position of the Provinces under the British North America Act? They had that Act expressly declaring that the Provincial Legislatures should have exclusive jurisdiction to make laws on a variety of subjects. While they had that express declaration that Provincial Legislatures should have this exclusive jurisdiction, yet in another part of the Act was a provision which enabled the Dominion Government to disallow every Act passed by the Provinces. It is not merely a power to veto an Act that might conflict with the Dominion policy, but a power that enables them at their own discretion, and without so much as giving a reason, to disallow every Act the Provinces might pass. Now if there was a provision that

WAS NEVER ACTED UPON

it might remain in the statute book. If acted on only once or twice in a number of years it might remain on the statutes. If acted on only in the same way as that in which the Imperial Government dealt with Provincial statutes it might remain. That provision was introduced into the Constitution in 1864 because the notion was that the Dominion Government would exercise that power of veto less frequently than the Imperial Government would exercise it. Nobody then had the idea that it would be more freely exercised than the veto of the Imperial Government, that it would be used as a curb upon the Provincial Legislatures. There was a feeling that the Colonial relation required the veto power to exist somewhere. Personally he did not agree with that. He did not see why the veto power should exist anywhere. He did not see why Provincial Legislatures should not be free within the limits of their sphere to pass any laws they chose. (Applause.) He did not see why, when a body of the people's representatives, elected for that purpose, had made up their minds that a certain law was necessary, it should be interfered with by anybody. (Applause.) But while he personally entertained this view, there was a general notion that so long as the Colonial relation existed there must be a disallowing power somewhere. The question that presented itself to the Confederation Conference was, Where should this power be? Up to that time it was exercised by the Imperial Government. At one time it had been a burning question in the Provinces as to what they could do to prevent so frequent and injurious a use of the veto power by the British Government as they were then subjected to. But that day had passed away in 1864. For some years prior to that date there had been very little disallowance of Provincial statutes. Still it was thought there was less danger of that power being too freely or improperly exercised if it was given to the Dominion Government than if it were given to the Imperial Government, seeing that the people of the Provinces were of course

REPRESENTED IN THE DOMINION PARLIAMENT

and not in the Imperial Parliament. It was because of this and because it was felt the Provinces would be freer in their legislation with a Dominion veto than with an Imperial veto that the resolution proposed this change. A number of old politicians who had been engaged in the struggles with Downing street were naturally strongly in favor of the veto power being given to the Dominion Parliament. So the veto power was given to the Dominion Parliament, and rightly or wrongly—he was not at present going to enter into a discussion as to whether their exercise of that power had been right or wrong—rightly or wrongly that power had been exercised by the Dominion Parliament a great many times for once that it had been exercised by the Imperial Government. There had been a disallowance of Provincial legislation under the Dominion veto such as had not been known for many years under the Imperial veto even in its most arbitrary days. Now he had no hesitation in saying in regard to this very important matter—this primary matter—what in fact he would have no hesitation in saying in regard to every one of the resolutions passed at Quebec, that had the Confederation Conference in 1864 foreseen the present state of affairs they would have been provided for. This veto power would not have been given to the Dominion Government if it had occurred to anybody that there would have been such a free exercise of it as there had been. He repeated that he was doing his very best to prevent any party feeling from creeping into this matter. He was not saying that it was a Conservative Government only that had disallowed Provincial Acts. A Reform Government had done the same. He was not going into the question as to how far either of them may have been correct in the exercise of their power; but both had exercised it very freely. He freely admitted, also, that the Acts of Conservative Legislatures had been disallowed, as well as those of Reform Legislatures. Take the case of Manitoba, which had until recently been a Conservative Government, and which he alluded to because it was the most recent case. The Conservative Government,

BACKED BY THE WHOLE PEOPLE

of the Province, had passed a measure which had been disallowed by the Dominion Government, so that if the Legislatures were to be as free to legislate within the sphere assigned to them by the British North America Act as they had been before Confederation, and as the different States of the American Union were to legislate for themselves, the power of disallowing Provincial Acts should be taken away from the Dominion Government. The question arose then—to whom should the power be given? Personally, as he had already intimated, he was in favor of its being abolished altogether. If it was to be retained, however, he thought there was no comparison as regards its effect on the interests of the Province, between the use made of it by the Dominion Government at the present time and the use made of it by the Imperial Government when it was in their possession. In the disallowance of Provincial Acts one ground very frequently urged was that in the view of the Dominion Government the Provinces had exceeded their jurisdiction. As a matter of fact the Dominion Government in disallowing was not bound to give any reason whatever; still this was the ground they frequently gave, and that ground was one that altogether interfered with the independence of the Provinces within their spheres. It simply amounted to this, that at Confederation exclusive powers were given into the hands of two different bodies, and under the present system the power lay in the hands of one of those bodies to determine what were the exclusive powers possessed by the other one. That was most unreasonable, could be backed by no sound argument and worked very injuriously to the interests of the Province. As a matter of fact it was necessary, if the Dominion Government was not to exercise this power of disallowance, that there should be some scheme devised whereby the judgment of Courts could be taken as to the legality of measures enacted by either the Dominion Parliament or the Provincial Legislature, and

THE NEXT TWO RESOLUTIONS

dealt with this matter. There was one vice in the American system which he would like to see removed from the Canadian system. It was in this—that frequently when a measure had been passed by a State Legislature, and had become law without anybody having expressed a doubt as to its entire legality, some two or three years later, when innumerable transactions had taken place under it, and perhaps a very large amount of money invested under it, some ingenious argument is raised, and the Act is perhaps decided to be invalid, and great injury is done to many parties. The resolutions suggested the formation of Courts which should pass upon the legality of measures enacted by either the Federal or the Provincial Parliaments, and proposed that to prevent any assumptions by either party of powers belonging to the other party, that there should be equal facilities to the Federal and Provincial Governments for promptly obtaining a judicial determination respecting the validity of statutes of both the Federal Parliament and Provincial Legislatures. Thus there would be

A SAFEGUARD ON BOTH SIDES,

for the Provincial Governments were just as likely to encroach on the powers of the Dominion Parliament as the latter on the rights of the former. In the matter of private litigants appealing against an Act on the ground of its unconstitutionality, the third resolution proposed that such Acts should not be open to question by private litigants except within a limited time. The conference suggested two years. He would like to make the time shorter still, personally. The present system in this respect was most unreasonable, one individual being allowed by it to put himself in opposition to the people of the entire Province, or perhaps of the whole Dominion.

THE FOURTH RESOLUTION

had reference to another very important subject, viz., the constitution of the Senate of the Dominion. That became a matter which was proper to be dealt with by the conference, because the Senate was constituted for the very purpose of protecting the interests of the Provinces as Provinces. That was expressly stated in the debate on the subject. There was to be a limited number only, and there were to be a certain number to represent Upper Canada, a certain number to represent Lower Canada, and a number for the Maritime Provinces, and for no other reason than that the interests of the Provinces should be protected as Provinces. Now, what were the Provinces to be protected from by this provision? From any injustice or hardship at the hands of the Dominion. So the Dominion Government appointed the men to protect the Provinces against the acts of the Dominion Government. It was similar to a plaintiff choosing counsel for the defendant in his case or vice versa, and he did not say this as a figure of speech merely, but as a plain statement of fact. There were other objections to the present constitution of the Senate, some of which were founded on principle and some as to the actual working of the