so by his ministers? Perhaps, in order to be specific, he might add the date—if he can find one.

MR. HARTLEY MUNRO THOMAS.—Mr. Thomas published in *The Globe* of 28 July a letter of a column and a half in the course of which he said as follows:

> "The 'constitutional issue' took a turn for the better in your number of last Friday Morning (6), when Mr. J. S. Ewart claimed specific precedents for his case. Hitherto too many of our cloud-cuckoo constitutionalists have relied on the mere opinions of politicians, of lawyers, of text-books, and not sufficiently on the facts which alone concern a constitutionalist . . . . Mr. Ewart pleads, I take it, that the dissolutions of 1874 and of 1900 were asked for without reasons of public interest, and that the Queen acquiesced because, as Queen, she could do no other. Mr. Ewart says for example, that in 1874 Mr. Gladstone was 'still in enjoyment of a solid Liberal majority', and consequently had no *prima facie* case for a dissolution."

Mr. Thomas in the next fifty-two lines of his letter contended that, at the time in question, Gladstone had not a "solid" majority and finished his reference to the dissolution by the assertion that it "came because the Ministerialists were too undisciplined."

Passing to the dissolution of 1900, Mr. Thomas challenged Mr. Ewart's assertion that 'There were no reasons on public grounds for suddenly plunging the country into a general election.' Mr. Thomas said—

(6) The reference is to Mr. Ewart's letter *contra* Reid of 23 July, quoted *post*, p. 225.

"that there was extreme difference of opinion about the prosecution of the Boer War to an 'unconditional surrender', after the spring of 1900, when the major operations were concluded. This was a vital issue in which Mr. Ewart himself surely had interest at the time."

Passing to the election of 1923, Mr. Thomas said—

"surely it is an eminently reasonable and proper way for a Government to effect a right-about-face in policy against its last electoral platform to appeal to the people. And to return to the facts, it was exactly for this reason, that is, a new policy of the Government on its major plank, that the Queen granted the dissolution of 1886 under circumstances till then unprecedented and only repeated in this very year, 1923."

Dealing with the 1924 election, Mr. Thomas said that—

"as Mr. Ewart is, after all, merely an amateur historian, may I refer him to a scholarly lawyer", namely, Edward Jenks who writing in his *Government of the British Empire*, said that if—

"a House of Commons was elected since the formation of the Ministry, then presumably the latest expression of the popular will is adverse to the Ministry, which cannot, therefore, insist on a dissolution of Parliament. (This was the exact position in which Mr. King found himself). Mr. Ewart as a political writer has appealed to history, but incorrectly. May not a historian, therefore, refer him to a learned opinion from his own profession?'

MR. EWART.—Mr. Ewart's reply to Mr. Thomas appeared in *The Globe* of 3 August as follows:

"And now Mr. Thomas. He is different. I should judge that he is not a lawyer, for a lawyer knows, and Mr. Thomas does not, that a plea to the inducement—a denial of an immaterial statement in the introductory part of an argument—is useless; that, to be effective, a plea in denial must traverse the main allegation. Let readers judge.

"In answer to my statement that the King had not during the last hundred years refused to assent to a request by his Ministers for a dissolution, my former opponent (7) said that 'a dissolution has never been advised

(7) Mr. R. A. Reid, post, p. 228.

except under conditions making it reasonable and proper.' In reply I gave three instances in which (apart from the existence of a developed convention allowing great latitude to ministers) the conditions were neither 'reasonable nor proper'. I said that—

> 'in 1874 Mr. Gladstone, while still in the enjoyment of a solid Liberal majority, asked for a dissolution upon the ground that his Government could not undertake further work without a fresh access of strength; in other words, Mr. Gladstone thought the moment opportune for political party advantage. And so, although, according to Sir Sidney Low, there seemed absolutely no reason of state for an appeal to the constituencies, the King gave his assent, and elections were brought on to strengthen the Liberal party.'

"It is obvious that if, instead of saying, in the inducement of this argument, 'Gladstone while still in the enjoyment of a solid Liberal majority,' I had said 'Gladstone with a shaky majority,' the case would have been made stronger, for the desire for a political party advantage by a dissolution would have been made clearer. Nevertheless. Mr. Thomas seeks to displace the whole argument by telling me (in effect) that instead of saying 'solid', I ought to have said 'shaky'. He says that in one book Sir Sidney Low said 'solid' while in another he said 'shaky', and that two other authors declared for 'shaky'. Have it as you will, Mr. Thomas. Say 'shaky' if you wish, and strengthen the case.

"And please receive my acknowledgements for rendering it unassailable by saying, as you do, that 'the dissolution came because the ministerialists were too undisciplined and could not carry on'. Not for public reasons, then, did the Queen assent to the dissolution. It was because of Mr. Gladstone's followers had become mutinous. And so I repeat that apart from the convention above referred to, Gladstone's request for a dissolution was clearly neither 'reasonable nor proper', but was nevertheless assented to.

"Turning to the khaki election of 1900, in which the Salisbury-Chamberlain Government shabbily exploited war enthusiasm, Mr. Thomas declares that the vital issue was whether or not the war should be pressed to

'unconditional surrender'. Not so. The war had been reduced to a mere hunting down of guerilla groupes. Parliament had nearly two years to run. And the Government was strong enough to do as it pleased. The Liberals were hopelessly divided; 62 supported the war; 68 opposed it; 30 sat on the fence, and 27 wobbled (*Annual Register*, 1900, pp. 155–6). I repeat that in cricket and other competitive activities, taking advantage of one's opponent is not thought to be either reasonable or proper. Nevertheless, the Queen assented to the dissolution.

"Referring to the election of 1923, Mr. Thomas expresses the opinion that a general election is 'an eminently reasonable and proper way to effect a right-about face in politics'. The Conservative party had carried the elections in November, 1922. After only one session of parliament, it regretted one of its election-planks, and, under a new leader, asked the King to assent to another election. Upon what ground? Merely that the party had got itself into difficulties. The request was unreasonable but the King assented. Mr. Thomas appears to think that the same thing happened in 1866. There was not, as far as I can see, any parallel between the cases.

