

Duncan Campbell Scott



*The Makers
of Canada: John
Graves Simcoe*

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CHAPTER I

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THE CANADA ACT

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It was on February 25th, 1791, that a royal message apprised the House of Commons that it was the intention to divide Quebec into two separate provinces, and the bill was introduced on March 7th by Pitt. The advisability of repealing the Quebec Act had been the subject of much agitation and debate, and hardly had the peace been concluded when demands were made, mainly by the English-speaking inhabitants of the province, for a properly constituted House of Assembly and for the trial by jury in criminal cases.

The portions of the province above Montreal had become settled by soldiers of the disbanded regiments and by Loyalist refugees, and they desired a change in the tenure of land to free and common socage from the feudal tenure which obtained under the Quebec Act of 1774. The partizan bias of some of the foremost agitators for these changes, in what afterwards became the lower province, led to proposals designed rather to place the strength of government in the hands of the minority than to establish upon broad and generous principles a government for the people, legislating for the good of the province. The spokesman of these agitators for constitutional changes, Mr. Adam Lymburner, a Quebec merchant of Scottish extraction, requested that one half the representatives from Lower

Canada should be chosen from the towns, which would throw the balance of power into the hands of his party and race. But it was with a very different desire and actuated by a nobler motive that the bill which was to inaugurate the principle of colonial self-government was designed and carried. Grenville, writing to Guy Carleton, Lord Dorchester, then governor-general of Canada, on October 20th, 1789, accompanied a draft of the proposed bill with a general survey of the measure. The letter contains a paragraph elucidating the principles upon which the bill was drawn: "Your Lordship will observe that the general object of this Plan is to assimilate the constitution of that Province to that of Great Britain, as nearly as the difference arising from the manners of the People and from the present situation of the Province will admit. In doing this a considerable degree of attention is due to the prejudices and habits of the French Inhabitants, who compose so large a proportion of the community, and every degree of caution should be used to continue to them the enjoyment of those civil and religious Rights which were secured to them by the Capitulation of the Province, or have since been granted by the liberal and enlightened spirit of the British Government."

It is upon the life and power of these principles that the welfare and harmonious permanency of the Canadian confederation depends.

Such expressions could not have fallen coldly upon the mind of Dorchester; they are in effect his own, and are merely the echo of opinions and sentiments by which his conduct as governor was consistently guided. The weight of his judgment was thrown against the division of the

province. He brought to the criticism of the draft bill his great knowledge of the condition of the country and his sympathy with the inhabitants. His views previously expressed were that for some time the only organization required by the settlements which were to be included in the upper province was that provided for a county; and a survey of the early Acts and proceedings of the legislature of Upper Canada will show this to have been to some extent the case. But the importance of the Canada Act lay not so much in its immediate necessity as in the principle of colonial self-government which it carried into effect. While really an Act of separation, by its clauses cleaving one province into two and providing for the self-rule of each, it was also distinctly the forerunner of those Acts of union which cemented the dominion and made confederation. In fact confederation, even in its present sense, was not unknown to the statesmen of the great minister's day.

A statement is here and there made that the present Canadian political union is artificial and will not bear the storm of change, which will break upon it from alien provincial interests, and the very weight of growth which will encumber it with almost imperial burdens. But it augurs well for the life of this many-branched tree that its planting is a century old and that its growth has been gradual.

Colonel Morse was doubtless the first to suggest the advantage of a union of the colonies in North America. In 1783 he pointed out that a federation of the Maritime Provinces with Canada would lead to the upbuilding of a great and prosperous domain.

Chief-Justice Smith, who may be said to have drafted the first scheme for confederation of the British possessions in America, was a native of the old province of New York. In the year 1763 he was appointed chief-justice of the province. During the time of doubts and agitations, when the revolutionary spirit was rising like a wave, Smith remained neutral, but in 1778 he espoused the British cause. Upon the conclusion of the war he accompanied Carleton to England, and was subsequently appointed chief-justice. Whatever opinion may be held as to Smith's character and motives, and both have been impugned, it cannot be denied that his judgment was sound and his opinions of the causes of the revolution consistent with facts. He argued that the provinces had outgrown their forms of government, and that the small legislatures acting independently had failed to create common political interests or to associate themselves as units in a confederated empire. His recommendation looked towards the provision of a legislative assembly and council for the whole of British America from Bermuda to Hudson Bay. The council was to consist of life members. The assembly was to be chosen by the provincial Houses. A governor-in-chief was to hold power above the lieutenant-governors, and was to have the option of assenting to a bill or reserving it for the royal decision. Provincial Acts were to be referred for approval to the federal or central government. In the main these terms and those of the British North America Act are synonymous but it needed nearly a century of political conflict before the colonies and the mother country were ready for so sweeping and so novel a change.

It had been the intention to introduce the bill for the division of the province during the previous session, but the uncertain state of the relations with Spain rendered this inadvisable. With war as a contingency it was deemed impolitic to further unsettle a colonial dependency which might become the cause of demands, if not the scene of actual invasion, by the United States. Dorchester, therefore, remained at his post and was not summoned to England until March of 1791. It was hoped that he might arrive in time to assist in clearing and adjusting the many points which still remained open and debatable. He did not arrive, however, until the Act had become a statute. But the fullest discussion was given to the measure, and its opponents had the privilege of laying before the House the reasons which they had to urge against it. Lymburner was heard at the bar of the House on March 23rd, and presented the adverse views as forcibly as possible. Time has shown that many of the contentions were cogent, and that many more were unworthy of the stress laid upon them.

The difficulty of communication with the territory of the proposed upper province and its inland character, together with an alleged hostility of the inhabitants to any division, were points urged against the passage of the bill. The measure was criticized "as dangerous in every point of view to British interests in America, and to the safety, tranquillity, and prosperity of the inhabitants of the province of Quebec." His object, and that of the English merchants of the province, was to save themselves from the domination of the French-Canadians, and to this end he asked for a complete repeal of the Quebec Act and the inauguration of a

new constitution "unembarrassed with any laws prior to this period." In this sentence he struck upon the main cause of the opposition both to the old conditions and the new proposals. It was to the French Civil Code and the feudal tenure that obtained under the Quebec Act and would be continued in Lower Canada under the provisions of the Canada Act that his party objected. If one large province could be constituted, the English inhabitants west of Montreal would join those of their tongue in the older section of the country, and in the union would be a certain safety from French aggression. But his representations had not sufficient weight to alter the course of legislation.

Pitt, in introducing the bill, spoke at some length and stated that "he hoped the division would remove the differences of opinion which had arisen between the old and new inhabitants, since each province would have the right of enacting laws desired in its own House of Assembly." Burke and Fox appeared in conflict; the former supporting the division reasoning from the absurdity of attempting to amalgamate the two races, the latter opposing it with the statement that it was most desirable "to see the French and English inhabitants coalesce into one body." But the principles of the bill had no stronger supporter than Fox. "I am convinced," he said, "that the only means of retaining distant colonies with advantage is to enable them to govern themselves."

Among the members who took a deep interest and a prominent part in the discussions was one of the representatives for St. Maw's, Cornwall, Lieutenant-Colonel John Graves Simcoe. His words were listened to with more