Dominion, Provincial Powers Ruled not Exchangeable.

Halifax, June 12.—The Nova Scotia Supreme Court in a majority decision today ruled that the province cannot delegate its constitutional powers to the dominion and the dominion cannot delegate its constitutional powers to the province.

In other words, the effect of the ruling is to confirm the constitutional authority of both dominion and province. For instance, it would be unconstitutional and illegal for the dominion to accept a delegation of traditionally provincial educational powers and by the same token the province could not accept a delegation of traditionally federal bank control powers.

The division of powers as between dominion and province also covers the field of taxation and kindred matters.

The last amendment was on the Redistribution Bill, making null and void the clause of our constitution which was limiting to sixty-five the number of seats in the province of Quebec, and constituting that number the quotient for seats in the Dominion electoral districts. The provinces were not consulted before securing the amendment.

A question was put by the honourable senator from Kingston, (Hon. Mr. Davies) as reported at page 190 of the Official Report of Debates, Tuesday, November 1, 1949, as follows:

Hon. Mr. Davies: May I ask the honourable senator a question? Have the other dominions a right to amend their constitutions?

Hon. Mr. Farris: Oh, yes.

Hon. Mr. Davies: They have gone that far?

Hon. Mr. Farris: All of them. The only reason that we have not that power is that in 1931, when the Statute of Westminster was passed, this dominion was not prepared to agree on any method of amending its own constitution, and at the request of this country the power was left where it has always been. . . . It was our decision that it was preferable to leave the Act as it was until such time as Canadians were able to agree among themselves as to how they wanted the constitution amended, and as to what safeguards and restrictions should be put around it.

I wish to ask the honourable senator and the other members of the Senate to pay attention to the following. It is a citation taken from the brief submitted by Mr. Scott, Professor of Civil Law in McGill University, Montreal, when he appeared before the Special Committee in 1935. It states:

South Africa is a particularly interesting example to us, I think, bcause that dominion has a racial problem and a minority problem comparable or analogous to that in Canada; and yet, after beginning with an imperial statute in 1909 as the basis of their constitution, which contained special guarantees for minorities, special entrenched clauses, they have now re-enacted that statute as their own constitutional Act, as a statute of their own parliament, and have thus destroyed the legal basis of the safeguards for minorities which were found in the earlier Act. The South Africans now admit that the adoption by them, by their own parliament, of their own constitution, puts it into the category of an ordinary Act of parliament in so far that in future it could be changed legally by the procedure of an ordinary Act. But they have stated in the debates and discussion of that change that, where minorities are protected, they will continue to respect that protection, relying in future not on legal protection, but simply on one another.

I hope the authorities I have cited will support, in your opinion, the view I hold that this proposed power to amend our constitution cannot and should not be granted without the consent of the provinces.

I have stated that the federal members were not the proper representatives of the provinces on matters of provincial rights. But there is a body which was specially created to represent the provinces in our parliament, and it is the Senate. This was, as I tried to show you on previous occasions, the main purpose of making the Senate an independent branch of parliament. I will not repeat what I have said so often. You know your responsibilities as well as I do.

Read again what was said by the mover of this resolution, and which I have quoted. You have been listening to the address of the honourable senator from Churchill (Hon. Mr. Crerar). He hopes that there will not be abuses of this power if secured. It is a pious hope and we will pray with him that his wishes may be realized.

But, honourable senators, already encroachments have been made on provincial rights. With the increased power, the federal government may go much farther. Remember the bill passed a couple of years ago, making elevators public works. Remember the address made by the honourable senator from Vancouver South on that occasion, when he said that he hoped that his bill would not create a precedent. Think of the duplication of the power respecting taxation. Think of what can be done under the "peace, order and good government" clause. These are only indications of what can be done. We hear much about social security, of requests to the government to help. Again, if this government supplies the money for social purposes, may it not, as a consequence, encroach on provincial rights, contrary to the wording of the judgment I have cited?

Before I conclude my remarks I wish to refer for a moment to a supposition made by the honourable mover, in reference to the Senate. I was surprised when I read the address the following day to find such a statement, coming from the great lawyer he is. You know very well that the only channel to reach the English Parliament is through a joint resolution of both branches of this parliament. Following the supposition the honourable senator made, if the House of Commons would vote for the abolition of the Senate and the Senate were to refuse to accept this resolution, there would be no channel to reach the government at Westminster. There would be nothing before that government. And if, by an abuse of power,