ABLE PRESENTATION OF P. E. ISLAND'S REPRESENTATION CASE IN HOUSE OF COMMONS BY MR. A. A. McLEAN, K. C.

In introducing the resolution on the Redistribution Bill and the addition to the Senate which, inter alia, provides that the representation of no province in the Commons shall be less than its representation in the Senate, thus giving P. E. Island 4 members as at present instead of 3, to which if, will be entitled on the basis of population, Premier Borden made the following reference to P. E. Island's claim:

The provision will have application at this time only to the province of Prince Edward Island. That province, as we know, has made strong claims that its representation ought to continue at six, the number allotted to it at the time it entered Confederation. The terms of the Order in Council under which Prince Edward Island was admitted to the union are plain and unambiguous. That province has rested its case upon certain written communications prior to the union, and also upon the well known feeling in the island at that time that the province should not enter the union with less than six members. The Committee on Redistribution, whose report will be under consideration at a later stage today, have not found themselves able to recommend that the representation of Prince Edward Island shall be continued at six; but they have made this unanimous recommendation, which commends itself to my judgment for the reasons I have already mentioned. Therefore I have embodied it in the proposed resolution, and I trustit will receive the favourable consideration of the House.

Mr. A. A. McLEAN (Queen's, P. E. I.): I am sorry that the committee to whom this rearesentation Bill was referred did not see eye to eye with the representatives from Prince Edward Island who presented the case of that province before the committee. It is an old story in this House and in the country the manner in which the province of Prince Edward Island refused to enter into Confederation in 1864. The refusal was based upon the question of representation. The conference composed of representatives from Upper and Lower Canada, New Brunswick and Nova Scotia, offered to Prince Edward Island a representation of five in the House of Commons. This the delegates from Prince Edward Island absolutely refused, and gave valid reasons for their refusal. The Hon. Edward Palmer, who was one of the members of the Government at that time, spoke at the Quebec conference as follows:

Representation by population is not applicable when a certain number of provinces are throwing up their self-government and individuality. When a colony surrenders that right she should have something commensurate in the Confederation. Why give up so great certainties where we have only a feeble voice. I never understood that any proposition at Charlottetown was to be binding as to representation by population.

My right hon. friend the leader of the Opposition today made the statement that the representation had to be based on population. It seems to me, from my reading of the history of Confederation that that was not the idea in the several conferences which took place previous to 1867. We have the speeches of the represatatives of Prince Edward Island at the conferences denying that that principle should be adopted in setting their representation in the House of Commons. Prince Edward Island, principally on that ground, held out until 1873. Then we had Earl Granville asking the Dominion of Canada to round out the Confederation and bring in Prince Edward Island. A special request was made by the British Government that generous treatment should be given to Prince Edward Island. What was Prince Edward Island asking for? There was only one thing that we were asking for and that is that the representation should be six instead of five and that is what was offered by us to the delegates from the different provinces previous to 1867. When the delegation came here from Prince Edward Island in 1873 the question which was put to the Government of Canada was. Will you concede us six representatives in the House of Commons? There is a record of what took place; it was put in writing, it is entered upon the journals of the House of Commons and upon the journals of the House of Assembly of Prince Edward Island. It has been stated to me several times by some of my colleagues that there was no evidence to go before the committee to which this Bill was referred of any arrangement or understanding whereby a representation of six was to be granted to Prince Edward Island in 1873. There is ample evidence; there is the evidence of the records of Parliament and of the House of Assembly. Here we are sitting as a supreme court of justice and the committee to which the Bill was referred is a part of this House. The evidence was submitted to the members of that committee and when they report that they would not be justified in recommending a representation of six they are committing an error. There was ample evidence of the fact that Prince Edward Island is entitled to six. This report, in my opinion, was simply a matter of expediency. They were not, in any way, entering into the merits of the case. This report does not deal with the merits of the case except in regard to the recommendations which would apply to more than one province; that is, that no province should be represented in the House of Commons by a less number than the number of its rearesentatives in the Senate. That will, of course, apply to Prince Edward Island, but as far as carrying out the contract made between the people of Prince Edward Island and the Dominion of Canada in 1873 is concerned, this committee did not consider the matter and when they reported upon it they were not justified in stating that there was no evidence. I repeat there was ample evidence.

This matter has been put before this Parliament before on several occasions. In 1903 it was before Parliament and at that time it was agreed to submit to the Supreme Court of Canada the question of whether Prince Edward Island was entitled to a representation of six. The Supreme Court decided that, according to the letter of the law, Prince Edward Island was not entitled to any more than the Parliament of Canada was then conceding to it. But the Supreme Court did not enter upon the merits of the case. The chief justice stated:

It might be that it was the impression of Prince Edward Island at the time, in the minds of the public men when they consented to this, that they did not expect a decrease, but that is not a consideration in the interpretation of a clear Act of Parliament.

That I concede. There was no evidence before the Supreme Court at the time and the judges were simply giving a decision upon the wording of the British North America Act and the resolutions which were passed by the Imperial Parliament admitting Prince Edward Island into the union in 1873. They were bound by the words of that Act. The counsel, Mr. Williams, stated:

It is not entirely an impression. If we can give you the express wording of the Act to show what was the meaning of it in the minds of the conference.

The Chief Justice: The framers of the Act may have intended a different meaning from the mind of the British Parliament.

There is no doubt that the men who were connected with the framing of this Act did intend that Prince Edward Island should have a eepresentation which would not be decreased below six. That is conceded on all hands. But these hon. gentlemen say that it would not be expedient to give Prince Edward Island the number to which she is entitled and to leave Nova Scotia, New Brunswick and some other provinces without any increase. I do not think that is the way this Parliament should enter into the discussion of the Act or to undertake to decide the matter. The matter should be looked at fairly and squarely and justice and right should be done. You must view the matter in the proper light and you must treat it as the people concerned at the time intended it should be treated. When this question was before the House in 1907 the right hon. leader of the Opposition stated that if it were proven that a mistake had been made in the drafting of the resolutions admitting Prince Edward Island into the union it should be remedied. The right hon. gentleman, addressing the House in 1907, 'Hansard,' volume 2, page 2199, said:

For my part I say without hesitation that this is a matter in which we can afford to be generous. Even if the balance of representation by population be not absolutely and minutely kept, even if Prince Edward Island or Nova Scotia or New Brunswick should have one or two members on the floor of this House beyond the number provided by the original constitution, the granting of such excess of representation would perhaps be a gracious and generous act and one which would redound to the benefit of confederation. But this House ought to hesitate in passing judgment until it has before it the views of all the provinces affected.

That was showing a proper spirit. The matter came up upon a resolution asking the House to declare that the Maritime provinces should retain the representation which they had when they entered Confederation. The leader of the Opposition, who was then the leader of the Government, thought that more time should be taken by the House to consider this matter, and he said that, after consideration, he had no doubt that Parliament would act in a generous manner in order to prevent these provinces from losing their representation.

At that time the hon. member for Pictou (Mr. Macdonald) also made some noteworthy remarks. He was of opinion that the representation of Prince Edward Island should be restored to six. The question was discussed in all its phases; all the evidence was presented to the House, and the hon. member for Pictou had an opportunity of hearing the arguments pro and con and of reading the evidence adduced by the members who argued in favour of Prince Edward Island. This is what the hon. member for Pictou said at that time:

Whether you are dealing with the ordinary affairs of life or whether you are dealing with constitutional problems and constitutional rights which perhaps should be given a higher regard than the other; it is only common sense and fair-play to say that the people of Prince Edward Island who were given six members in 1873, although they had no right to that number according to the unit of population, are entitled to preserve that number of six members right through so long as the Confederation of Canada lasts.

Here is a strong opinion. The hon. gentleman, who was almost as conversant with the politics of Prince Edward Island as the members for that province, declared in this House, after hearing the arguments that, in his opinion, Prince Edward Island should preserve the number of six members right through as long as the Confederation of Canada lasts. I have no doubt that is the opinion of the hon. member for Pictou today, because he is a man who does not rapidly change his mind; and I would ask him today in this House to give a declaration to the same effect as he gave at that time.

There are other hon. gentlemen who have taken part in the discussion of this matter at various times in this House, and, who have expressed similar views to those expressed by the hon. member for Pictou; and I have no doubt that, if the matter were fairly presented to the members of this House today there would be only one opinion on both sides, namely, that a contract was made in 1873 between the people of Prince Edward Island and the Dominion of Canada whereby that province for all time to come was to have a representation in the House of Commons of six members. It is my intention, before this matter goes before the committee, to move a resolution. In doing so I think I would be derelict in my duty if I did not strongly urge that this resolution be approved by this Parliament. The resolution would provide that the original representation of Prince Edward Island in the Commons, of six members be restored.

At one o'clock, the House took recess.

The House resumed at three o'clock.

Mr. A. A. McLEAN: Before recess I mentioned that it was my intention to move this amendment in committee:

(b) Prince Edward Island shall be entitled to be represented in the House of Commons by six members. The representation to be increased under the provisions of the British North America Act, 1867. Prince county shall constitute one district to be designated 'Prince county district' and return two members; Queen's county shall constitute one district and be designated 'Queens county district and return two members; and Kings county shall constitute one district, to be designated 'Kings county district' and return two members.

When the resolution asking for the admission of Prince Edward Island to the Union was passed by this Parliament and sent to the Imperial Parliament and there made law, it provided that each of the counties should return two members. This is what I now ask to be incorporated in this resolution.

There is no doubt that, if you take this Order in Council of the Imperial Government of the 26th June, 1873, the resolution of this Parliament, and the resolutions of the Legislature of Prince Edward Island, you will find that the clear and distinct intention of the Legislature and of this Parliament was that Prince Edward Island should have minimum representation of six members; otherwise, why was it stated that each county should return two members?

The provision in the resolution of this Parliament,

That the population of Prince Edward having been increased by 15,000 since the year 1861, the island should be represented in the House of Commons by six members; the repsesentation to be readjusted from to time under the provisions of the British North America Act, 1867,

was not intended to be in that form. The insertion of the word 'readjust' was an error. It was agreed between the Dominion Government and the Prince Edward Island Government that the island should have an irreducible representation of six, similar to British Columbia. It was not intended that the representation could be reduced under the provisions of the British North America Act. It was contended in this House some time ago that we should have been reduced in representation in 1881, but that it was found that there was no record of a census of the island for 1871. That could never have been successfully contended, as the resolution passed by this Parliament on the 20th May, 1873, distinctly declares that the island's population, 'as shown by the census of 1871,' was 94,021. The resolution of this Parliament is incorporated into and forms part of the Imperial Order in Council admitting the province into the union. The population being only 94,021 in 1871 we could not possibly be entitled to a representation of six in this House if it were the intention of the agreeing parties that the terms of the 51st section with respect to re-adjustment should apply. There was no justification in giving us six members in the first instance with our then population if the contracting parties thought for a moment that the provisions of the 51st section with regard to readjustment applied. You must read all the documents, all the records together and thus judge the case. My opinion is that any fair-minded man will admit after reading all the documents and correspondence that the intention was to give the island a minimum representation of six. The Order in Council provides that each county should return two members. In 1881 Sir John Macdonald was premier. He had a full knowledge of what passed in the Confederation conferences and subsequently. He negotiated the terms of union in 1873 and he evidently thought when the redistribution Bill was passed in 1882 that Prince Edward Island had a minimu representation of six, otherwise he would have reduced it to five. All the facts have been before Parliament many times. In 1865 immediately after the conference took place in Quebec, and when the matter was fresh in the minds of the men who were present at that conference, we find the matter was discussed in the legislature of Prince Edward Island. A great number of speeches were made. I am not going to weary the House by reading them. But there was one terse speech made upon this question in the House at that time made by Mr. Duncan. He said

As to the general legislature -

That is the Dominion Parliament:

—I consider the representation is it allowed to this Island unfair and unjust. The five representatives allotted to us in the Lower House would not give this colony much influence there, but as our population will not increase so rapidly as that of Canada, there is a prospect, through the operation of one clause in the report that our five representatives would dwindle down to three.

That is what happened. These men were objecting to a representation of five and it was the principal objection in the Legislature of Prince Edward Island in 1865, immediately after the contention of the delegates of Prince Edward Island for a representation of six was rejected by the delegates from the other provinces in the Quebec conference. Mr. Duncan goes on and says:

Taking all these points into consideration, therefore, it is clear to me that we have nothing to gain and much to lose by adopting the Quebec scheme.

It may be said we are a small province, and that we today are only on a level with any three other constituencies in any other part of the country. I do not look at the matter in that light at all. We were a separate province; we had certain valuable rights and privileges as a separate colony, we were asked to give those rights away; We made an agreement with the Dominion Government that certain of these rights should be granted away for all time. we wanted a representation of six members in the Parliament of Canada as one of the considerations and we would not go into the union unless we got a representation of six. The Imperial Parliament through one of its principal officers, said: Be generous to Prince Edward Island. They were generous; they gave us one more representative than we were entitled to. That solemn compact should be ratified by this Parliament today, by inserting the amendment which I read, in the resolution which is going to the Imperial Parliament for ratification. This will only be doing what is fair and just. We get six members then. Are we any less important today than we were in 1873?

