

in and by any enactment, for instance by this Act, provide that the command shall be vested somewhere else than in His Majesty, or, as it states, in the Queen. I do not want to question the interpretation put upon section 15 by the right hon. First Minister (Sir Wilfrid Laurier) or the Minister of Justice, though I must confess that it did not seem to me that one of the arguments made in support of that contention was very conclusive. It was argued that because under section 9 which provides that the executive government of Canada shall be vested in His Majesty it was held, and I have no doubt that it was rightly held, that that meant that the executive government of Canada was vested in His Majesty, represented by the Governor General, in Council—that holding settles the meaning of the words 'the Queen' in section 15. I do not dispute that holding at all, but in so far as it was argued that because in section 9 the words 'Her Majesty' or 'the Queen' were to be taken as meaning 'Her Majesty' through the Governor in Council it necessarily followed that the same expression in section 15 meant the same thing, that did not seem to be quite conclusive. Because it is to be pointed out that section 15 deals with the command, not merely of the military forces of Canada, but deals with the military forces of and in Canada. Now, at the time of the passage of the British North America Act, and for a long time subsequent, we had in Canada regular forces of Her Majesty. We may not for the moment have these, but there is no reason why we should not at one time or another have within Canada the regular forces of Her Majesty. Section 15 determines, without making any distinction between the two, that the command of all forces of and in Canada shall continue to be vested in Her Majesty. I hardly think it would be argued that the effect of that section was to place the regular forces of Her Majesty in Canada under the control of the Governor in Council and in the same section the Queen, or her Majesty, as constituting the commander of the regular forces, could hardly be held to be a different personage from the Queen as constituting the commander of the militia. I do not propose to argue from that in support of either one or the other proposition as to what is meant by 'Her Majesty'. All I desire to point out is that the argument by analogy from section 9 does not seem to me to be at all conclusive, and I think it may further be pointed out as showing that those who were in the beginning called upon to deal with the interpretation of this section recognized the then existence in Canada of regular forces of Her Majesty, which they did not in any way pretend under this section

came under the control of the Governor in Council, that in the original Militia Act—and I am not certain that this is not carried on in the Act to-day—that you have a special provision that Her Majesty might in certain cases place the militia under the command of the commander of her regular forces in this country. Now the commander of Her Majesty's regular forces was not the officer of the Governor in Council, there was a separate commander of the militia forces. But as I said I do not desire to argue for or against the pretention that the control of our own militia may have been intended to be in Her Majesty in Council in Canada; that is to say Her Majesty as represented by the Governor General in Council in Canada. All I wanted to point out is that the argument made in support of the proposition does not seem to me to be as conclusive as it apparently seemed to the gentleman who invoked it.

It seems to me that the discussion by this House of what is meant by the provisions of the British North America Act is quite nugatory. We have not power by legislation here to determine what that meant, and it seems to me that we have not properly speaking, power to determine where the command of the forces of this country rests, that is determined by the British North America Act, and as was pointed out by the hon. member for Hastings (Mr. Northrup) if the British North America Act means, as it was contended on the part of the government, that the command is vested in His Majesty through the Governor General here and vested in him in council, that is so, whether we make an enactment on the subject or not; and if, on the other hand, it does not mean that our enacting that it does will not alter the state of the law. Apparently this parliament in taking upon itself as a matter of substantial legislation to determine where the command lies is taking on itself to determine something which the parliament of the United Kingdom by the British North America Act has determined for all time to come. In that connection one may safely say that that was the view of it entertained by the authors of the original Militia Act and they might perhaps be correctly enough described as having been at the same time the authors of the British North America Act. At least the minister who was primarily and particularly responsible for the Militia Act, the late Sir George E. Cartier, may fairly be described as having been one of the authors of the British North America Act, and it is a noteworthy thing that when they came to enact the Militia Act, the first one enacted under the British North America Act they did not ask parliament to determine on its own authority where the command rested, they enacted a section which recited that the British North