"Mr. Thomas misses altogether the point which I made in connection with the Ramsay Macdonald elections of 1924. I referred to that incident, not as Mr. Thomas appears to think, as an example of assent to dissolution when the request was unreasonable and improper. Upon the contrary, I said that I deemed it both reasonable and proper. I referred to it in reply to Mr. Reid's assertion that Mr. King asked dissolution in order to escape the censure motion, and that upon that ground the Governor-General rightly refused to grant it. To that argument, the Ramsay Macdonald case formed a complete reply. For not only had a censure motion been proposed, but it had actually been carried by the overwhelming vote of 364 to 198, and yet the King assented to dissolution when so advised by Mr. Macdonald. Very evidently, neither the pendency of a censure motion, nor its passage, affects the right of ministers to advise dissolution. Nor is it of importance to the King, who (it cannot be too often repeated) has not for over 100 years refused to assent

to a dissolution, no matter upon what ground it was asked. It ought to be observed that the expiry of parliament by effluxion of time is almost always interrupted by an advised dissolution. At a guess (nothing else is possible) one might say that the Sovereign did not approve of a good many of the dissolutions. Mr. Thomas himself mentions 1886. Nevertheless, assent was always given—always—always.

MR. THOMAS.—The reply of Mr. Thomas occupied nearly three columns of *The Mail and Empire* of 12 August. Granting that—

> "the Governor-General has no more power than has the King in his older Dominions, in Great Britain itself",

Mr Thomas passed in review every British election since 1837 and asked:

> "Where in all this story is there precedent for Mr. King's request for a 'second election' . . . . Lord Byng has followed the precedents of Queen Victoria and of King George."

MR. EWART.—Mr Ewart replied to Mr. Thomas (*Mail and Empire*, 17 August) as follows:

> "I fancy that the three-column letter of Mr. Thomas which appeared in your issue of August 12th, was intended to convince the unwary, (1) that between 1837 and 1926 no British Government had asked for a 'second dissolution': (2) that, constitutionally, every government has a right to one dissolution, and to one only; and (3) that Mr. King's request in June last was refused because it was a request for a 'second dissolution'. Mr. Thomas said, for example:
>
> > 'Every government called to office by a vote in the House of Commons has the right to one dissolution. It is true that the Crown has never refused dissolution to a prime minister in Mr. King's position, because no prime minister ever before asked for it.
> >
> > 'Following the unbroken precedent, this defeated government was allowed to have one appeal to the country.' Mr. Gladstone's Government 'was properly allowed one appeal to the electorate.'
>
> "The first and second points: In June, 1895, the Rosebery Government resigned and Lord Salisbury's was installed. Lord Salisbury immediately asked for and was

accorded a dissolution. That parliament would naturally have lasted till June 1902. But in September, 1900 Salisbury asked for and obtained a 'second dissolution.' Not only so, but the request was a mean one. The war-operations in South Africa were proceeding favorably. On the previous 13th March, Lord Roberts had entered Bloemfontein. On the 28th of May a proclamation had been issued annexing the Orange Free State. On September 1, the Transvaal had been annexed. Nothing remained but the hunting down of the scattered burgher bands. Lord Roberts was on his way home. And, as *The Annual Register* of the year has it:

> 'The election was to be hustled on in order that the patriotic fervor which animated the whole nation might be exploited if possible, in the interests of a particular party.'

"Request for an election, under such circumstances, was a mean proposal to place before the Queen. And it was a request for a 'second dissolution'—something that never happened (according to Mr. Thomas), until Mr. King did it. But the Queen assented.

"Again, in 1906, the Liberal government, under Campbell-Bannerman, asked for and obtained a dissolution, and, although the parliament would naturally have lasted until 1913, the same ministry, under Mr. Asquith in January, 1910, asked for and obtained a 'second dissolution'. Mr. Asquith wanted it merely for the purpose of strengthening his party in his quarrel with the House of Lords over its re-refusal to pass the finance bill. Mr. Thomas would excuse or justify this 'second dissolution' on the ground that while the Lords 'cannot turn out a Government' it 'can force an appeal to the people'. But that is exactly what the Lords learned that they could not do. Note the following: On November 23, 1909, the Marquess of Lansdowne moved in the Lords—

> 'That this House is not justified in giving its assent to the bill until it is submitted to the judgment of the country.

"But Mr. Asquith absolutely refused to admit the existence of any such doctrine. He said that it was 'the hollowest political cant'. And the Commons resolved—

> 'That the action of the House of Lords in refusing to pass into law the financial provision made by the House for the

> service of the year is a breach of the constitution and a usurpation of the rights of the Commons.'

"Upon the hustings, Mr. Asquith announced that, if supported, it would be—

> 'The first duty of the government to make the recurrence of the Lords' action impossible by a statute embodying the settled doctrine of the constitution that it was beyond the Lords' province to meddle in any way with national finance.'

"The Lords imagined (as does Mr. Thomas), that they could compel the Commons to submit the merits of a bill to the electorate. They found that all that they had done was to induce Mr. Asquith to submit a proposal for curtailment of their own pretensions.

"But worse (for Mr. Thomas) than a 'second dissolution', the year (1910) had not expired before Mr. Asquith asked for and was conceded a third Why now? The Lords had passed the finance bill, and Mr. Asquith had proceeded with his curtailing resolutions—popularly referred to as 'the Government's veto resolutions'—but, before the Lords could deal with the ensuing bill, King Edward died, and an effort was made, by conference between the party leaders, to arrive at agreement. They failed. It was evident that the Lords would reject the proposed curtailment, and Mr. Asquith once more for the purpose of strengthening his party in an attack upon the Lords, asked for and obtained a third dissolution.

"I do not say that the requests in these cases were unreasonable. I do say (1) that they completely displace Mr. Thomas' contention in June last that there was no precedent for a 'second dissolution' by the same Government, and (2) that they are inconsistent with Senator Lynch-Staunton's idea that, in the exercise of the dissolution prerogative, the King is 'guided by what he believes to be in the public interest not regarding party politics'.