So far as wealth is concerned, we have gone ahead with rapid strides; in proportion to our extent of territory, we have advanced perhaps more rapidly than any other part of Canada; yet our representation is now to be reduced to three. The rest of Canada has increased in population to a very considerable extent. Within the last few years the territory of Ontario has been increased by 150,000 square miles. We see by the legislation which is before us that two new constituencies are opened up in Northern Ontario; two have been opened up within the last two years. By reason of the addition of 180,000 square miles in 1897 and of the Ungava territory in 1912, the population of Quebec is rapidly increasing. In 1912, in the Act ceding Ungave to Quebec, they were given their new representation. Outside of the 65, which is the pivotal number upon which the representation of Canada is based, they are getting additional representatives for the territory which was granted to them in 1912. If you read the discussions which took place not only at Quebec, but in the different legislatures of the provinces at the time of Confederation, you will see that the whole theme of the discussion was that the representation was to be based upon the various conditions existing in and the influences acting upon the provinces. If the provinces gave away certain rights, they were conceded certain rights. Sone hon. gentlemen say that the basis of Confederation is representation by the population, but the representatives from Prince Edward Island never conceded that. The province of Manitoba also got a large extent of territory, and their population is increasing very rapidly. But nothing is given to the other provinces in respect of this great increase of territory, although there is a provision in the British North America Act that in the case of increase, diminution or alteration of territory in respect of any province, provisions respecting the effect and operation of such increase or diminution or alteration of territory in relation to any province affected thereby must be considered. Although the three provinces which I have named have been largely increased in area by the addition of territory, no consideration is given to that in so far as the Maritime provinces are concerned. This is a matter which the British North America Act clearly states should be considered by this Parliament.

We had a clause in our terms of Confederation that we should be provided with continuous steam communication, winter and summer, between Prince Edward Island and the mainland. I take it that this is a matter which should receive consideration by this House in the discussion of the matter now before us. It was brought up by the delegates to the Interprovincial Conference last year and it was brought up by the members of the Government of Prince Edward Island when they appeared before the committee of this House a few months ago. We were to get continuous steam communication, and although immediately after we entered the union we asked the Dominion Government to fulfil the terms of Confederation in that respect, we were totally ignored, and from 1873 up to the time the present Government came into power, we received no consideration at the hands of any Government. I may say that the people of Prince Edward Island are today rejoicing in the fact that within a very short time we will have continuous steam communication and that the terms of union in that regard will be fulfilled.

Mr. SPEAKER: May I suggest to the hon. member that he is rather wandering away from the motion now before the House?

Mr. McLEAN: I think that it has a certain connection with this matter and that I have a right to make the statement, but in deference to you, Mr. Speaker, I shall not continue to discuss the matter along that line.

Reference is made in this resolution to the colony of Newfoundland. In my opinion it would be a good thing if we were to obtain the consent of Newfoundland to their entering into this Confederation it would be a good thing not only for the people of Newfoundland, but for the people of Canada as well. I think that the the real reason why the colony of Newfoundland did not come into the union is because the term of Confederation in respect of communication between Prince Edward Island and the mainland had not been fulfilled, and because the representation which was agreed upon has not been conceded to us. We are living contiguous to the colony of Newfoundland; we have trade communications with them; we have close commercial relations with them; an extensive trade is carried on with Newfoundland. Notwithstanding the fact that it was known by the representatives of the people in this House that the terms of Confederation had not been carried out with the island, the matter was allowed to stand from year to year. Is it any wonder that the people of Newfoundland did not make any approches to the Government of Canada in respect to their entering this Confederation? In 1864, when the first conference met at Charlottetown, the delegates from Newfoundland were there, and we were in hopes at that time that Newfoundland would come into the Confederation. But they saw how Prince Edward Island was being treated, the conference would not grant what Prince Edward Island asked for, and Newfoundland backed out also. They were in hopes at that time that they would get the concessions for which they asked, but their requests were refused by the delegates from the other provinces. Now we have the opportunity of bringing Newfoundland in and of clearing up all the objections and grievances of the provinces which did enter into the union. Give to Prince Edward Island, New Brunswick and Nova Scotia what the people at that time thought they were getting. Be generous, as the right hon. leader of the Opposition said here in 1906, even though you may concede a little more than you think that people are entitled to. If you are generous, if you give to Prince Edward Island, what I consider she is entitled to, you will be heralding to the world the fact that you are acting in a generous way and the people of Newfoundland will see that Canada is desirous of fulfilling the contract which she entered into with the people. On August 18, 19, and 20 next we propose to have a celebration in Prince Edward Island of the conference which took place on September 1, 1864. Let this Parliament show the people of Prince Edward Island, every man of whom believes that we are entitled to a representation of six in this House; every man of whom believes that a contract was made that we should have that representation; let this Parliament show to the people of Newfoundland, many of whom will be present at this celebration, that the Dominion is willing and anxious and ready to fulfil the contracts which were entered into with Prince Edward Island at that time. Then you will find that the people of Newfoundland will probably take a different view of the desirability of their entering into Confederation with us.

