

parliament by section 2 of the Act of 1871 must necessarily be read as being subject to the provisions of those Acts, and of the original Act just as the power of the Queen in Council to admit the provinces of Prince Edward Island, British Columbia, Rupert's Land and the Northwest Territories to the union under section 146 was subject to those provisions. Now it surely was not intended that this parliament which is the creature of the British North America Act and which is subject to all the limitations embodied in that Act as all the provinces of this Dominion are subject to the same limitations, it was surely not intended that this parliament, which is a creature of this Act, could constitute a province and give it whatever powers it pleased without reference to the terms of the Act under which this parliament itself was created. If we have any power to vary in any way, in the slightest degree, the terms of the British North America Act, then we can vary them to whatever extent we please and we could withhold from the new provinces any one of the subjects or all of the subjects which are assigned exclusively by the British North America Act to the provincial legislatures, and we could confer upon the new provinces in the west the power to legislate with reference to any one of the several subjects which the British North America Act assigned exclusively to this parliament. It seems to me that that would be an absurd view for any lawyer to advance, and I think it is perfectly clear that the intention of the British North America Act is that in the case of the constitution of any new province, it must be subject to the terms and conditions of the Act as they apply to the other provinces of the confederation. My view is in common with the views that have been advanced not only by the leader of the opposition (Mr. R. L. Borden) who is opposing this Bill, but by other legal authorities, as for instance the hon. and learned member for Jacques Cartier (Mr. Monk) who is supporting this Bill, that we have power only to create this province and that the provisions of the British North America Act which apply to the other provinces of the Dominion then apply automatically to the new provinces. I think I shall be able to show that this is not only the view of the leader of the opposition (Mr. R. L. Borden), and of other eminent gentlemen who have been quoted in this House, but that it is really the view also of the Minister of Justice (Mr. Fitzpatrick) who framed this Bill. That hon. gentleman argued an important case in the Supreme Court of Canada in 1903. It was styled 'in re-representation in the House of Commons' which I believe, was initiated by the province of New Brunswick, the question involved being whether in estimating the population of Canada only the population of the four original provinces

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was to be taken into consideration or whether the population of the provinces admitted subsequently to 1867, was to be considered in the estimate. In the course of that argument, the Minister of Justice advanced, I think, the same view that has been advanced by the leader of the opposition in this case, that the provisions of the British North America Act apply automatically to new provinces as they should be created. In the course of his argument, he dealt with section 146 and said:

Now, my lords, it is outside the question to discuss this question as to whether British Columbia came in with the number of representatives it ought to have had under the constitution or not. That is outside the question we are now considering. But my construction of section 146 is this, that the Queen had the right by Order in Council to legislate in the way and subject to the limitations contained in section 146. The Order in Council became and had the effect of an imperial Act of parliament so long as the powers conferred by section 146 were exercised subject to the limitations contained in section 146. Legislation by Order in Council is an exceptional legislation and can only be exercised subject to the limitations in the power authorizing the legislation to be had in that form. An Act of the imperial parliament might modify, alter or amend the British North America Act, might absolutely repeal the Act or alter any of the terms or provisions of it, but the Order in Council cannot do that. The Order in Council can only legislate in so far as its provisions are within the provisions of the Act, and it would not be competent with respect to the imperial Order in Council which would have for effect the altering or the amending of the provisions of the Act and under the control of all the provisions of the British North America Act, so that no Order in Council could be passed that could in any way affect this section 51 of the Act.

Now, the Order in Council to which the learned Minister of Justice was referring was an Order in Council which the section 146 of the British North America Act authorized the Queen in Council to pass for the admission of any other British possession in the northern part of America. Now, this parliament gets in the same way, the power to constitute those provinces in the Northwest as the Queen in Council got under section 146. So that the argument which the Minister of Justice addressed to the Supreme Court in reference to that Order in Council would apply as effectually to this matter. But, furthermore, in the course of his argument, the Minister of Justice said, as will be seen in vol. 33 of the Supreme Court of Canada Reports, p. 584:

I have no desire to put forward a provincial view of this matter at all; on the contrary, so far as the Dominion parliament is concerned, our desire and our duty is to see that the Act operates automatically without respect to consequences.

So, we have not only the authority of the leader of the opposition and the other gentlemen to whom I have referred and whose