Hon. Mr. Campbell said his hon. friend had raised that point when the bill was before the House on a former occasion, but he (Mr. Campbell) believed that it was within the Constitution for them to pass such an Act as they now contemplated passing. The objections to the bill had been under the consideration of the members of the Government, and under the consideration of the members of the Legislature, who are familiar with such legal subjects as the rights of this Parliament, and they believe that this Parliament has the power to deal with those subjects provided for in this bill. It only deals with three classes; they are, companies which are now being wound up, companies which are Dominion in their character, and companies to be incorporated by the Dominion Government. Some legislation must be had upon these subjects, and until it is otherwise decided, Parliament must act upon the assumption they have the power, and make provision for cases which must necessarily arise.

The amendments were then adopted, and the Bill concurred in, read a third time, passed, and sent to the House of Commons for their concurrence.

DEPARTMENTAL BILL

On motion of the **Hon. Mr. Campbell,** the House went into Committee of the Whole on "Secretary of State's Departmental Bill,"

Hon. Mr. Hazen in the chair.

Hon. Mr. Campbell said he desired to make some remarks upon the 8th clause of the bill for the organization of this Department. This Bill proposes to give to the Secretary of State the charge of the Indian affairs, which has formerly been exercised by the Minister of the Crown Lands, in the late Province of Canada. He had been four years in that Department, and had an opportunity of seeing the working of the bill, and forming an opinion as to the necessity of its provisions being continued. Its provisions at first sight seem to be arbitrary, but they must bear in mind that the Indians are very frequently surrounded by a set of lawless white people, who seem to consider Indians as having no rights of property at all, and invade their possessions, and treat them with a high hand. There is a large tract of Indian land in Lower Canada, which for the most part is wild land, covered with half wood and half brush. This was once covered with wood which the Indians did not wish to sell, and unless it was sold by their Council it could not be lawfully sold. Some of the Indians premising that they had a right, sold this wood to some parties there who wanted it, for which they did not receive an adequate compensation, and their land was injured thereby. Then again a similar case occurred in regard to some Indian lands at the West near Brantford. In spite of all the resistance which could be made all the white oak timber was taken off this land. The Indians there farm only eight or ten acres, whereas the tract of country belonging to the tribe is half a township, and at the outskirts of this land where there is no one to look after it, everything of value is taken off. Therefore, if there are some extraordinary provisions in the bill, it is in order to meet any emergency such as has been described. The same difficulties often arise on public works, such as the construction of canals or railways. Such a case occurred in the construction of the Lachine Canal, where there was no order, and people would go in and take what they wanted. A general law was passed, by which this public work was put under an especial Act by Order of Council, as the provisions of the Act were arbitrary, and gave the Government the same power as it is proposed to give them by this bill. This is not a normal law, but an abnormal provision by which certain Indian lands shall be brought under its provisions after a proclamation is made by the Governor in Council, "these provisions shall extend to such Indian lands only, as the Governor from time to time, by proclamation published in the Canada *Gazette*, declares and makes subject to the same, and so long only as such proclamation remains in force." This is the security for these provisions, which he admitted were severe and arbitrary : they cannot be put in force, unless the Governor in Council sees a good and sufficient cause for it. No reason can be assigned why the House should apprehend that this power will be abused. Would the Government bring any portion of this territory under the provisions of this law if no circumstances rendered it necessary for them to do so? He could not believe it possible that under any circumstances the Government would proclaim any tract of land as coming within the provisions of this clause unless the circumstances warranted it. A great deal of the valuable products of those lands could be removed before the ordinary laws of the land could be put in force. There would be considerable difficulty in putting them in force, as in reference to some of the Indian lands the patent is in the Crown, and in others the title is in certain Indians, some of these being dead

their titles are in the hands of the trustees, which would cause great delay in the Courts dealing with the matter, and is another reason why the Government should be armed with this power. He could see no reasonable apprehension that it would be abused, as the Government were responsible to Parliament for all their acts done in the country. The proclamation of the Governor must issue before the law could be put in force, therefore, he trusted that the Committee would concur in the clause, which he could vouch for as being essential to the welfare of the Indians.

