

There are omissions which to my mind are very striking—inexcusable, I was going to say—and for which I can give no explanation whatever. For instance, why has the Highway Bill been withdrawn? It was one of the pet bills of the Government. It came here on its mission of usefulness, so it was alleged, twice. We are charged with having rejected the Highway Bill. We never rejected the Highway Bill, neither once nor twice. It was stated in the other Chamber a day or two ago that we rejected it. The Bill was amended; it was our privilege to amend it; it was much better constitutionally as we amended it than it was originally. And if it were brought in again, on a sound constitutional basis, I think the Senate would pass the Bill, if it thought it could do so constitutionally. Let me say that since the Bill was before us last session, I have changed my attitude towards it somewhat. I did not oppose it; the majority on this side of the House, in the amendments that we made to the Bill, did not oppose it; but I do not think the Bill has any right in this House. I do not think it is a Bill that can be constitutionally presented in this House. I think it is indirectly in violation of the principles of the British North America Act. That is my view in reference to the Highway Bills. I will give the reasons. We could have a Highways Bill in this House, with an amendment by the Imperial Government of section 91 of the British North America Act. The first question that arises: Has Parliament authority, without Imperial legislation, to grant a subsidy to a province to aid in the performance of duties for which the province is already receiving aid under the Federal pact? I do not think it has. When the British North America Act was passed by the Parliament of England, it divided the jurisdiction and the functions of government between the provinces and the House of Commons. We cannot transfer any function of government from one House to the other without Imperial legislation, that is clear. Otherwise we could pull down the whole fabric of Confederation. I do not think we have any such power. If we have no power to transfer the functions of the Senate and the House of Commons to the provincial legislature, then we have no power to appropriate

money that belongs to the Federal Government to the uses of the provinces. That must be equally clear. Mr. Blake, in discussing the 'better terms' with Nova Scotia in 1869 or 1870, laid down this principle.

He said:

That under the Union Act the public service of each Province shall be provided for out of the revenues thereof.

The public service of the province shall be provided for out of the revenue of the province. One of the public services of the province is to make highways. The cost of making and maintaining those highways is a charge on the province. He continues:

—and not out of the revenues of Canada which were to be appropriated to the public service of Canada solely, and that thus the great grievance of the application of general funds to local services shall be removed for ever.

Now the Dominion Government started on its career with a certain source of revenue and a certain amount of revenue which were intended for its own use. Can the Dominion Government take the revenue which the provinces originally surrendered for its own exclusive use, and apply them to a different purpose? I do not think it can. I think that is quite clear. The compact between the provinces and the Dominion Government, in regard to the functions of the Government, as well as in regard to its financial considerations, was the product of an Act of the Dominion Parliament, practically a treaty, as Lord Carnarvon held, and as all authorities on the constitution hold to-day. As was stated in this House, and as stated in the other chamber by Sir Charles Fitzpatrick before he left that chamber, that is the foundation rule of the constitution, in regard to the matter. Now a Highways Bill contravenes that for the reasons I have given.

Secondly, I would say, granting that a subsidy may be given to a province for some special purpose, can the Federal Government enter upon the provincial domain, and expend such subsidy by its own officers, even with the consent of the provincial legislature or the order of the Lieutenant Governor in Council? I do not think it can. In the early clauses of that Bill such power was retained to the Dominion Government; it could build and maintain highways. The only rule of the constitution is that where a local undertaking is declared