

Newfoundland

section 1, under the heading "Union", I read:

On, from, and after the coming into force of these terms . . . Newfoundland shall form part of Canada and shall be a province thereof—

At that stage, when Newfoundland comes in, does it have no constitution? Does it receive its constitution after that? How is it that we, the parliament of Canada, and not the parliament at Westminster, are to revive the constitution which, as I understand it, was derogated from, or whatever the proper expression may be, under the authority of that other parliament?

Mr. St. Laurent: If this were not to be confirmed by a statute of the parliament of the United Kingdom the revival of the constitution of Newfoundland could not be done by the parliament of Canada; it would have to be done by the parliament of the United Kingdom. But it is one of the conditions of this agreement that it does not come into effect or have legal effect until confirmed by an act of the parliament of the United Kingdom.

The delegation from Newfoundland and its law officers insisted that they did not want the province of Newfoundland to get a new constitution out of the union. They wanted to be in the position of the provinces of Nova Scotia and New Brunswick, which had constitutions before union and retained all the powers of their constitutions, except those given to the central authority. It was for that reason that the dean of the law school was insistent upon having the constitution revived an instant before union becomes effective. It will be revived only because there will have been enacted an act by the United Kingdom agreeing to this.

Mr. Macdonnell (Muskoka-Ontario): I am still not clear as to why this clause is in here at all. Has it any effect? As I understand the Prime Minister, this would have no effect unless there was an act passed by the parliament at Westminster. What effect has this clause in here?

Mr. St. Laurent: None of these clauses would have any effect except by virtue of an act passed by the parliament of the United Kingdom. The parliament of the United Kingdom is, at the present time, the legislative body having jurisdiction and authority over Newfoundland. You cannot have a marriage merely with the consent of the groom. You have to have the bride agreeing thereto as well. These terms of union have to be agreed to by Canada and they also have to be agreed to by those who are competent and willing to give consent for the other contracting party.

[Mr. Macdonnell (Muskoka-Ontario).]

Section agreed to.

Sections 8 to 16 inclusive agreed to.

On section 17—*Education*.

Mr. Fulton: I wonder if the Prime Minister would be good enough to explain why it is necessary to make a special provision for education in Newfoundland, and why section 93 of the British North America Act is not sufficient to cover the case if it were made applicable.

Mr. St. Laurent: With respect to education, the situation was different from that which existed at the time of the creation of the two new provinces of Alberta and Saskatchewan. At that time, this parliament had control over education in those territories. It could reasonably stipulate it would part with that control, subject only to certain guarantees of the rights of minorities. The delegates from Newfoundland were told we had no control over their educational system at the present time. The authority having legislative jurisdiction at that time, however, could make any provision it wished to make with respect to education. We also told them we had no right to insist upon any guarantee being written into the constitution because they have complete jurisdiction themselves; but if, for the satisfaction of their own people, they felt it was preferable to have a guarantee written into the constitution, we could not object. The matter was discussed back and forth for quite a long time.

The hon. member knows that the sanction of the rights of minorities under section 93 of the British North America Act is an appeal to the governor in council and the enactment by this parliament of remedial legislation. The hon. member knows what difficulties arose out of appeals under that section and out of the attempt to pass remedial legislation some forty years ago. It was felt by the delegation from Newfoundland that it would be more effective to have the clause concerning guarantees drawn in this way so that the legislature would have complete control over education but would not have jurisdiction to do things that would impinge upon the rights of minorities. To do those things would be a denial of jurisdiction.

If an attempt were made to do those things, the recourse is to the courts of law. The courts of law will examine whether or not the thing that is being done is contrary to the guarantee written into this clause. If it is found by the courts of law to be contrary, the courts of law declare it to be void and unconstitutional. It was felt that would be a more effective safeguard than appeal to the governor in council and a request to the central parliament to pass remedial legislation.