Hon. Mr. Bureau (in French) could see no cause for alarm at the summary powers given in this bill to a member of the Government, and instanced the case of the Indian reserve at Caughnawaga, where timber and cordwood had been removed by trespassers; these lands at the door of Montreal being of immense value, the Government should have power to deal summarily with such trespassers. This tract comprised some of the best lands in the parishes of St. Constant and Caughnawaga. The late Sir George Simpson, Governor of the Hudson Bay Company, was empowered by the Government of the late Province of Canada to try to negotiate some arrangement with this tribe of Indians to concede these lands *à titre de service*, and invest the proceeds for their benefit.

Hon. Mr. Chapais (in French) advocated the emancipation of some of the most intelligent of the Indians, many of whom, if not all, were more intelligent than the negroes emancipated long since by Great Britain in several of her colonies. They were generally loyal, peaceable subjects, if properly treated by the white man. They should be ensured by the Government the benefit of their lands free and unmolested, and to ensure this the powers under this bill were none too large or comprehensive. If their emancipation were effected gradually, giving the leading and best educated amongst the tribes their freedom firstly, and continuing to train and prepare them to enjoy the rights of freemen, no danger to society would be apprehended, but great benefits to themselves and the Dominion generally.

Hon. Mr. McCully said he had thought this matter over with a great deal of care, and had given it considerable consideration, but he must say in reply to his hon. friend who spoke in a language which he (Mr. McCully) but imperfectly understood, that he, coming from another part of the country, seemed to be getting connected with a class of people who, if they are as they are described, will set all justice at defiance, and can only be controlled in this arbitrary manner. If this was the case he was sorry he had not understood it at an earlier period. He could not bring himself to believe that at this time, under any circumstances, they should be required to seize a man, take him to jail by force, and become judge, jury, and executioner; that he should be held, and that it should not even be lawful for a judge of the Supreme Court, or of any court in the land, to hear the cause or to consider the case. The Postmaster-General has conferred these powers not merely upon the Secretary of State, but he is about to confer these powers upon a class of those persons distant probably, some thousands of miles from his office of Secretary of State, and with whose qualifications, for the exercise of those high powers, the Secretary of State must be but imperfectly acquainted. These persons will have the power to seize a man because he continued upon these Indian territories and hurry him into jail, while no *habeas corpus* can issue, and no judge of the tribunals of the country can be permitted to hear the cause. If there should be such a case as a man being committed for trespass who was not the cause of that trespass, an innocent man would be kept confined in jail because he could not be relieved, as the Deputy appointed by the Secretary of State is judge, and no court in the Dominion can re-hear the case or consider it. He had thought that practice had been for ever abandoned. He was sorry that the state of society in Canada was such as to make it necessary to confer upon any Secretary of State the powers sought to be conferred by this bill. No such powers as this existed in England, although an attempt to take such power was made two hundred years ago, in the time of Charles I. It was said that neither Her Majesty nor the Privy Council have, or ought to have, any jurisdiction in such matters, but that they ought to be tried and determined in the ordinary courts of justice, by the ordinary courts of law. He did not think the position he took upon this question was such an extraordinary one, as some who had spoken on the subject allowed. He did not ask that the Secretary of State should not have large powers, but he did ask that such a provision should be made, that when the Deputy-Secretary of State made a mistake, it should not be a final judgment, but the courts of law should correct it. It may be necessary that the Government should control the rights of the Indians, but he presumed any Justice of the

