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SENATOR FERGUSON ON REDISTRIBUTION

The Constitutional Point Aply Discussed

SIR LOUIS DAVIES AND MR. MILLS

Quoted to Prove the Unconstitutionality of their own Bill.

In Senator Prowse's speech published by THE EXAMINER, the Government Redistribution Bill as it would have effected Prince Edward Island and Canada at large was very clearly and fully exposed. Senator Ferguson dealt with the various points and also with the question of the constitutionality of the bill,—the question upon which the bill was thrown out. We quote from the Senate Hansard what Senator Ferguson said about this question, as follows:

"I take the ground that Parliament has not a right to pass a measure of this kind except after the taking of the decennial census. I hold that we have not the constitutional right to do it. I feel rather diffident about discussing a question that is, in many respects, a legal one, very closely, but I will take very great care to support the opinions I give on this question by excellent authority—authority which I am sure the Minister of Justice will not dispute. My hon. friend, in introducing the bill the other day, took a long time—I think about an hour—in instructing the House on some of the elementary features of the British constitution. He began away back in the reign of Henry Third, and traced the growth of representative institutions in the mother country up to a comparatively recent period. His speech embraced also a review of the old American colonies and Canada before the date of confederation; and, if I understood the object of this very long and tedious disquisition, if it had any bearing on the subject before the House, it was to prove that this Parliament had an implied power to pass such a bill as this independently of the British North America Act.

Hon. Mr. Mills—No.
 Hon. Mr. Ferguson—My hon. friend shakes his head. I understand if he has changed his practice, he has not changed his opinions on this subject at all events, and it will be my duty to place before the hon. gentleman some views of his own on that matter which I know he will receive with very great respect. In 1892 another hon. gentleman, a prominent member of this government, Sir Louis Davies, made a statement in Parliament with regard to redistribution. He said:

"Now, sir, it is said by some that there must be an inherent power in Parliament to do this. (That is to pass a Redistribution Act) I deny it. This Parliament is the creation of an Imperial statute and is bound by the limitations expressed in the statute; it has no power to legislate in defiance of, or beyond, or in consistent with any of the limitations in that statute."

That was the opinion expressed by Sir Louis Davies, in 1892. I now come to what my hon. friend the Minister of Justice said on the same occasion Page 3206 Hansard of 1892. He says:

"What does the 40th section say? It says: 'Until the Parliament of Canada otherwise provides Ontario, Quebec, Nova Scotia and New Brunswick shall have,' &c., &c."

Until the Parliament of Canada otherwise provides, provides how? In what way? Arbitrarily? No, sir, provides in the way pointed out in section 51. It is authorized to provide in that way. It is not authorized to provide in any other way? Now there is no rule of constitutional authority better settled than this that you cannot set up a simplified power against an expressed one."

That is the way (quoted the 51st section) which you are to exercise that power. There is the express provision. There are the directions given and this Parliament is required to act in consonance with these directions and in conformity with this grant. It had no right to go outside the grant."

These are the words of the hon. gentleman himself, and I may venture an opinion surely when I am supported by a gentleman of such great eminence as a constitutional lawyer as the hon. Minister of Justice. These are the views of the present government on that subject, and if my hon. friend did not mean, by the nature of the disquisition which he gave on the growth of representative institutions in Great Britain and the colonies up to the time of confederation, if he did not mean to found an argument in favor of Parliament dealing in the way he proposes in this bill—that is, apart from the 51st section of the British North America Act, I fail to understand the meaning of his words. But, according to my hon. friend's own language in 1892, there is no power or provision for dealing with the redistribution except as provided for in section 51 of the British North America Act.

Hon. Mr. Mills—Hear hear!
 Hon. Mr. Ferguson—My hon. friend says "hear, hear," and notwithstanding that, he brings in a bill in entire violation of section 51 of the British North America Act. There are four sections in the British North America Act which deals with

this question. Section 40 I have already partially read, but in order that we may have them all before us, I will read all the sections:

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the purposes of election of members to serve in the House of Commons, be divided into electoral districts as follows, etc:

51. On the completion of the census in the year one thousand eight hundred and seventy-one and of each subsequent decennial census, the representation of the four provinces shall be readjusted by such authority, in such manner and from such time, as the Parliament of Canada from time to time provides, subject and according to the following rules:

1. Quebec shall have the fixed number of sixty-five members.
 2. There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bear to the number of the population of Quebec (so ascertained.)

3. In the computation of the number of members for the province, a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number.

4. On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then last census, to be diminished by one-twentieth part or upwards.

5. Such readjustment shall not take effect until the termination of the then existing Parliament.
 52. The number of members of the House of Commons may be, from time to time, increased by the Parliament of Canada, provided the proportionate representation of the provinces prescribed by this Act is not, thereby disturbed.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the order, peace and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces; and for greater certainty but not so to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:

Then we come to section 92 which says:

92. In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say:

1. The amendment from time to time (notwithstanding anything in this Act) of the constitution of the province, except as regards the office of Lieutenant Governor.
 While it is laid down as the law with regard to provincial legislatures, in the enumeration of the powers of the Federal Parliament there is no corresponding power mentioned. There is a general power conferred by section 91 to make laws for the peace, order and good government of the country, which probably would be quite sufficient to give power to pass Redistribution Bills, unless express provision was made in another section of the British North America Act for the same purpose; but I think my hon. friend will be very loath to contradict me when I say that, if, as my hon. friend admitted a few moments ago, and as he said in 1892 section 51 gave express and complete power with regard to making readjustments involving redistributions—if that is provided in an express provision, the general provisions like section 92 will not apply. My hon. friend may take another view, but I doubt very much whether he will assume the responsibility of taking any such position as that. Of these four sections, 91 gives general power; 40 creates an undoubted power; 51 specifies the power created by section 40 and section 52 further specifies the powers granted in section 40. Again, I am supported by the Minister of

Justice himself on another point. I think it has an important bearing on this question. In the original resolution for the union of the provinces, it was provided that the provinces should have the framing and shaping of electoral districts for federal purposes. That was the original plan provided by the resolutions; but during the London conference a different view prevailed, and the advocates of retaining power in the hands of the local legislature were induced to give way and accept section 51 instead of the resolution

(Continued on page 5.)

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