"Approximately one-half of the people of the United Kingdom agreed with the Commons and the other half with the Lords, and the King, in that most momentous struggle, aided (because, constitutionally, he could not do otherwise), by the exercise of his prerogative, one of the contesting parties. He even went so far along constitutional lines as to agree that—

> 'in the event of the policy of the government being approved by an adequate majority in the new House of Commons, His Majesty will be ready to exercise his constitutional powers, which may involve the prerogative of creating peers, if needed, to secure that effect shall be given to the decision of the country' (May's *Constitutional History of England*, III, p. 368).

"One more instance of a 'second dissolution': Mr. Bonar Law, in the end of 1922, asked for and obtained a dissolution, and within a year the same government, under Mr. Baldwin, asked for and obtained a 'second dissolution' merely for the purpose of disengaging itself from an election pledge. Consideration of the 'public interests' had no bearing upon that case, nor upon any of the others. Indeed, it is hardly too much to say that the dissolution prerogative, like all the other prerogatives, has passed from the Sovereign to the Cabinet. Does anyone doubt that Mr. Ferguson will dissolve when it suits him? Does anyone imagine that, when he prefers his request, the Lieutenant-Governor will be 'guided by what he believes is in the public interest, not regarding popular politics'– That is not the idea of Mr. Ferguson.

"The third point: Were there a rule that no more than one dissolution should be given to one ministry, it would certainly not apply to a case where a parliament is dissolved in accordance with custom rather than because of a special request. As Mr. Lowell has said (*The Government of England*, I., 246): "As a matter of fact, parliament never dies a natural death". It usually comes to an end, at the instance of the ministry, about a year prior to its statutory termination. That was the character of the dissolution of last October. It was the usual dissolution in anticipation of the statutory expiration of parliament. Mr. King's request of last June was, therefore, the first proposed invasion of customary expiration, and that is all that can be debited to him.

"An absurd rule: Were there such a rule as Mr. Thomas asserts, it would be a very absurd rule, as may be seen by applying it to the present case. It is not disputed (1) that the constitution of the Commons in June last was such as precluded the effective discharge of governmental duties by either Mr. King or Mr. Meighen,

and (2) that the only remedy for that situation was a new election. That being clear, it became Mr. King's duty to advise the Governor-General to apply the remedy. If it be said that he ought rather to have resigned, the answer would be that his resignation was not a remedy, Under the circumstances, no question could exist as to Mr. King's 'right to a dissolution'—to use Mr. Thomas' phrase. It was a case of duty, not of right. And if there were any rule which prevented a prime minister advising the King to do that which was essential in order that the government of the country might be carried on effectively, it would be a phenomenally absurd rule.

"The replies therefore to Mr. Thomas' contentions are: (1) there is no such rule as he suggests; (2) no authority for its existence can be cited; (3) within the limits of the present century a 'second dissolution' has been conceded three times, and a third dissolution once; (4) Mr. King's request in June last cannot fairly be regarded as one for a 'second dissolution', for the dissolution in the previous October occurred according to custom; (5) any such rule as Mr. Thomas suggests would be a phenomenally bad one."

MR. R. A. REID.—Having listened to an address by Mr. Ewart to *The Daughters of Canada* (15 July [8]), Mr. R. A. Reid published a reply in *The Globe*, in which, after some unimportant observations, he said as follows:

"All he says is, that it has not been used in England for a hundred years, but that it has been exercised and used quite frequently in the overseas Dominions, and that there it is gradually falling into abeyance, as in England. Now that is the sum and substance of all his Kingdom Paper ravings. He makes a number of quotations and cites authorities, nearly all irrelevant, and in some cases he omits to cite the real references to the crux of the problem under consideration, and I will show this to be true as I proceed. He acknowledges for all practical purposes, that the Governor or Governor-General has the power of refusing a dissolution of Parliament when he says this:

'The only possible ground or consideration which could

(8) Reported in *The Toronto Daily Star*, 16 July 1926.

> have justified a refusal of dissolution to his then Prime Minister, Mr. King, would have been the possible chance of avoiding another election.'
>
> "So you will see that even Mr. John S. Ewart admits there are occasions and circumstances which entitle a Governor-General to refuse dissolution, although he really should not use any such discretion in Canada, because it is not done in England."

For support of his opinion, Mr. Reid quoted from a book by Leonard Courtney—*Working Constitution of the United Kingdom and its Outgrowths;* and a book by Professor Hearn—*Government of England.* Answering his own question "Why was it (dissolution) refused in Canada to Mr. King", Mr. Reid said—

> "Here was a premier, his Cabinet and Government, practically under impeachment by the House of Commons. Parliament was in the act of passing judgment on the culprits when the chief political conspirator hurries off to the judge—Governor-General Byng—and requests him to kindly issue an order directing the jurors—that is, the members of the House of Commons—who had prepared their verdict of 'guilty', that they need not render any finding on the matter, as he had decided to withdraw the case from the jury, because, although the culprits are guilty, and if you do not decide as I direct I will dissolve and dismiss the jury. That is, in effect, what Mr. King wished Governor-General Byng to say. But the Governor-General no doubt said:
>
> > 'No. If you are guilty you must resign. And if you are guilty and won't resign I will dismiss the whole Ministry."

Mr. Ewart.—Mr. Ewart's reply appeared in *The Globe* on 23 July, as follows:

> "I should like to make reply to Mr. Reid's letter. He affirms that I acknowledged, 'for all practical purposes', the Governor-General's power to refuse a dissolution, when I said—
>
> > 'The only possible ground or consideration which could have justified a refusal of dissolution to his then Prime Minister, Mr. King, would have been the possible chance of avoiding another election.'
>
> "The quotation is sufficiently accurate for Mr. Reid's purpose, but when placed in its proper context it loses

the significance which he attaches to it. For my argument was that practically the King had no such power; that the Governor had no greater power than the King, and that, therefore, the Governor had made a mistake. I then added that, supposing all these arguments to be wrong, and supposing that the Governor had a discretion, 'the only possible ground', etc.—as Mr. Reid has it.