Peace could try those cases, subject to review in the courts of law in the Province, and then every man could be heard. In this class of cases he said the law they sought to enact was the legislation of a by-gone period, which was swept off the Statute Book of England two hundred years ago. We have the right to suspend the *Habeas Corpus* Act, but it can only be done where the rights and lives, perhaps, of whole classes of people are involved, but we do not arbitrarily take away a liberty without judge or jury, on account of a few oak staves or shingles being taken from wilderness land. It was not so much in regard to this particular Act that he took up the time of the House, but it was the principle which was being introduced of giving Secretaries of State the power to take away a man's property and personal liberty, and allowing no Judges of the Supreme, or other Courts, to re-hear the case or consider it. We find that the decisions of high tribunals are not as final as the decisions of the Secretary of State will be under this Act, because these decisions often call for the exercise of the prerogative of the Crown in consequence of some mistake being made to which everyone is liable. He would ask the Postmaster-General if he knew men in the distant Province of Nova Scotia to whom he would be willing to confer such a power; he could only know them by report, and if having conferred this power it came to his knowledge that some man had been grievously oppressed, no man would be more willing to give redress than he would, but under this Bill if an innocent person was committed to jail, the operations of the warrant could not be arrested until he had made an application which would satisfy the Governor-General in Council, that it was a wrong act, and then he would receive pardon, but in the meantime his feelings would be very much lacerated by any such misfortune. He would ask the Postmaster-General to strike out the two last lines of the 21st Section, "and such judgment shall not be removed by *certiorari* or otherwise, or be appealed from, but shall be final." The whole thing was wrong; the Judges of the Supreme Court were as able to protect the Indians as any one else, as they have no motive in allowing the laws to be frustrated. He did not think this was the period in the world's history when they ought to be passing laws in the Dominion of Canada by which deputies of the Secretary of State would have the power to seize the most respectable men in the community, and cast them into the common jail, and hold them there for at least thirty days; this officer not being amenable to the law, no proceedings can be taken against him. He could not understand what necessity there could be in regard to the case of the Indians, or Indian lands, which made it necessary to enact such a stringent law, and to put such a power in the hands of any subordinate of the Government to execute it. He did not know what acts they may have had in force in Canada, but he knew that no such Act was ever placed on the statute book of Nova Scotia. They had made every provision for the Indians, but they did not give the Government power to seize upon persons and property, because a few trees had been cut down within the Indian territory. He would raise his voice against this measure, lest it should be said hereafter that he had consented to allow a measure to be passed in this first Parliament of the Dominion which gave up the rights of the subject. Many of the most serious difficulties have arisen in consequence of arbitrary powers assumed by Secretaries of State. He as a public man coming from a liberty-loving Province, where men's rights are passed upon by tribunals in which we have most unbounded confidence, would ask the Postmaster-General not to put this law upon the statute book, for by doing so we would say to our people, we have connected ourselves with a country whose law cannot be enforced unless such arbitrary power is given to the Secretary of State. If his hon. friend would so amend his bill, that although it might give summary powers to be exercised in a summary way, yet in case a mistake should be made the bill should provide that it might be remedied by submitting the case to the highest courts in the land, then nothing would give him greater pleasure than to assist in passing the Bill.

Hon. Mr. Bureau (in French) in answer to the remarks of the hon. member, (Mr. McCully) felt that the Government were only the *Dépositaires* or guardians of the domain set apart for the benefit and support of the Indians, and consequently should be of necessity invested with all requisite powers to protect these lands from speculators and trespassers. He could not understand how hon. members would feel more security to the liberty of the subject if the remedy were referred to the adjudication of any one man, Justice of the Peace, or Judge, than if these same powers were conferred on the Government, who are directly responsible to this Parliament for all their acts. He could apprehend no danger in leaving the summary power sought for by this

bill in the hands of the Secretary of State and the Government, who could not be actuated by any private malice, but would necessarily act in the public interests. Let the opponents of the bill suggest some amendments which might meet the difficulties of the case, and then he could appreciate their reasoning. It is very easy to find fault, but not easy to frame a measure that will give universal satisfaction, and meet the requirements of this exceptional case. The only defence that any trespasser on these Indian Reserves should possibly be allowed to make, that the lands occupied by him, were not a portion of this domain, and this would necessarily give rise to an action *en bornage*, to have the lines drawn and established. If the Hon. Postmaster, (who has charge of this bill), could possibly see his way to allow the decisions to be brought up for revision before the Courts by writ of *Certiorari*, it might end all the opposition to the bill, and give general satisfaction, though, as he said before, he would willingly support the bill in its entirety, having full confidence that all interests will be safe in the hands of the Government of the country.

