

State of Missouri into the union, an attempt was made to include a restriction, prohibiting the introduction of slavery into that State, as a condition of the admission. On that occasion the question was largely discussed, whether Congress possessed a constitutional authority to impose such a restriction, upon the ground that the prescribing of such condition is inconsistent with the sovereignty of the State to be admitted, and its equality with the other States. The final result of the vote which authorized the erection of that State, seems to establish the rightful authority of Congress to impose such a restriction, although it was not them applied. In the act passed for this purpose, there is an express clause, that in all the territory ceded by France to the United States under the name of Louisiana, which lies north of 36° 30' N. latitude, not included within the limits of the State of Missouri, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby for ever prohibited. An objection of a similar character was taken to the compact between Virginia and Kentucky, upon the ground that it was a restriction upon State sovereignty. But the Supreme Court had no hesitation in overruling it, considering it as opposed by the theory of all free governments, and especially of those which constitute the American Republic.

The decision rendered in the case of Missouri has been at all times considered as the policy of the United States. Nevertheless, Mr. Speaker, under the constitution of the United States, all that Congress has a right to do is to admit a state into the union. Such is not the case as regards our constitution. The British North America Act provides that we may frame the constitution of the provinces.

When the province of Manitoba was admitted into the Dominion, the public men of the time realized at once that the British North America Act, though carefully drafted was not perfect. In fact it will suffice to read clause 146 to be satisfied as to its shortcomings. It reads as follows:

#### ADMISSION OF OTHER COLONIES.

It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of the parliament of Canada, and from the Houses of the respective legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those colonies or provinces, or any of them, into the union, and on the address from the Houses of the parliament of Canada to admit Rupert's Land and the Northwestern Territory, or either of them, into the union, on such terms and conditions in each case as are in the address expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act.

That article states that, in order to admit new colonies and provinces into the Dominion, a joint address from such provinces and the Dominion parliament will be necessary. Why? Because, at the time of the admission of such province, there is an agreement entered into by both parties, however, when it comes to admit the Northwest Territories into the Dominion, His Ma-

esty declares that an address on behalf of the parliament of Canada will suffice. In that case, therefore, no agreement has been entered into between the parties, for the making of an agreement implies two parties. Why have we this omission in the latter case? For this reason that when these territories were admitted into the Dominion, they were not organized, they were without a constitution, while British Columbia and Prince Edward Island had each a constitution and a regularly organized government. These provinces were fully organized when they entered confederation; but such was not the case with the Territories. It was therefore necessary that the Dominion parliament should acquire the right to lay down the terms on which these territories might be admitted into the Dominion. It was realized that section 146 was not up to the requirements. In the year 1870, Sir John Macdonald, perceiving this inadequacy, recommended that the home government should help out the Dominion parliament by granting it greater powers than had been vested in it by the constitution of 1867. The words 'terms and conditions' might well apply to an agreement, but not to the drafting of a constitution suitable to unorganized Territories. Section 146 which met the case as regards provinces having a distinct individuality, was no longer sufficient when Territories such as those in the Northwest were to be taken in. Such is Sir John Macdonald's contention, set forth in his memorandum dated December, 1870. I quote:

The address which was passed by the Parliament of Canada, contained no provisions with respect to the future government of the country, the only terms and conditions contained in it being those agreed upon between the Hudson Bay Company and Canada as the conditions of their surrender of their charter to Her Majesty. Even if the terms of the address had included a new condition for the Northwest, it must, under the above cited section, have been subject to the provisions of the Imperial Act of Union.

This is what he says: Section 146 does not invest the Dominion parliament with the right to frame a constitution for the new Territories. Hence the necessity of applying to parliament to obtain such right. He goes on to say:

The general purview of the 'The British North America Act, 1867,' seems to be confined to the three provinces of Canada, Nova Scotia and New Brunswick, originally forming the Dominion.

Now, Sir John Macdonald makes the following request:

Under these circumstances, as the question as to the constitutionality of the Act of the Canadian parliament has been raised, and as the doubt may cause grave disquiet in the territories which have been or may hereafter be added to the Dominion; and in order also to prevent the necessity of repeated applications to the Imperial Parliament for legislation respecting the Dominion, the undersigned has the honour to recommend that the Earl of