"The Governor's refusal to sanction elections is justified by Mr. Reid upon a ground that appears to indicate his possession of an extraordinarily fertile but extremely errant imagination. His idea is that Mr. King asked the Governor to save him by dissolving Parliament from a verdict in the Commons of 'guilty'. To which the Governor is supposed to have replied:

> 'No. If you are guilty you must resign. And if you are guilty and won't resign then I will dismiss the whole Ministry.'

"I do not believe that any one else in Canada could have thought it possible that Mr. King asked for a dissolution upon the ground suggested by Mr. Reid. Mr. King has told us (and there appears to be no reason for questioning his statement) that he advised a dissolution because neither he nor Mr. Meighen could carry on effectively the government of Canada. And if we do not know exactly what the Governor said in reply we may be sure that it was not that imagined by Mr. Reid (for the last occasion upon which a King dismissed his ministry was in 1784); and that it was not as some other persons may have imagined, namely:

> 'I agree, Mr. King, that there is no remedy for the present situation other than dissolution, but I think that I ought to give your opponents a chance to get a crack at you before the elections.'

"Mr. Reid will look in vain in British as well as colonial history for such a nonsensical reply. The Governor would not like to see it on record. For the rule is very clear that the King must abstain from participation in the quarrels of political parties. And there was nothing so unusually reprehensible in the charge made against the government as to make proper the Governor-General's infringement of that rule. All that Mr. Stevens's motion

alleged as against the Prime Minister and the government was that they—

> 'Had knowledge for some considerable time of the rapid degeneration of the Department of Customs and Excise, and their failure to take prompt and effective remedial action is highly indefensible. The conduct of the present Minister of the department, the Hon. George H. Boivin, in the case of Moses Aziz, is utterly unjustifiable.'

"The resolution, therefore, was of the usual character of attacks by Opposition leaders. The committee, which had at great length examined the whole subject, agreed to a unanimous report in which there were no such censures. And the object of the Opposition was to add the above condemnatory clauses to that unanimous report. Very clearly his Excellency had nothing to do with the bandying of political charges of such a nature.

"To Mr. Reid's question whether the Governor-General ought to function merely as 'a figurehead' and 'a rubber-stamp', the replies are as follows:

"1. The Governor-General ought to act as does the King.

"2. As Bagehot puts it: 'The sovereign has three rights: the right to be consulted, the right to encourage, the right to warn. And a King of sense and sagacity would want no others'. (*The English Constitution*, sixth edition, page 75).

"3. In theory and for all practical purposes the prerogative powers of interference in legislation and administration are gone—the taxing prerogative since Charles I, the veto prerogative since Queen Anne, the dismissal-of-Ministers and the refusal-of-dissolution prerogatives since George III. They are all capable of resuscitation, but no British King will ever risk his crown by an attack upon the well-established principles of responsible government and ministerial responsibility. Does Mr. Reid imagine that King George would antagonize the millions of members of a political party by declining to act upon the advice of their leader?

"Mr. Reid would not have cited Leonard Courtenay and Professor Hearn had he kept in mind that nobody disputes the theoretical right of the Crown to refuse dissolution. For these authors were dealing with the case

of a ministry defeated at the polls, facing an Opposition capable of carrying on the Government, and immediately asking for a new election. Although Mr. Courtenay thinks that under such circumstances the King might refuse to sanction dissolution, he rightly might have added that such a ridiculous case has never happened, and never will happen, in a country so amenable to public opinion as the United Kingdom or Canada. In other words, while the prerogatives remain they are practically—that is, under all conceivable circumstances—as dead as the respective sovereigns who last employed them.

"Challenging my argument that the King has not during the last hundred years refused to assent to a request by his ministers for a dissolution, Mr. Reid says that—

> 'A dissolution has never been advised except under conditions making it reasonable and proper.'

So far from that being the case, the right of a prime minister to request dissolution for mere party advantage purposes is so well established by convention that Sir Sidney Low says in his book, *The Governance of England:*

> 'Under the English system it is always in the power of a Cabinet to rush the appeal to the electorate.' And he adds that the 'power of the Prime Minister to call a dissolution when he pleases increases the authority of the Cabinet. It can be used as a kind of penal pressure if ministerialists are too undisciplined and the Opposition too obstructive.'

"Let me supply three out of the many instances in which dissolution was asked and granted, although the conditions under which the request was made were (apart from the recognized convention above referred to) both unreasonable and improper:

"1. In 1874 Mr. Gladstone, while still in the enjoyment of a solid Liberal majority, asked for a dissolution upon the ground that his Government could not undertake further work without a fresh access of strength. In other words, Mr. Gladstone thought the moment opportune for political party advantage. And so, although, according to Sir Sidney Low, 'there seemed absolutely no reason of State for an appeal to the constituencies', the King gave his assent and elections were brought on in order to strengthen the Liberal party.

"2. In 1900, too, there were no reasons on public grounds for suddenly plunging the country into a general election. The whole energies of the people were being devoted to the prosecution of the Boer war. But the Salisbury-Chamberlain administration saw in the war-enthusiasm of the people a splendid opportunity for re-establishing themselves in power, and for that reason only they advised the Queen to grant a dissolution. Her Majesty, of course, refrained from remonstrance, and, acting constitutionally, gave her assent. In cricket or other competitive activities taking a mean advantage of one's opponent is not thought to be either reasonable or proper.

"3. The elections of November, 1922, gave Mr. Bonar Law and the Conservative party a very comfortable majority. A few months afterward Bonar Law resigned and his successor, Mr. Baldwin, within twelve months of the previous elections advised the King to assent to another dissolution for the mere purpose of enabling him to get rid of a tariff pledge given by Mr. Bonar Law during the 1922 elections. I think Mr. Reid will agree with me that to precipitate a general election merely to enable a political party to change an item of its policy is (apart from the convention) both unreasonable and improper.