Hon. Mr. Ritchie said although he was willing to go very far in giving the Government power to protect the Indians, he was not willing to put the liberties of white men under their control. He thought the difficulty would be removed by proceedings being taken in a summary way before a judge at the instance of the Secretary of State. It was inconsistent with the due administration of justice, for a person's property to be subject to injury, and his liberty to be taken from him without his having an opportunity of being heard. Under this bill a person could be imprisoned upon an *ex parte* statement without his having any chance of defending himself, or even of knowing upon what ground he has been imprisoned. If this power were given to the Secretary of State, his Deputy may do something wrong, or it is possible he may be deceiving himself and thinks he is doing right when he is doing wrong, and the aggrieved person would have no redress. There should be a provision for an appeal to the Courts of Justice, but the parties making this appeal should give good security for all expenses attending this appeal. The case would not be between a white man and an Indian, but between a white man, supposed to be an offender, and the Government. If the Crown prosecutes a man for infringing upon the Indian lands, surely, it is not wrong to say, he shall have an opportunity of defending himself.

Hon. Mr. Sanborn thought that after what had been said, it would be well for the Hon. Postmaster-General to allow the 19th and two following sections to stand over for another day, to see if any remedy could be devised to meet the objections made. It was true that this was a most extraordinary power which it was proposed to give the Secretary of State, but there was another objection—that the writs should be issued out in the ordinary course, and the Sheriff of the county would be called upon to perform duties of a most extraordinary character. The bill also raised the difficulty which was continually coming up, that it interfered with the rights of property which came under the jurisdiction of the Local Legislatures, because here they would have to decide in regard to boundaries between the Indian lands and private lands. He thought proceedings against trespassers should be taken through the ordinary channels, by summary proceedings, at the instance of the Secretary of State or his Deputy.

Hon. Mr. Campbell had listened with the greatest attention to the views advanced by the hon. members, but he thought they laid undue stress upon the character and provisions of certain sections of the bill. In the first place, those provisions were not law, but could only be brought into effect when a case should arise of such importance as would induce the Government to issue a proclamation giving effect to them. It was an exceptional provision, only to be resorted to when circumstances rendered it absolutely necessary as was the case of the exceptional law in regard to labourers on public works.

Hon. Mr. McCully: Did the Government of England ever enact a law of that kind?

Hon. Mr. Campbell said it was a Canadian Act, only to be put in operation when the necessity arose. In regard to this bill, the Secretary of State, or some one authorized by him, has to visit the locality and ascertain if those persons are really there, and if so, they would insist upon their leaving those lands, and it is only when they return to them that the Sheriff can issue his warrant for their apprehension. This can only take place after a section of the country has been put under the force of the Act by proclamation, which will not be issued without a necessity should arise. What earthly motive could the Government have for issuing such proclamation, unless the circumstances of the country called for it? When the Act is put in force parties can only

be arrested after they go back upon those lands wilfully, knowing what the penalty is. The Secretary of State can then send them to jail for thirty days. His hon. friend said, why not allow them the right of appeal? Because it would destroy the possibility of remedying the evil promptly. He then related the case of an Indian being put out of his house by force of arms, and said they must have abnormal laws to deal with such cases, and you could not provide for appeal as you could in a more civilized country. To do prompt justice to the Indians, you want an officer armed with prompt power. He referred to the difficulty in bringing these cases before a Court of law in localities like the Island of Manitoulin, where there was no judge within nineteen or twenty days travel. White persons go there at certain seasons of the year, and if they find anything valuable, or any advantage to be gained, they will not remove, but use their intelligence to the prejudice of the Indians. Surely the experience of sixteen or eighteen years in the operation of the law was sufficient to justify the House in coming to the conclusion that no evil can arise from a provision of the kind. We have found that no evil has resulted from it to the white people, while it has been a benefit to the Indians, and we can favourably contrast their love for our constitution, with the sympathies of the Indians in the United States with that Government. In no country is the law better administered for the protection of the Indians than Canada, and in no country are they more firmly attached to the Crown.

