ernment, and setting forth that a certain group shall be defined legal powers, and a certain other group undefined powers, are all legal powers, and not constituent powers. I could agree with his argument if it was that the sixteen subsections of section 92 covered co-ordinate powers, and the hon. gentleman will agree that, in a general way, those terms which characterize group 91 may be used to characterize group 92. I think, to draw a line between section 91 and section 92 is simply to go back to the powers which we have in old Canada. If it is right that the powers given Parliament in section 91 are co-ordinate with those in section 92, then it is clear that one of the powers in section 92 is, beyond all doubt, not a legal power, but rather a constituent power, for the reason that section 92, subsection 1, says that among the provincial powers set forth in that group, the province shall have power to make amendments, from time to time, to the Constitution, except as regards the office of Lieutenant-Governor. Well, then, if, under the common law, our powers are, in general terms, the same, or nearly the same, as the local powers, the provisions are not legal but constituent.

Mr. MILLS (Bothwell). The powers of the provinces were conferred on them by statute, prior to 1867. The powers since that time possessed by this Parliament have been created by compact. The powers possessed by this Parliament, as Lord Carnarvon said, are the result of treaty, and, therefore, cannot be varied, for they are the result of a compact entered into between the different provinces.

Mr. WELDON. It may be that those phrases have been used by some of the members of the British Parliament. But it is within the knowledge of the hon. member for Bothwell, and other legal gentlemen, members of this House, that this question has arisen in appeal cases, and I can specially speak of a case that was heard before the Judicial Committee of the Privy Council, from New Brunswick, ex parte Renaud, in which it was distinctly laid down that our Constitution could not be so interpreted. Take the Act as applying to New Brunswick. One of our leading New Brunswick lawyers took the ground that the courts could not construe in a liberal and free manner the terms of the Act as they could those of a treaty, and their Lordships answered that a statute like the British North America Act could be construed the same as any other Act. The hon. gentleman is wrong when he says that the provinces, before the Union were provided with statutory powers. That is not true with respect to New Brunswick, and it is also not true with regard to the province of Nova Scotia. You cannot find those powers in the statute or in the Governor's commission except in a vague and crude form, and I wish here to say that that statement is not correct. I could make

a verbal argument to show the absurdity of the contention of the hon. member for Bothwell. In section 34, I read that the Governor may from time to time, by instrument under the Great Seal of Canada, appoint a senator to be Speaker of the Senate. The moment you undertake to construe that Act in a hard and literal fashion you find yourself face to face with many difficulties. If the hon. gentleman were to press me with a technical difficulty, I could raise another one that would place him in a most difficult position. There is a clause stating that the Speaker shall preside at all meetings of the House of Commons—which would go to show that the Speaker was an essential part of the House of Commons. There is no such clause in the Act as regards the Speaker of the Senate. So, if you press the literal phrases and interpretations you are driven to most absurd lengths. Take another section of the Act, section 65. It will be remembered that in the famous Letellier case the point was taken that the Lieutenant-Governor of a province was appointed by the Governor, while his dismissal could only be made by the Governor-General in Council. Surely if there was ever an antithesis it would be that the appointing power was not the one that could dismiss. But every one knows that the law officers of the Crown admitted that the words in the first section were Governor-General in Council, and that they should be read in the same way in that regard as were the words Governor-General. I observe that these sections to which I refer are 58 and 59. The hon. member for Bothwell says this is an interference with the prerogative. In my judgment it does not in any way affect the prerogative. If I know the meaning of prerogative it is the common law power of the Queen or Executive in any country. We do not propose to interfere with that power in any event, but with the power given under a statute, and there is all the difference in the world between a prerogative power which the Crown holds at common law and an executive power which the Crown exercises which is clearly and fully defined in the terms of an Act. In this view no interference is proposed with the prerogative. It must be remembered that the Governor-General in this country represents the Queen, and is the guardian of the royal prerogative. It is his duty to guard that prerogative, and if he considered an Act invaded that prerogative he would withhold his sanction, and the Act would not become law, unless the Imperial authorities superseded his action. So it cannot be said that this measure in any way interferes with the prerogative. And if it does so, it does so by the consent or authority of the Crown which is a party to the Act—not only the Governor-General, but also the Queen herself. Now, Mr. Speaker, I think I might sit down with that statement and say no more, but I will add one word. In my judgment, you cannot