"And now let us notice the last of the British dissolutions. The Baldwin elections of 1923 were a surprise to their originator. His majority was greatly reduced, with the result that, when the Labor and Liberal parties combined shortly after the opening of parliament, he was beaten. That was in the early part of 1924. Mr. Ramsay Macdonald of the Labor party was entrusted with the reins of government, but before the year was up he sustained a heavy defeat (364 to 198 votes) by a combination of Conservatives and Liberals. Mr. Macdonald now asked for and obtained a dissolution. It was the third request within two years. It was asked for and granted to a man who not only had been afraid of defeat, but had been overwhelmingly defeated

"Was his request unreasonable and improper? If so, it is a test case for Mr. Reid. In my view, it was both

> reasonable and proper, for, the Commons being constituted as it was, the only remedy was a dissolution. Mr. Baldwin, with the largest following, had been beaten. Mr. Macdonald, with the next largest, had been beaten. Nobody imagined that Mr. Asquith, with still fewer supporters, could carry on. The only remedy was a dissolution, and the King assented.
>
> "Apply that case to our situation. Neither Mr. King, Mr. Meighen nor Mr. Forke could effectively carry on the government of the country, as everybody knows. The only remedy was dissolution. Mr. King advised dissolution, and the Governor-General ought to have assented."

MR. R. A. REID.—In a long letter (two and one-half columns) in *The Globe* of 23 August Mr. Reid commenced with the following:

> "I have been endeavoring to prove and show the public that the Governors-General of Canada, as well as all the overseas Dominions of the British Crown, have an unfettered discretion given them by the people for their protection and welfare under the constitution, to refuse a dissolution of parliament under certain circumstances and conditions, and that the case of the King government supplies an instance, fortified by precedent and authority which I have cited, when dissolution will be refused, and not granted."

At considerable length, Mr. Reid referred to the circumstances attending what was called the *Pacific Railway Scandal* of 1891. After some repetition of previous arguments, and some irrelevances, Mr. Reid said—

> "The people of Canada will be able to judge for themselves after reading the foregoing statement of the constitutional position the very serious nature of Mr. King's offense in trying to cover up a public scandal by attempting to smother a vote of censure with a dissolution of parliament, after trying by political deception to mislead the Governor-General of Canada into granting his unconstitutional request."

And Mr. Reid asked whether we should be guided by Mr. A. J. Balfour (who was uselessly quoted as having emphasized the condemnatory effect of votes of censure)—

"or the opinions of an opportunist like Mackenzie King, or the views of an anti-British, anti-English, anti-Imperialist supporter of Mr. King like Mr. John S. Ewart?"

MR. EWART.—Mr. Ewart replied in *The Globe* on 26 August as follows:

"Premising that personal vituperation is not argument and need not be noticed, I offer the following as reply to such portions of Mr. Reid's letter as seem to present the appearance of coherence:

"1. If Mr. Reid holds, as he appears to hold, that our Governor-General has the right to exercise a discretion with reference to dissolution which the King himself has not, I refer him to Sir Robert Borden, Mr. Meighen and Senator Lynch-Staunton, who will effectively correct him.

"2. If Mr. Reid holds, on the contrary, that the relations between our Governor and his ministers are the same as the relations between the King and his ministers, then he ought to admit that our Governor was wrong when he refused to act upon the advice of his prime minister, Mr. Mackenzie King. For no King has done the like during the last hundred years—how much further back I do not know.

"3. What Mr. Reid says about my objections to his quotations from old books is very inaccurate, but quite irrelevant, and so may be passed.

"4. Mr. Reid's assertion that Professor Keith 'distinctly states that he (Mr. King) was not entitled to any such consideration', is very misleading. The Professor's statement was as follows:

> 'Lord Byng, in refusing the dissolution of parliament advised by Right Hon. Mackenzie King has challenged effectively the doctrine of equality in status of the Dominions and the United Kingdom, and has relegated Canada decisively to the colonial status which we believed she had outgrown.'

"5. What Sir Richard Cartwright said and did in 1874 (detailed by Mr. Reid in 96 lines) is entirely immaterial. If Mr. Reid declines to recognize the difference in Canada's political status between that time and now, he ought to cease discussing Canadian constitutional questions.

"6. Mr. Reid's statement, that Mr. King advised the Governor-General to dissolve—

> 'for the only reason because a vote of censure and condemnation was about to be passed upon him, his ministry and government by the House of Commons sitting as a jury in the Customs scandal, and so as to avoid the stigma of public impeachment attaching to his administration,'

is (I am afraid I must say it) absolutely untrue. Mr. King, as he has told us, based his request to the Governor upon the simple ground that, with the Commons constituted as it was, neither he nor Mr. Meighen could effectively carry on the affairs of government, and that the only remedy was an election. That was a good reason, well based.

"7. A stronger characterization than 'absolutely untrue' might well be applied to Mr. Reid's statement that 'Mr. King now admits that he did not tell the Governor-General the truth, but, rather, misled him, because he did not say anything about the vote of censure'. The Governor reads the newspapers and he is not a fool.

"I heartily dislike such language as Mr. Reid applies to Mr. King, namely:

> 'A political prevaricator, or as a teller of political untruths, and as a politician who is a promulgator of false political doctrines, or as a public man who uses the truth with penurious frugality.

"8. In the conversations between the Governor and Mr. King, nothing was said about the vote of censure, because it had no bearing upon the subject under discussion. The Governor did not think it had, or he would have referred to it. Mr. Reid appears to think that its pendency was a sufficient reason for the Governor's refusal to act upon the advice of his minister. His Excellency was not of that opinion, or he would have said so.

"9. I did not suggest, as Mr. Reid alleges, that 'the cases of the Baldwin Government in England in 1922 and the Ramsay Macdonald government in 1924' are similar to the case in hand. No two cases are precisely alike.

"10. But I do say that the Baldwin government case is one of the four of the present century in which a ministry asked for and obtained a 'second dissolution'.

