

“ a power which was not possessed or exercised by the British House of Commons at the time of the passing of ‘ The British North America Act, 1867.’

“ The undersigned has come to the conclusion, although not without doubt, that this Bill is not within the competency or jurisdiction of the Canadian Parliament, and that the attention of Her Majesty’s Government should be called to its provisions, and to the doubt that exists with respect to its validity.

“ All which is respectfully submitted.

“ (Signed,)

JOHN A. MACDONALD.”

[*Enclosure in Lord Dufferin’s Despatch, No. 116, May 3rd, 1873.*]

[COPY.]

“ OPINION IN REFERENCE TO THE MEANING OF THE 18TH CLAUSE OF THE BRITISH
“ NORTH AMERICA ACT OF 1867.

“ This clause is as follows :—

“ ‘ The privileges, immunities and powers to be held, enjoyed and exercised by the Senate, and by the House of Commons, and by the Members thereof, respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.’

“ A Bill having been introduced into the Dominion House of Commons, in the present Session, intituled ‘ An Act to provide for the examination of Witnesses on Oath by Committees of the Senate and House of Commons in certain cases,’ a question has been raised as to whether the Dominion Parliament were competent to pass this Bill in view of the restrictions imposed by the 18th clause of the B. N. A. Act aforesaid.

“ In my opinion that clause was intended to restrain the claims of either House to indefinite privileges and immunities, by providing that such privileges shall never exceed those enjoyed by the Imperial House of Commons, at a given date. The privileges and immunities herein referred to are those that might reasonably or unreasonably be claimed as inherent in, or necessarily attaching to the Houses of the Canadian Parliament, pursuant to the maxim that ‘ all things necessary pass as incident.’ By limiting such privileges and powers to those possessed by the Imperial House of Commons in 1867, it prevents, on the one hand, an undue encroachment or extension of privilege, and on the other hand secures to the two Houses and the Members thereof, respectively, the privileges, immunities and powers appropriate to them as component parts of the Canadian Parliament.

“ It has been urged that the Act to authorize the examination of witnesses on oath by Committees of the Senate and House of Commons of Canada, is an extension of their privileges, beyond those sanctioned by the B. N. A. Act, inasmuch as Select Committees of the Imperial House of Commons (not being Private Bill Committees) did not possess such power in 1867, or until, by the Imperial ‘ Parliamentary Witness Oaths Act of 1871,’ such power was for the first time conferred upon them.

“ It is to be observed, however, that the power so conferred upon Committees by the English House of Commons was not claimed as a ‘ privilege’ inherent in that Body. It was merely a power conferred by Statute, to facilitate legislative inquiries, similar to that which has been repeatedly conferred upon Statutory Commissions ; and in being so conferred it did not trench upon any prerogative of the Crown, or enlarge the constitutional rights of the House of Commons.