Hon. Mr. Letellier de St. Just remarked that it was all very well for the Postmaster-General to say that up to this time, this power had not been abused. Suppose a case should arise in which great injustice would be done, would there be any means of redress? There would be none whatever, as the aggrieved person could not take his case before the courts of law.

Hon. Mr. McCully said that according to the arguments of the Postmaster-General they were to have these laws which were necessary for a half civilized country, to extend to a country where there was not the least ground for that state of things.

Hon. Mr. Campbell—They will only be put in force by proclamation when a necessity arises.

Hon. Mr. McCully said his hon. friend asserted that the Government would not do it, but he does not know what future Governments may do.

Hon. Mr. Campbell asked if his hon. friend thought that any Government would put the law in force in any section of the country where it was not absolutely required?

Hon. Mr. McCully said when they put that law on the Statute Book they would introduce a principle which no man in Nova Scotia, educated as they have been, could support for a single moment. It was an exceptional state of things that required a law for Manitoulin, a perfectly uncilivized country, and he would not be found opposing a measure to protect the Indians in that Island, but he would oppose so obnoxious a law being passed in a civilized country. A man should know what offence he is charged with, and be able to meet his accusers face to face. It is provided in the Bill: "If any person after having been removed as aforesaid returns to, settles upon, resides upon, or occupies any of the said lands, or roads, or allowances for roads, the Secretary of State, or any officer or person deputed, and authorized as aforesaid, upon view, or upon proof on oath made before him, or to his satisfaction, that the said person has returned to settle or reside upon, or occupy any of the said lands, or roads, or allowances for roads, shall direct and send his warrant, signed and sealed, to the Sheriff of the proper county or district commanding him forthwith to arrest such person and commit him to the common jail." Suppose a person has been removed beyond that territory, and was afterwards seen upon it. There might be some ill feeling between him and the Deputy Secretary of State, who would be glad of a chance to arrest him, and would now take advantage of his happening to be upon the land.

Hon. Mr. Campbell—It is only when he returns and settles upon the land that he can be arrested.

Hon. Mr. McCully—He has come back, he has returned, that is the language, and the deputies would take the literal interpretation of it. He would say, "I have seen you here, and I arrest you, and commit you to jail for thirty days without bail." He did not wish to prevent their removing a man from those lands, but he wished the man to have the right of appeal by giving security for five times the amount of costs if necessary. When a man is arrested, he does not care so much for the amount as for the indignity to which he is subjected, and he would sometimes rather give all he is worth rather than submit to it. In consideration then of the wrong done he should have an

opportunity for redress. If they gave power to remove the person trespassing upon those lands they would attain the object of the Bill, without stamping the statute book of Canada with this most disgraceful principle, which has never been heard of in the Lower Provinces. In regard to disturbances on public works in other countries, the criminal law takes charge of such outrageous characters.

Hon. Mr. Campbell objected to the defence mentioned or suggested, as all the trespassers would be prepared to deny that they occupied the Indian lands, and so defer the decision for months, and get delay, and in the meantime pillage the lands and put the Government to all the expense and trouble of a contested suit at law.

Hon. Mr. Dickey objected to the arbitrary powers of the bill. He thought some redress or means of justification should be allowed to the parties who might be accused of occupying these lands, and urged at length the danger of such arbitrary and exceptional powers, entirely at variance with the spirit of our laws.

Hon. Mr. Tessier thought it much safer to refer the exceptional remedy of this class of cases to the Secretary of State and the Government, than to any judicial functionary, either Magistrate or Judge. The right of petition remains to the subject, and surely this House, or the country, will not be deaf to such cases of hardship, if by any possibility any member of the Government could be guilty of any injustice to parties affected by this bill. He for one, felt no fears of any such alarming results under this bill.

The Committee then reported progress, and asked leave to sit again to-morrow.

Hon. Mr. Seymour moved, seconded by Hon. Mr. Simpson, that the order for consideration of the fifth report of the Contingent Committee be discharged and referred back to the same Committee for further consideration.

The House adjourned at 6 o'clock until three o'clock tomorrow afternoon.