I know that this measure has been introduced by the leader of the Government and that the Government are bound by it. But there is no law which we cannot change. Notwithstanding the fact that this committee represented that there should be granted to any province representation in this House equal to what it has in the Senate, still there is no reason why this Government, in my opinion, should not add the clause which I read to the House a few moments ago. I think it will be only fair, just and right that this Government should do, that in fulfilment of the solemn contract that was made with the people of Prince Edward Island in 1873.

Motion agreed to, and House went into committee on the resolution, Mr. Murphy in the Chair.

On section 1, subsections 3 and 4 of the draft Bill.

(3) The number of persons whom by section 26 of the said Act, the Governor General may, upon the direction of the King, add to the Senate, is increased from three or six to four or eight, representing equally the four divisions of Canada.

(4) In case of such addition being at any time made the Governor General shall not summon any person to the Senate, except upon the further like direction by the King on the like recommendation, to represent one of the four divisions until such division is represented by the twenty-four senators and no more.

Mr. A. A. McLEAN: I beg to move that the following clause be added to the resolution, at the end thereof:

Prince Edward Island shall be entitled to be represented in the House of Commons by six members, the representation to be increased under the provision of the British North America Act, 1867.

Prince County shall constitute one district to be designated 'Prince county district' and return two members.

Queen's county shall constitue one district to be designated 'Queen's county district, and return two members.

King's county shall constitute one district to be designated 'King's county district, and return two members.

While I appreciate the concession of four representatives for Prince Edward Island as is provided in the last clause of the resolution, I submit that the original bargain should be recognized and carried into effect. The Government deserves great credit for this concession which is of very great importance, but I do not think it is too much for me to ask that the original representation of six members be restored.

Amendment negative.

Mr. A. A. McLEAN (Queen, Prince Edward Island) moved in amendment:

That the resolution be not now read a second time but that the same be referred back to the committee with instructions that they have power to amend the same as follows:

(4b) Prince Edward Island shall be entitled to be represented in the House of Commons by six members, the representation to be increased under the provisions of 'the British North America Act, 1867.' Prince county shall constitute one district to be designated Prince county district' and return two members; Queens county shall constitute one district to be designated Queens county district and return two members: and Kings county shall constitute one district to be designated Kings county district and return two members.

Amendment negatived, motion agreed to and Resolution read the second time to amend the clause by adding at the end of the section relating to Prince Edward Island the following:

Provided, that if the British North America Act, 1867, should be amended by the Parliament of the United Kingdom, in accordance with the address of both Houses of Parliament of Canada in that behalf, passed at the present session, immediately upon the Act of the Parliament of the United Kingdom amending the said British North America Act, 1867, in accordance with such address coming into force, there shall be in the Province of Prince Edward Island three electoral districts defined as follows'

(1) The county of Kings shall form and constitute the electoral district of Kings and shall return one member.

(2) The county of Prince shall form and constitute the electoral district of Prince and shall return one member.

(3) The county of Queens shall form and constitute the electral district of Queens and shall return two members.

That would provide for the existing condition of things immediately upon the Imperial Act coming into force.

I see no reason why it should not be done.

Mr. BORDEN: And save legislation next year. Perhaps my hon. friend will let it stand and have the Bill read the third time to-night, and I will consult with the Minister of Justice in regard to the matter. I do not see any objection to the proposal; it seems to me rather appropriate. I do not know whether my hon. friend from Prince Edward Island has considered it or not.

Mr. A. A. MACLEAN—I was not sure whether the resolution would pass in the senate where it now is, and if it did not, I supposed that the Bill would pass as it is, and that the amendment, if it were necessary, would require to be moved tomorrow on the third reading. That is the reason I did not move it tonight. I had the matter in mind, but did not consider this the proper time to move my amendment.