"11. And I do say that the Ramsay Macdonald Government case makes clear the irrelevancy of the pendency of the vote of censure. For Mr. Macdonald asked for, and obtained, without any hesitation, a dissolution, not merely after notice of a motion of censure had been placed upon the order papers, but after it had been voted upon, and carried by the overwhelming vote of 364 to 198."

MR. REID.—In a letter to *The Gazette* (Montreal) late in September, Mr. Reid said he had discovered a case in which, in the United Kingdom, the King had refused to agree to a dissolution advised by his ministers.

"Mr. Asquith" Mr. Reid said "was refused a dissolution of parliament by King George in the year 1910 . . . . In support of what I have stated regarding the refusal of a dissolution to Mr. Asquith in 1910, let me cite the following extract from the papers and correspondence of Sir Almeric Fitzroy, (published in 1926), who was for a great many years the trusted primate and confidential servant of the British Crown authorities, and Secretary of the Imperial Privy Council and Cabinet in England. He resigned in 1925. He says on this matter, at page 422:

> 'No sooner has one party taken the false step of bringing the conference to a close, in order that the judgment of the constituencies should be invoked, than the other caps the indiscretion by attempting to force a dissolution at the bidding of its extreme supporters without having a technical case to claim from the Crown the exercise of its prerogative in that regard. Lord Morley, in discussing the matter this morning, was perfectly frank in agreeing that the King's position in refusing Mr. Asquith's request was a very strong one and that of the Government, so far as at present developed, very weak.' "

And so the only evidence of the refusal—the only refusal of its kind in the history of the United Kingdom—is a note in a diary of a conversation with Lord Morley.

MR. EWART.—Mr. Ewart's reply appeared in *The Gazette* on 1 September. It was, in part, as follows:

"In his previous letters, Mr. R. A. Reid's reply to the assertion that within the last hundred years no British sovereign had refused to sanction dissolution of parlia-

ment at the instance of a minister was 'because none has ever been requested that was improper or unmoral.' Forced to abandon that notion, he now asserts that a refusal actually happened in 1910. As sole authority for the assertion, he quotes from a book by Sir Almeric Fitzroy, who, in his diary, under date of 16th November, 1910, noted something that could have been nothing but a rumor. Now, when everybody might well know its character, Mr. Reid reproduces it as follows (See above). If it were true that the King had refused to act upon Mr. Asquith's advice, we should have observed two consequences, namely, (1) that Mr. Asquith would have resigned immediately (as, in similar case, Mr. Mackenzie King did), and (2) that there would have been no dissolution. But the facts are exactly contrary, namely, (1), Mr. Asquith did not resign, and (2), dissolution did take place. Had Mr. Reid been honest, he would have said that on the page of Sir Almeric's book next to that to which he referred is the statement that the King assented to the dissolution.

"That the rumor of the King's refusal which reached Sir Almeric, or which he originated, was untrue, is made apparent not only by the foregoing considerations but by the following: It was on the 15th November that Mr. Asquith and Lord Crewe waited upon the King and received his further assent to the creation of a sufficient number (some hundreds) of new peers in order to overcome the resistance of the House of Lords to the Government's proposals—

> 'Thus, when parliament reassembled on the 15th November all were agreed that its life would be short' (May's *Constitutional History of England*, 1912 edition, vol. III, pp. 368-9).

"Please note that the 15th November was the day before the date of Sir Almeric's entry in his diary. The impossibility of Sir Almeric's statement being true is made further manifest by the fact that not only was there no objection on the part of the opposition of the day to the dissolution, but that they desired it, and in debate referred merely to the inopportuneness of an election being held in December instead of January. In Sir Almeric's

book, immediately following Mr. Reid's quotation, it is said that—

> 'The tactics of the Opposition were to defer a general election till the New Year, and the tactics of the Government to get it over by Christmas.'

"In the debate which followed upon the announcement of the dissolution Mr. Arthur Balfour, the leader of the opposition, said:

> 'We have, speaking as a party, not the slightest objection to an election, whether on Monday next, or the Monday after, or any date which it may please His Majesty's Government to advise the King to select.'

"Referring to the inconveniences of 'two elections coming close upon one another', Balfour said:

> 'I admit that that cannot be avoided. I agree it is almost certain that a general election could not be deferred more than a relatively small number of weeks or months.'

"From all this, it appears clear that, apart from the difference between December and January, nobody, except Sir Almeric, suggested objection to the dissolution. When I say anybody, I mean nobody qualified to speak on the part of the opposition, for it is quite true that Mr. Belloc, for instance, referring to 'the election on which the two front benches are determined in conference and by agreement', said that it was not desired by the country.

"Such misleading letters as that of Mr. Reid cannot be too strongly deprecated. Very probably, he has given to very many people an impression that will remain with them. Truth never can completely overtake misrepresentation."

MR. MEIGHEN AND MR. FORKE

After the new government had sustained its defeat on 1 July, assertion was made that the Progressives had promised support, and that Mr. Meighen had been justified in depending upon the promise. In conspicuous setting on its front page, *The Mail and Empire* headed its relation with the words "PROGRESSIVES SHOWN GUILTY OF SERIOUS BREACH OF FAITH". Mr. Meighen

himself made no such assertion. The facts are as contained in a statement authorized by a conference of the Progressives (9):

> "On Tuesday, June 29, it was made known that Mr. Meighen had accepted an invitation to form a government. This he did without having communicated with the Progressives, or seeking their co-operation. A conference of the Progressive group took place the same day, during the course of which a telephone communication was received by Mr. Forke requesting him to meet His Excellency the Governor-General. Seized of the importance of the situation, the group, after discussion, undertook to give to Mr. Forke a confidential memorandum for his guidance in any conversation that might take place. It was clearly understood by all our members, first, that the memorandum was simply a guide for Mr. Forke; secondly, a general indication that we were prepared to act fairly with the new administration, and facilitate the completion of the session's business; and third, was purely voluntary, and in no sense could it be regarded as a contract.
>
> "It was, of course, always based on the assumption that the new ministry was legally constituted and capable of functioning. The memorandum was not addressed to His Excellency, nor was any other communication from the Progressive group directed to the Governor-General. Mr. Meighen had no assurance from our group, nor did he seek an assurance. No promise was broken, for no promise had been made. However, had the Conservative contemporary government been legally and constitutionally established, the Progressives would undoubtedly have given it assistance in completing the work of the session. This fact may be proved by the following incidents:
>
> "1. The Progressives requested an interview with Mr. Meighen, and secured it at the very time when Mr. Forke was being consulted by His Excellency. In this interview no mention whatever was made of co-operation or assistance, and it was solely for the purpose of ascertaining the procedure Mr. Meighen intended to adopt.
>
> "2. A majority of the Progressives rejected the purely partisan fiscal motion introduced by the Liberals.

