

—you take the letter of the constitution without regard to its bearings and its application to the time being, and apply it literally, whether the application fits the time and occasion or not. But taking the spirit of the Act on each occasion of creating a new province, you adopt the constitution, as far as possible, to the new province, having due regard to the conditions then prevailing.

That is to say, that the powers given to the provinces from time to time as the provinces are created, must differ according to conditions then prevailing. Prevailing where? What conditions? Conditions of expediency, or conditions of party expediency? What does the Postmaster General mean by 'conditions then prevailing.' Again he says later on:

I sympathize with the view of the premier, and I put him in contrast on this occasion with the attitude of the leader of the opposition. In one case you have an interpretation of the constitution by a lawyer; in the other case, may I be permitted to say, by a statesman. Which view is the more likely to be correct? Which view is the more likely to be in the best interests of the country? I take this view of it then; I began by arguing that there could be no infringement of provincial rights until they have a right, or until they are created into a province.

That is a peculiar distinction I had not observed.

They have no rights until this parliament has declared what their rights are, that according to the spirit of the British North America Act and according to the letter of the amending Act of 1871 it is in the discretion of this parliament to-day to say what new constitution we shall give to these new provinces.

Now, Mr. Speaker, I submit with all due deference to the hon. gentleman who uttered these words, that this parliament has no discretion to grant or to withhold from a province, when creating it, what it is legally entitled to under the British North America Act. I submit that parliament has no discretion in regard to what powers the provinces shall receive; because if it has a discretion, where does that discretion end? Parliament might go the full limit, they might confer upon the province all those powers that the British North America Act reserves to the Dominion, they might give to the province all the powers the Dominion has, and they might withhold from the province all the powers the province has under the British North America Act. In referring to this subject, I mention the question of education. I am taking it from the lawyer's standpoint, from the standpoint of the framers of the constitution. If, as it is contended, the parliament of Canada has a right to pass the Bill now before the House, which contains legislation in regard to education, we admit the principle, and how far can that principle be carried? If you admit the principle where are you going to end? Parliament might go to the full extent of legis-

Mr. MACDONELL.

lating in regard to education for all time to come, they might take all educational matters out of the hands of the province absolutely. I submit with all deference to the hon. gentleman that it cannot be argued that the parliament of Canada who created this province can take from it every vestige of a right to legislate in regard to matters of education, because another government might come in who would act in a very different way, another government might act in direct opposition to the way this government has acted, because, after all, governments go and governments come. If the government have the right and power to legislate in the domain of education, no doubt they can legislate to the full extent either adversely to the minority, or in favour of the minority, or adversely to the majority or in favour of the majority. Where is it going to end? Surely the argument, if they have the right to pass this legislation, in view of that statement, must hold good. It does seem to me that the British North America Act opposes very strongly the passing of this legislation because we have always thought that we had the British North America Act as our guarantee and we have relied upon it as we should rely upon our constitution. It does seem to me that it is ignoring and overriding that Act because the Bill in its very terms does proceed to amend the British North America Act in vital points. I do not know what the intention of hon. gentlemen opposite may be whether it is their intention to ask the imperial parliament to confirm this legislation or not, but certainly in the absence of confirmation by the imperial authorities, I do not think it will be seriously contended in this House that the parliament of Canada has the right to pass the legislation now before the House. I think if they do it will be a matter of regret, because I believe the question will find its way into the courts, and if my opinion is worth anything on this subject, and if the opinion of eminent counsel whom I have consulted is worth anything, then I say the Act is ultra vires. I have consulted counsel who will probably be concerned in this case if it ever reaches the courts and I believe I am correctly informed by counsel as to what will be in all likelihood the result of this legislation. The hon. Minister of Finance (Mr. Fielding) also went on record as against the constitution as follows:

I do not propose to go into that constitutional question, not because I say it should not receive any consideration, but because I say it is not the great question involved, and I prefer to go on and deal with the practical questions which are before us. If it is a constitutional question above all others, then, perhaps the best thing we can do will be to request the legal members of this House to adjourn to the Railway Committee room and thresh it out while we who have not the good fortune to belong to that learned profession will stay down here