

out by the Earl of Kimberly, that draft Bill was considered and returned to the Earl of Kimberly by the then acting Minister of Justice for the Dominion, Sir George Etienne Cartier, dated 29th February, 1871, and approved by His Excellency the Governor General in Council, transmitting the draft copy of the Act of 1870. It is as follows:

The undersigned has to observe that it is absolutely necessary that the province of Manitoba, as well as any that may hereafter be erected, shall hold the same status as the four provinces now comprising the Dominion and British Columbia when it comes in, . . . and like them shall hold its constitution subject only to alteration by the imperial parliament.

I submit that this correspondence shows conclusively the intention of the framers of the Act, and I submit that the Act contains this underlying principle, namely, that it was absolutely necessary that any province to be created under this Act shall hold the same status as the four provinces then in the confederation. We can understand very readily why such language was used. The then provinces comprising this Dominion were jealous lest any other province should, by any possibility, in the future obtain greater powers than they themselves enjoyed. There had been a struggle for equality all through. All through the framers of confederation were struggling for equality. Sometimes the effort was to repress the struggles for supremacy that would break out here and there on the part of certain provinces, and they were all exceedingly desirous that no new province should have any greater powers than they themselves possessed. Undoubtedly it was not thought necessary then to suggest to the imperial authorities to pass an Act which would give the Dominion parliament the right to create new provinces with less power. No one then considered the possibility of our creating new provinces with less powers than those which the older provinces had acquired. Suppose, for instance, that in this Bill we omitted to provide for certain powers which properly pertain to a province with regard to many matters that suggest themselves, and which are provided for in section 92 of the British North America Act—suppose these powers were left out, who would supply them? That is a very pertinent question. This parliament could not do so. I apprehend that the powers of this parliament would be exhausted by enacting the constitution, and consequently would be 'functus officio' as regards the amending of it afterwards. These provinces would simply have to go to the imperial parliament in order to obtain imperial legislation to rectify any omission that might have occurred in the Act creating them, and to which they are entitled by law as members of the confederation.

We had that Act passed—the Act of 1871. Then the Act of 1886 was passed; and by

section 3 of that Act we find that the original Act of 1867 and the Act of 1871 and the Act of 1886 are all to be construed together as the British North America Act of 1867 to 1886. In that way I consider that the full force and effect of the original British North America Act is brought in, and it is made to form part of the Act of 1871 and the Act of 1886, so that they are all to be construed together in the creation of these new provinces. And I submit, therefore, that wherever you find the words 'subject to the provisions of this Act in the original Act of 1867.' You must read them as applying to these three Acts concurrently and correlatively, and that these new provinces are to be considered as being constituted under these combined Acts.

I would like to refer for a moment to the bargain, if I may describe the transaction by that term, which took place when these lands first came under the jurisdiction of the parliament of Canada, and I think it will be found to bear out my contention, namely, that the constitution of these provinces must be in accord with the terms of the British North America Act of 1867. I shall refer first to the address from the Canadian Senate and House of Commons to the Queen, praying that the territory, then known as Rupert's Land, be taken over from the Hudson Bay Company and that Canada be given the right to legislate for its peace, order and good government. From that address I take the following extract:

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole empire, if the Dominion of Canada, constituted under the provisions of the British North America Act, 1867, were extended westward to the shores of the Pacific ocean. That the welfare of a sparse and widely scattered population of British subjects of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several provinces of this Dominion.

In pursuance of that, an Order in Council was passed admitting into confederation these Territories on the 23rd June, 1870. the preamble of which is as follows:

Whereas by the British North America Act of 1867, it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's most honourable Privy Council, on address from the Houses of the parliament of Canada, to admit Rupert's Land and the Northwest Territories, or either of them, into the union on such terms and conditions in each case as should be in the addresses expressed and as the Queen should think fit to approve, subject to the provisions of the said Act.

That is the British North America Act. And then, later on, the parliament of Canada was given power to legislate, for the peace, order and good government of that territory. And, by the deed of release from the Hudson Bay Company—which, in pass-