

America Act, it would be more correct to say that we are going beyond our powers. Speaking as a lawyer I do not quite see the difference between stretching your power and going beyond your power. To be within your power you do not need to stretch it, and the moment a lawyer, judge, or counsel tells me that certain statutory powers are being stretched, I would take it to mean that the statutory power is being exceeded under a fair construction of the law.

Mr. FITZPATRICK. I would like to withdraw that word.

Mr. LANCASTER. I do not ask the Minister of Justice to withdraw it; what I want to ascertain is if the Minister of Justice agrees with me that in this legislation we are not keeping within the powers given us under the British North America Act. The Imperial Act of 1871, and the Imperial Act of 1886 must be construed as dealing with the matters that were then being legislated on by this parliament, namely, the representation in this House and in the Senate of a part of the country that was not a province. The moment we pass this present Act, Alberta and Saskatchewan become provinces, and what may have been sanctioned in dealing with the representation of Territories which are not provinces has nothing whatever to do with our powers after we establish another province, whether it be in that same part of Canada or in another part. The moment we make that part of Canada into a province, I submit we must be within the British North America Act which makes no distinction between one province of Canada and another in saying that the representation must be readjusted every ten years. I submit that in calculating the basis of representation at any other period than at the end of the decennial census, the enactment is *ultra vires* of this parliament and is in fact amending the British North America Act, which we have no power to do.

Mr. FITZPATRICK. Let me see if I can make myself clear. What is important is to provide for the representation of the new provinces in this parliament. We now have an arbitrary representation of practically five members each for the two provinces. It would be necessary to ascertain the true population to fix their present representation and we provide that instead of doing that to-day we shall do it a year hence after the next quinquennial census. Having then ascertained what the true population is, we will make a readjustment on the lines laid down by the British North America Act. The initial representation having been settled in that manner, thereafter the representation shall be dealt with absolutely as in the case of every other province.

Mr. MONK. What causes the doubt is the words used, that there will be a readjustment after the next quinquennial census. I suppose that if we simply enacted that the representation should remain what it is until the 1st of January, 1896, when the population would be definitely fixed until the next decennial census, it would appear less objectionable.

Mr. FITZPATRICK. Perhaps so; but I do not know that I can get a better word than the word 'readjusted,' because you have to readjust the limits of the electoral districts. It is a word consecrated by long usage, and it became familiar to my ear in the discussions which we had here some years ago.

Mr. MONK. I suppose we would be strictly within our power if we declared that during this decade the provinces should be represented by such a number of members for the first four years and by so many for the balance of the decade?

Mr. FITZPATRICK. We would have that power.

Mr. MONK. So long as we did not interfere with the operations that take place every ten years.

Mr. LANCASTER. Suppose the Ontario government took a census on the same day that a census is proposed to be taken in the provinces, and suppose it turned out that Ontario was entitled, under the spirit and the equity and common sense of the British North America Act, to have its representation in this House increased, say from 86 members to 100, it seems to me that if you invoked the British North America Act to deprive Ontario of that increase, you would also have to say that increased representation should not be given to the Northwest provinces until the end of another five years and the decennial census were taken.

Section 5 agreed to.

On section 6—election of members of House of Commons,

Mr. FITZPATRICK. This provides for continuing the existing franchise.

Mr. OSLER. Is not that franchise law very objectionable?

Mr. FITZPATRICK. It is in many ways; but I do not see how to provide for the election of a member before the redistribution without accepting it.

Mr. OSLER. The local member says it is so objectionable that it is a scandal, and ought not to be recognized.

Mr. FITZPATRICK. I think myself that it ought to be changed.

Mr. M. S. McCARTHY. It would be difficult to make provision in the Bill to meet the objections that have been raised. The