

*Redistribution*

be sustained and that the course followed by the present government was the only adequate one to cope with the situation.

In his exposé of the decisions on the two references the hon. member for Stanstead contended that the courts had not been seized of the question covered by the third coniderant of the resolution before us. With that part of his contention I am in accord. The two questions put to the learned judges did not directly cover the matter at issue in the present debate. I shall read them from Canadian Reports, 13 Appeal Cases, page 343:

In determining the number of representatives in the House of Commons to which Nova Scotia and New Brunswick are respectively entitled after each decennial census, should the words "aggregate population of Canada" in subparagraph 4 of section 51 of the British North America Act be construed as meaning the population of the four original provinces of Canada, or as meaning the whole population of Canada including that of provinces which had been admitted to the confederation subsequent to the passage of the British North America Act?

And the other one, at page 342:

Although the population of Prince Edward Island as ascertained at the census of 1901, if divided by the unit of representation ascertained by dividing the number of sixty-five into the population of Quebec, is not sufficient to give six members in the House of Commons of Canada to that province, is the representation of Prince Edward Island in the House of Commons liable, under the British North America Act and amendments thereto and the terms of union of 1873 under which that province entered confederation, to be reduced below six, the number granted to that province by the said terms of union of 1873?

I said that it did not directly refer to the specific question. Everyone will have noticed that in both the New Brunswick and Prince Edward Island references there is an implied directive for the consideration of the whole of subsection 4 of section 51.

By reading such subsection and by comparing it with the above two orders of reference, one cannot but conclude that, in order to decide whether Prince Edward Island's representation in the House of Commons should be reduced below six, as a consequence of the operation of section 51 of the British North America Act, it is absolutely necessary to consider the terms of the whole subsection 4 thereof.

I was struck by the argument of the hon. member for Stanstead when he said that this question had not been discussed except by Mr. Newcombe, acting as counsel for the federal government, and then only occasionally, as a casual answer to a question put to him by one of the judges. I found, however, that all or practically all the counsels representing the central government and the

governments of the various provinces argued the question of readjustment in a more or less elaborate manner.

Mr. Irving, representing Ontario in the New Brunswick reference, touched upon it in his argument, as appears from the report of the case to be found in 33 Canada Supreme Court Reports, at page 479. Mr. Pugsley, counsel for New Brunswick, explains the workings of the "saving clause" after a question of Mr. Justice Sedgewick at pages 500 and 501 of the same report. He asserted that this saving clause was "no safeguard at all, if every ten years you can bring in a new province from the vast territories of the north-west, the whole population of which is to be counted against you." Mr. E. M. Macdonald, for Nova Scotia, just mentioned the "saving clause" at page 511. Mr. Fitzpatrick, for the Dominion of Canada, gave a lengthy illustration of its practical application to Ontario, Nova Scotia and New Brunswick. His figures, which strangely resemble those of the hon. member for Stanstead, are to be found at pages 527 and 528 of the report. It is to be noted here that the comparison is established between 1891 and 1901, a ten-year period. Again, at page 543, Mr. Fitzpatrick insists that a readjustment is to take place on the completion of each census, which under section 51 is to be held every ten years. Mr. Cannon, for the province of Quebec, says, at page 560:

Now, representation by population being the accepted principle in the British North America Act, section 51 goes on to state how this representation by population will be readjusted. This readjustment is to take place under section 51 every ten years, after each decennial census, and subsections 1 and 2 fix the unit of representation under which the redistribution shall take place.

Is it any wonder, then, that Mr. Justice Girouard should, in his reasons, at page 578, conclude that:

... the provision (of section 51) was intended to cover the cases of all the provinces for which the previous section had provided that there should be a decennial census ...

Is it extraordinary that Mr. Justice Mills should have expressed himself in this manner, at page 584:

It was agreed that the census should be taken every ten years, beginning with the year 1871, and the number of representatives mentioned, with which a province entered the union, was to continue to be the number by which it was entitled to be represented in the Commons of Canada until its population was ascertained by the taking of the census, after which a readjustment was to be effected, if this was found necessary. If the population of a province bore to the aggregate population of Canada a less proportion by one-twentieth than it did by the previous census its representation was to be diminished, but if the relative diminution was