(9) *The Citizen*, Ottawa, 5 July 1926.

"We assisted in dismissing the Conservative shadow government for the following reasons:

"1. It was not legally capable of functioning either as to the introduction of money bills or estimates, or in the letting of necessary contracts.

"2. The act of Mr. Meighen in attempting to usurp the functions of government in so illegal a manner is evident when it is known that the proper step for Mr. Meighen to have taken was to have sought adjournment for six weeks to have properly elected and sworn his ministry.

"3. The action of the Governor-General in refusing to accept the advice of his adviser, the late prime minister was unconstitutional, and calculated to restore Canada to a purely colonial status."

Mr. Forke issued a personal statement in Winnipeg in which according to a Canadian Press Despatch of 7 July he said that—

"The responsibility for any misapprehension entertained by His Excellency the Governor-General as to what would be the attitude of myself and other Progressive members toward the new Prime Minister and his 'shadow Cabinet' must rest upon Mr. Meighen, along with the responsibility for the dissolution of parliament before the fruits of its labors in the past session were garnered.

"The statement denies than any assurance of Progressive support of the new Meighen ministry had been given, either to Baron Byng or to Right Hon. Arthur Meighen, before the latter was sworn in as Prime Minister, and he had never been asked for such assurance.

"After the new Premier was sworn in, the statement continues, Progressives in caucus passed a resolution for the guidance of Mr. Forke, setting forth their intentions toward the new government, these being dictated by anxiety to preserve the results of the session's labors.

"The Robb motion declaring the government's conduct of the business of Parliament unjustifiable was not contemplated at the time the resolution was passed, says the statement. But the arguments in support of it convinced the majority of the group that Mr. Meighen was not justified in carrying on."

CONCLUSIONS

STATUS OF CANADA.—It is not correct to say with Professor Keith and Mr. Gash [10] that—

> "Constitutional usage still permits a Governor to decline to accept the advice of his Ministers, if he thinks that he can procure other advisers to take their place in the event of their resignation."

The relations between the Governor-General and the Canadian ministers are the same as those which obtain between the King and the British ministers.

DISCRETION OF KING.—It is not correct to say, with Senator Lynch-Staunton [11] that the King—

> 'has the ancient right of refusing dissolution if in his uncontrolled discretion he deems it in the best interests of the country.'

Since the inauguration of responsible government, there has been no case in England in which the Sovereign refused to act upon the advice of his ministers with reference to dissolution.

ESCAPING CENSURE.—It is not correct to say, with Mr. Meighen [12] that—

> "No Government or Prime Minister of England, or of any Dominion ever asked for dissolution in the whole history of responsible government, in the whole history of parliaments, while there was a motion of censure, or even of want of confidence, hanging over its head in the House of Commons."

On various occasions in England (1831, 1841, 1859, 1886 and 1924) the sovereign acted upon the advice of his ministers although a motion of censure had been not only moved, but carried, in the Commons. The case (among others) of Ramsay Macdonald who in 1924 was censured by an overwhelming vote, but nevertheless asked for and obtained a dissolution, is a sufficient reply to Mr. Meighen's assertion.

NO SECOND DISSOLUTION.—It is not correct to say with Mr. Thomas [13] that a ministry is entitled only to one dissolution. There are various cases quite inconsistent with the statement. There are for example, in recent years, the case of Lord Salisbury in 1900; of Mr. Asquith in 1910; and of Mr. Baldwin in 1922. In Mr. Asquith's case the King assented not only to a second

(10) Ante p. 212.
(11) Ante p. 205.
(12) Ante p. 198.
(13) Ante p. 220.

but to a third dissolution. Although Mr. Meighen in his statement of 2 July ([14]) raised objection to a second dissolution, he made no reference to it in his speeches 20 July ([15]) and 6 September ([16]).

Such a rule as that alleged by Mr. Thomas would be absurd. It would prevent ministers advising a dissolution when circumstances had made obvious that that was the only solution of difficulties.

UNREASONABLE REQUEST.—To the contention as urged by Mr. Reid that—

> "A dissolution has never been advised except conditions make it reasonable and proper."

there can be cited amongst other cases that of Mr. Gladstone in 1874, that of Lord Salisbury in 1900, and that of Mr. Baldwin in 1922. In all these cases, mere party advantage was the motivating reason for advising dissolution. It is not difficult to imagine circumstances in which a request for "a second dissolution" would be so grossly improper as to warrant refusal of it by the King([17]).

SETTLEMENT OF THE QUESTION

The elections (14 September 1926) resulted in the return of 119 Liberals; 91 Conservatives; 11 Liberal-Progressives; 11 United Farmers of Alberta; 8 Progressives; 3 Labor; and 2 Independent. Mr. Meighen resigned office on 25 September and was succeeded by Mr. Mackenzie King.

In this way, the Canadian electorate settled the Constitutional Question of 1926, and made appropriate the clause of the Report of The Imperial Conference of that year which declared—

> "In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government."

([14]) Ante p. 186.
([15]) Ante p. 192.
([16]) Ante p. 198.
([17]) Ante p. 188.

