

*The Budget—Mr. Dorian*

Of course I am fully aware that the preamble of section 91 which empowers federal legislators to pass laws for peace, order and good government has developed into a blanket formula most convenient to those who would justify the craving for centralization, which tends to grow within any federal government. In this connection, let me quote an argument in point, namely the opinion stated on page 57 of the Report of the Royal Commission on Dominion-Provincial Relations, Book I. While considering this construction put on the said preamble, the commissioners remarked, and rightly so:

The exclusive sphere ensured to the provinces by section 92 might, if the Dominion so desired, become very small indeed.

...the bare assertion by the federal parliament of a general or national aspect in the subject matter of the legislation would, of itself, justify the legislation under the "peace, order and good government" clause. That clause would then confer tremendous power on the federal parliament... The power of the dominion parliament under the "peace, order and good government" clause would become so overwhelming that the federal character of the constitution would be open to grave doubt.

Indeed, under these conditions, the constitution in its working, would approach the legislative union which some of the fathers desired but which, as they recognized, they could not secure by agreement.

Mr. Speaker, from time to time also, an argument is predicated on the power which rests with the federal government to resort to any taxation system, and the inference is made that it can, on that basis, levy monies even for purposes beyond its field of action. I had the opportunity last year to probe the matter from that particular angle and I do not want to be repetitious. No doubt, the remarks made by the commissioners I just quoted, apply to the same extent, if not to a greater extent, to this argument which is all the more specious for its failure to take into account the function of the tax which, far from being a purpose in itself, is but a means entrusted to the government to carry out the tasks in its own realm. That education, at every level, should come within the exclusive jurisdiction of the provinces; that, by inference, it should remain with them to look after it and to provide grants to that effect, that is obvious to me. In 1938, when some legislation passed by the Ontario government was referred to the Supreme Court, Hon. Justice Lyman Duff, who was unquestionably one of the most brilliant minds on the Canadian bench, said as follows:

(Text):

[It is well not to forget, in examining the constitutionality of enactments of the character of those before us, that by section 93 (subject to provisions having for their purpose the protec-

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tion of religious minorities) education is committed exclusively to the responsibility of the legislatures; and that, as regards that subject, the powers of legislatures are not affected by the clause at the end of section 91. We should perhaps also recall that section 93 (as is well known) embodies one of the cardinal terms of the confederation arrangement. Education, I may add, is, as I conceive it, employed in this section in its most comprehensive sense.

(Translation):

For the information of my hon. colleagues opposite, it is interesting to note that the leading figures of the Liberal party around 1920, spoke in a similar vein. One instance will be enough: when taking part in the debate on federal grants to provinces for their technical schools, as found on page 3795 of *Hansard*, volume IV, for the year 1919,

Hon. Ernest Lapointe made an argument in point, as follows:

The question of education is a very delicate question in this country. Suppose this government does in the matter of national schools what it proposes to do in the matter of technical schools, and grants subsidies to the provinces, provided those moneys shall be spent on the establishment of national schools, would that be fair? Some of the provinces would refuse to accept the money. Would it be fair for this parliament to ask the citizens of those provinces to pay for education in other provinces, when education is a matter of exclusive provincial concern?

Now, Mr. Speaker, it should be noted that those grants to industrial and technical education came in the wake of a report made by the commission of inquiry set up in 1910 by the federal minister of labour with the explicit agreement of every province.

How this doctrine has changed as time went on. To realize it, it is enough to remember the comments made by Hon. Jean Lesage, then member for Montmagny-L'Islet, the day before the Liberal convention in January 1958. He said:

I am positive that the Liberal party as such is prepared to endorse the principle of free education at every level.

And he went on to say:

I think that all governments, federal, provincial and even municipal, could all together take steps to achieve this desirable objective.

As compared with grants to industrial and technical grants, grants to university education have a much more questionable background. They date back to the recommendations made by an investigation commission appointed and set up by the federal government alone, without the co-operation of the provinces.

Let us see the language used in the recommendations as found on page 355 of the report:

We therefore recommend: