

was a comparison on a census between the population of a province and the number of the representatives elected from that province in the House of Commons. That was the matter which had to be decided in the Prince Edward Island case, and it was so decided. The suggestion has been made that we might have a reference as to whether under section 52 we could not increase the number of members in this house and bring about a readjustment in proportion to the population.

Mr. HACKETT: Before taking up that question, would it interfere with the minister's argument if I asked him a question?

Mr. ST. LAURENT: Not at all.

Mr. HACKETT: I ask him if he is aware that Mr. Newcombe, who represented the dominion in the privy council and in the supreme court, said, when he was asked by the bench to consider this argument, "I don't think that what I am about to say has anything to do with the case"?

Mr. ST. LAURENT: That is in the New Brunswick case, is it not?

Mr. HACKETT: No; that is in the Prince Edward Island case, and it is found at page 653. He is referring specifically to the point which I have submitted to the house was *obiter dicta*.

Mr. ST. LAURENT: In the New Brunswick case Mr. Justice Sedgewick said, at page 548 of the same volume which my learned friend has in his hand, that this subsection 4—

... is a great protection to the representation of the decreasing provinces, because there must be a decrease of more than one-twentieth during the ten years. It may be a little smaller decrease than the one-twentieth for the ten years, and the result may be that not a single one may be left in the province after a time, and still they would be entitled to their full representation.

That was in the course of the argument. In delivering the judgment, Mr. Justice Mills said, at page 584:

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.

If hon. members will turn to page 593 they will find that that judgment was concurred in by Mr. Justice Taschereau, Mr. Justice Sedgewick and Mr. Justice Armour, and they will find that it was confirmed by the privy council.

I toyed with the idea and with the arguments which were submitted to this house in such an interesting fashion by the hon. member for Stanstead, precisely for the purpose of suggesting to the law officers of the depart-

ment that it might well be worth while to have a reference to the supreme court on that score. I was turned down cold, and convinced by them that I could not get anywhere with that suggestion; and it is because of that that I agreed with my colleagues on the procedure which is now before this house.

Mr. SMITH (Calgary West): Even deputy ministers have precedents.

Mr. ST. LAURENT: Well, the deputy minister who expressed that view left a lasting mark upon the rulings of the Department of Justice.

Mr. SMITH (Calgary West): Agreed.

Mr. ST. LAURENT: He became later Mr. Justice Newcombe. None of his successors has found it necessary to depart from the rulings which were made under the one who became later Mr. Justice Newcombe.

Mr. HACKETT: He was the very gentleman, though, who said that the argument was irrelevant to the issue.

Mr. ST. LAURENT: Whether he said it or not, the privy council said otherwise, and said that it rendered its decision because of its construction of the subsection of 51; and I was convinced that we could not get around that through any other method than by an amendment. The fact that the language of this section 51 was changed in London shows that the delegates there did not regard that as a matter of treaty, because if they were bound by the treaty which was expressed in the Quebec resolutions, John A. Macdonald and George Etienne Cartier, as they then were, in London, representing the two major elements of the population, are not, from my reading of their biographies, the kind of men who would have violated the treaty or concurred in its violation by the language put into the act. There was, among other reasons which had induced them to search for a workable constitution for the nation they had envisaged, that very problem of proportionate representation. Every hon. member knows that was the very thing which started the movement for confederation—the deadlock that occurred in the parliament of the Canadas because of the equality of representation of Upper and Lower Canada, though there was substantial inequality in the populations of the two sections. If hon. gentlemen who are interested will look at Mr. O'Connor's report to the senate in 1939 on the British North America Act, in the fourth annex, at page 67, they will find a lengthy tabulation of the substantial differences between the Quebec resolutions and the London resolutions and between the London resolutions and the Brit-