WAR-TIME PROPAGANDA

The illusion imposed upon Sir George Foster by war-time propaganda—his acceptance during the conflict of the propaganda which asserted that—

> "this fight" was one "for freedom and high ideals and for the liberty and defence of our common country" [18],

was shared by the vast majority of Canadians. A rapidly increasing number are now learning with him that they were most shamefully deceived. In a recent article in *Queens Quarterly* [19] he said as follows:

> "How this after-study and research into the preceding diplomacy and subsequent conduct of the war dispels our war-time illusions, and lays bare the trickery and falsehood played upon our most sacred feelings of patriotism and willingness to sacrifice life and fortune for the fair cause of justice and liberty!"

Publication by the governments of the United Kingdom, Germany, France, Russia, Belgium, Serbia and Austria, and the revelations of many of the principal actors—Viscount (formerly Sir Edward) Grey, the British Foreign Secretary; Poincare, the French President; Sazanoff, the Russian Foreign Minister; Bethmann-Hollweg, the German Chancellor: Von Jagow, the German Foreign Minister and others have made clear to students the truth as to "the cause of the war." There was no single cause. And no single culprit. Among the original belligerents—Serbia, Austria-Hungary, Russia, Germany, France and the United Kingdom—all were censurable, although not all in equal degree, and no two for similar reasons. Of later participants, Japan, Italy, Bulgaria and Roumania entered the war for their own respective purposes and quite voluntarily. Belgium, and the United States were forced into the war. While Turkey and Greece were partly tricked and partly kicked into it.

The propaganda activities have to a large extent been laid bare in such books as those of Mr. H. D. Lassall, *Propaganda Technique in the World War;* Lord Ponsonby in *Falsehood in Wartime;* C. E. Montagu in *Disenchantment;* Norman Angell in *The Public Mind;* Lippmann in *Public Opinion;* and Lowes Dickinson in *The International Anarchy.* The following is a worth-quoting

[18] House of Commons, 18 June 1917.
[19] Summer, 1929.

extract from an article by Mr. Kingsley Martin in *The Political Quarterly of April 1930:*

> "In times of peace it is rare for people who are anxious for some working picture of the world to be restricted to a single source of propaganda. Even the habitual reader of the *Daily Mail* hears some conversation which throws doubt upon the perfect adequacy of its leading articles. But during a war every nation is in the isolated position of passengers on board an ocean liner. A simple picture of the world is presented in the unanimous Press. The public only asks to have its courage kept up and the patriotism, business acumen, and political ambitions of Press proprietors alike encourage them to perform this service. Censorship deals with any surviving recalcitrants and prevents discordant facts slipping into the daily paper. The enemy (whether Germany, England, France, Russia or Italy) is composed entirely of black-hearted but cowardly bullies who lose every battle but who are yet extremely cunning and only to be defeated by the maximum expenditure of effort. No modern war can be fought unless an overwhelming majority of common citizens are convinced that right is wholly on their side. That is why wars are so difficult to prevent: they are fought by idealists in a passion of rectitude.
>
> "Victory is dependent upon a unanimous belief in a talismanic myth. The public desires to believe. The Press is the condenser through which war enthusiasm is transmitted. The politician must either endorse each lie, convincing himself that it is a regrettable necessity, or retire to wait for days of sanity. In office he is helpless without the Press on his side. Modern war is lost and won by the progeny of this unholy liaison."

MR. ASQUITH'S TESTIMONY.—The principle point with reference to responsibility for the outbreak of the war between Germany and Russia relates to the Russian mobilization and the German declaration of war. The official documents appear to make clear that while negotiations for peace were actively proceeding, while for that purpose Germany was putting the heaviest pressure upon Austria-Hungary even to the extent of threatening to withhold support if the Emperor-King refused to be reasonable—while that was going on, Russia mobilized her army against Germany and thus made counter-action by Germany not only justifiable but necessary. Any possible doubt of the correctness of that reading of the documents was removed by the publication after the war of the Diary of Mr. Asquith, the Prime Minister at the time of the happenings. In that he noted under date of 1 August 1914, that when most of his colleagues had left his house after a cabinet meeting (Italics now added)—

> "Sir W. Tyrrell arrived with a long message from Berlin to the effect that *the German Ambassador's efforts for peace had been suddenly arrested and frustrated by the Czar's decree for a complete Russian mobilization.* We all set to work, Tyrrell, Bongie, Sir Maurice Bonham-Carter, Drummond

and myself, to draft a direct personal appeal from the King to the Czar. When we had settled it I called a taxi, and in company with Tyrrell drove to Buckingham Palace at about 1.30 a.m. The King was hauled out of his bed, and one my strangest experiences was sitting with him, clad in a dressing gown, while I read the message and the proposed answer."

The King's telegram was as follows:

"I cannot help thinking that some misunderstanding has produced this deadlock. I am most anxious not to miss any possibility of avoiding the dreadful calamity which at present threatens the whole world. I therefore make a personal appeal to you to remove the misapprehension which I feel must have occurred, and to leave still open grounds for negotiation and possible peace. If you think I can in any way contribute to that all important purpose, I will do everything in my power to assist in reopening the interrupted conversations between the Powers concerned. I feel confident that you are as anxious as I am that all that is possible should be done to secure the peace of the world" (20).

To King George, the existence of "some misunderstanding," as he politely phrased it, was very evident. There appeared to be no reason for frustrating the efforts for peace of the German Ambassador at Vienna. There must be "some misunderstanding": and very evidently the King believed that it was the Czar who could "remove the misapprehension,"—really, cancel his mobilization—and thus "leave still open grounds for negotiation and possible peace."

These documents settle, surely forever, that Viscount Grey intended to mislead his readers when he wrote, in his *Twenty Five Years*:

"But, when Austria condemned the Serbian reply as unsatisfactory, the German Emperor did nothing; and after that he let the German and Austrian Governments veto a Conference to settle the one or two points that the Serbian reply had left outstanding" (21).

"Germany ceased to talk of anything but the Russian mobilization I could do nothing to stop that . . . . I felt impatient at the suggestion that it was for me to influence or restrain Russia. I could do nothing but express hopes in general terms to Sazonof" (22).

Ottawa, June 1930. JOHN S. EWART.

(20) Coll. Dip. Docs., p. 537.
(21) Vol. II, 25.
(22) Vol. I, 330.