

Mr. HUGHES. Might I point out that when Sir Charles Fitzpatrick asked that the clause stand, it read then (in the Militia Act the same as section 4 in this Act now reads, but when it was represented to the House it read as it now stands in the Militia Act with these extra words.

Sir WILFRID LAURIER. Does my hon. friend think these words make the clause any stronger?

Mr. HUGHES. I am bowing to the opinion of Sir Charles Fitzpatrick.

Sir WILFRID LAURIER. I am sorry I have not been able to read the whole discussion. If the point is simply this, that in the opinion of my hon. friend instead of reading as it does to day 'the command in chief or the naval force is vested in the King,' it should read 'the command in chief is declared to continue,' I do not know that it would make much difference, and for my part I would have no objection at all. If he insists upon these words, I will ask it to stand and will consult the Minister of Justice upon this point. For my part I do not think it makes any difference at all whether the clause reads as it is here, 'the command in chief of the naval force is vested in the King,' or whether it reads 'the command in chief is declared to continue and be vested in the King.' This seems to me to be a distinction without any difference. Of course we cannot change the law of the British North America Act; we are bound by it. And whether we recognize it in so many words or not makes no difference.

Mr. R. L. BORDEN. The Minister of Justice of that day expressed so entirely the spirit of the views I entertain that I would like to give another quotation. I refer to page 6406 of the 'Hansard' of 1904. On the occasion mentioned, the section was allowed to stand, and Mr. Fitzpatrick, now Sir Charles Fitzpatrick, expressed himself thus with regard to it:

The constitutional principle which governs the raising and control of the militia is of course the same in this country as it is in England. There can be no departure with respect to His Majesty's forces in this country from the principle that obtains in England. The principle in England I will state briefly from the books, is that the sovereign has not constitutionally any power to raise a military force without the consent of parliament, but when a force is raised with that consent he can, subject to any enactment, regulate it in any manner that appears good. Parliament controls the levying of the force, its equipment, maintenance, distribution, payment and all that; but the control of the force when raised is in the sovereign as head of the executive. The same constitutional rule applies to the colony; but in the case of the colonial forces, the consent is given by the colonial legislature instead of by the imperial parliament; so that our position in that re-

spect is the same as that of the imperial parliament. My view with respect to the old Bill, with all due deference to the draughtsman, is that there was an oversight. Someone drew that Bill who had not a proper regard for the true constitutional doctrine that controls the militia.

And then he goes on to quote, and adds:

It is quite apparent that that section was merely intended to be declaratory of the law; because we had no power to depart from the constitutional principle laid down in section 15 of the British North America Act.

There are some important words of his at page 6407, which, however, I will not quote now. Then, at page 6408, he adverts to the fact that the Minister of Militia proposes, for the purpose of maintaining continuity of legislation, to add some words to those already to be found in the British North America Act. He does not seem to be very much in favour of adding these words, and the sum of his opinion is that, though, possibly, they may do no harm, they can certainly do no good:

We must read the clause merely as a declaration or reaffirmation of the principle which we have in the British North America Act, but the minister has control of the Bill, and to preserve the continuity of legislation, wants to import into it the words in the section of the old law with respect to the Governor General. There is no harm in that except the harm that every useless word may have, and the use of the words "His Excellency the Governor General" seems to be unnecessary, especially in view of the fact that in the letters patent which are issued to the Governor General, there is contained this clause. This is from the King:

"We do hereby require and command all of our officers and ministers, civil and military, and all other inhabitants of the said Dominion to aid and assist our said Governor General."

It is perfectly clear that the Minister of Justice of that day took the view which every one must take, that it is absolutely impossible for this parliament to limit or interfere with the provisions of section 15 of the British North America Act and that if you do insert any words reaffirming it, such as these, the best that can be said is that it does no harm.

Sir WILFRID LAURIER. I have no objection to make this in conformation with the Militia Act and I move that in the first line of section 4, after the word 'is' be inserted 'declared to continue and be.'

Mr. J. A. CURRIE. Why not insert the words of the original Militia Act?

Sir WILFRID LAURIER. This Militia Act was adopted after long discussion, as appears from the quotations that have been made, and as it is the latest utterance of parliament on the subject, I think we should adhere to it.