

America Act vested the command in the King. In other words the parliament of Canada did not say: the King shall have the command. What they said was: the parliament of Great Britain and Ireland has vested the command in the King. The section reads:

As provided by the 15th section of the British North America Act, 1867, the command in chief of the land and naval militia, and of all naval and military forces, of and in Canada, is vested in the Queen and shall be exercised and administered by Her Majesty personally, or by the Governor General as her representative.

No doubt they took upon themselves to add the words:

And shall be exercised and administered by Her Majesty personally, or by the Governor as her representative.

To that extent they undertook to interpret the meaning of the words of the British North America Act. But they did not undertake of their own authority to place the command of the militia anywhere; they recognized that the British North America Act settled that. Now the interpretation they put on it by the addition of the words added may or may not have been correct. I do not want to dispute its correctness.

It seems to me that this parliament is without power to, of its own authority, determine where the command rests; that is determined one way or the other by the British North America Act, and if it were within my functions to make a suggestion it would seem to me that the wise course for this parliament would be to follow the example set by the framers of the original Militia Act and simply to recognize the fact that the British North America Act vests the power of command in His Majesty, of course leaving it to be interpreted by the proper tribunals what the expression 'His Majesty' in the Act means. After all that is the whole question. We cannot by any addition to the wording of that Act alter the person or persons or authority in whom the command is to be vested. The parliament of the United Kingdom settled that. The parliament of the United Kingdom gave this parliament power to legislate with regard to militia and defence no doubt, but as a preliminary to conferring that power is settled where the command was to rest, so it seems to me that the wise course under the circumstances would be to follow the example of the original framers of the Act and content ourselves with recognizing that the British North America Act places the command where that Act does place it. That of course as I have said does not affect the question of the meaning to be attached to the provision of the British North America Act, and I do not want to be understood as arguing here for the position that under the British North America Act the power vested in His

Mr. DOHERTY.

Majesty or Her Majesty is not a power exercisable by Her Majesty or His Majesty through the Governor General in Council.

Mr. R. L. BORDEN. I am also disposed to take the view that the government must accept the responsibility of legislation of this kind—of course that goes without saying. The point of my objection was precisely that which has been emphasized by my hon. friend (Mr. Doherty), inasmuch as this parliament has no legislative authority to qualify or limit the language of section 15 of the British North America Act, it ought not to undertake to do it. Indeed I have some support in that from a former Minister of Justice, although apparently none from the present Minister of Justice. I observe what took place when the Militia Act was before this House in 1904, during the discussion on section 4 which read:

The command in chief of the militia is vested in the King and shall be exercised and administered by His Majesty, or the Governor General as his representative.

The hon. member for Victoria and Haliburton (Mr. Hughes) who has brought the passage to my attention, inquired:

Mr. SAM. HUGHES. In what does this differ from the old clause?

Sir FREDERICK BORDEN. The word 'personally' is left out.

Mr. FITZPATRICK. I would suggest that this whole section would be dropped. It is absolutely unnecessary and in any event would have to be altered. Section 15 of the British North America Act provides:

The command in chief of the land and naval militia, and of all naval and military forces, of and in Canada, is hereby declared to continue to be vested in the Queen.

That does away with the necessity for this section.

Sir FREDERICK BORDEN. Let the section stand.

Mr. FITZPATRICK. If it is to stand, I would suggest this modification. Instead of reading, 'The command in chief of the militia is vested in the King,' it should read, as in the words of the British North America Act, 'is hereby declared to continue and be vested in the King.' Because we are not conferring upon His Majesty authority over the army. That authority is conferred by the constitution.

Sir WILFRID LAURIER. This seems to be a wordy warfare. I rather agree with the Minister of Justice (Mr. Fitzpatrick) that there is no necessity for the clause. I think we might allow it to stand in the meantime.

That was the view expressed then.

Then let us remember once more that the authority of the imperial parliament is one thing, and the authority of this parliament is another thing so far as the prerogative of the Crown is concerned. The imperial parliament under modern conditions can deal with the prerogative of the Crown in any way that it sees fit, but this parlia-