

address the British North America Act, 1867, is again expressly made to apply :

Except so far as varied by these resolutions.

Then I take the case of Prince Edward Island which came into confederation in 1873 upon joint address likewise, and I find that in one clause of that address the British North America Act is again made to apply :

Except so far as varied by these resolutions.

And turning to the Bill now under discussion, I find in section 2 of the Bill that same clause :

Except in so far as varied by this Act

Surely the leader of the opposition cannot argue, that Manitoba, Prince Edward Island, and British Columbia came into this union unconstitutionally. If it were proper in the Manitoba Act which was confirmed by imperial legislation ; if it were in the British Columbia Act which was approved by Order in Council having the force of an imperial Act ; if it were again proper in the Prince Edward Island case which was approved by Order in Council having the force of an imperial Act ; if it were proper and constitutional in these three cases to insert these words surely their insertion cannot be unconstitutional in this Act.

Now this clause is far reaching in its effect. If the clause is constitutional, and I argue it is constitutional, what does it mean ? It means that we have the right to vary the terms of the British North America Act, and it means more, because if we go beyond it we find we have varied the terms of confederation just as each of these provinces came in, and no one has challenged the constitutionality of these Acts, or, if it has been challenged the challenge has not been sustained. I turn once more to section 146 and referring to that part of the section which relates exclusively to the Territories, and I apply to the Territories these words :

Subject to the provisions of this Act.

What provision in the British North America Act of 1867 applies to Territories ? I challenge any hon. member in the House to answer that question—to point to one single clause or portion of a clause in the whole Act except section 146 which has any reference to territorial government. Section 93 does not apply ; it only applies in express terms to provinces. Subsection 1 of section 93 applies to rights in denominational schools which have existed, not in any territory, but in any province which had previously been a colony with its own government. You may search the British North America Act from its preamble to its last section, and you will not find a single clause applicable expressly or by implication to the case of Territories. I state that conclusion with a good deal of confidence, because I am aware that it has been confirmed.

As I have said, in 1870 we passed the Manitoba Act in anticipation of the entrance of the Territories into this Dominion. They did not as a matter of fact become a part of the Dominion until the 15th of July, 1870, three months after the Act had been passed ; and note the language of the Order in Council which admitted them ; that these Territories should form part of Canada—not as provinces or colonies, but territorially should form part of Canada, and that the parliament of Canada shall from the day aforesaid have full power and authority to legislate for the peace, welfare and good government thereof ; these words being taken from the Imperial Order in Council passed on the 30th of June, 1870, to take effect on the 15th of July, 1870 ; clearly showing that all that transpired was that the Territories became part of the Dominion territorially at that date, and that the Dominion was authorized to legislate for those Territories so far as their peace, welfare and good government were concerned. Now, what happened under the Manitoba Act ? That Act was passed in May, 1870, and sought to form the province of Manitoba out of those very Territories which came into the Dominion in July, 1870. All the authority to form the province of Manitoba was contained in section 146 of the British North America Act of 1867 ; and when that Act was laid before the law officers of the Crown, they held it to be ultra vires. They held that there was no authority in section 146 to pass such an Act or to constitute a province—that the only authority there given was to bring those Territories territorially within the Dominion of Canada. Then it became necessary either to have a new Imperial Act or a new Imperial Order in Council to rectify matters, and the Imperial Act known as the British North America Act of 1871 was thereupon passed. It was mentioned in this House by the late Sir John Macdonald as an Act which was necessary to confirm the Manitoba Act, on account of doubts which had arisen as to its validity. Now, what did the Manitoba Act profess to do ? By section 2 it enacted that the British North America Act of 1867 should apply except in so far as varied by this Act ; and they varied it. The educational clause of the British North America Act, section 93, was varied ; but when it was confirmed by the imperial Act of 1871, the imperial Act went a little further than the Manitoba Act did. The imperial legislature no doubt thought that they would set at rest for ever the question of these Territories, and the greater question of their formation into provinces when the time to form them into provinces should arrive. Now, the British North America Act of 1871, in its preamble, reads as follows :

Whereas doubts have been entertained respecting the powers of the parliament of Canada to establish provinces in territories admitted, or which may hereafter be admitted into the