

THE SENATE

Thursday, March 19, 1868

The Speaker took the chair at three o'clock.

ALIENS AND NATURALIZATION.

Hon. Mr. Campbell in moving a Bill respecting Aliens and Naturalisation, said he apprehended that the general feeling throughout the Dominion was in favour of a more liberal policy upon this subject in New Brunswick than there was in that Province at present. It was for the advantage of the Dominion to allow persons coming in from a foreign country to have the same right to hold, convey, or transmit estate that naturalized subjects have. This is desirable as titles have often been impaired by the fact, that at some former time aliens have held property and have not been able to transmit it. It is proposed by this bill to make the law, rules, and procedure respecting the naturalization of aliens uniform throughout the Dominion. These rules are of a general character; they provide that if an alien takes the oath of allegiance to the Sovereign, having been a resident within Canada during a period of three years, and his oath being accepted, he becomes a naturalized subject. It is also provided in regard to married women who are aliens, that if the husband has become naturalized the wife is naturalized too; but with reference to single women, they will be required to take the oath of allegiance. These being the principal features of the bill, he would now ask the House to refer it to a Committee of the Whole.

Hon. Mr. Hazen called the attention of the hon. member of the bill to a section of the Act of Union which provided that laws relating to property and civil rights are to be dealt with by the Local Legislatures. Although he approved of aliens holding property, yet he thought this bill affected property and civil rights in the Province of New Brunswick.

Hon. Mr. Sanborn said this subject was brought up when difficulties existed on account of raids which took place during the American war, and which rendered a passport system necessary. It was found according to the law of Canada that naturalized subjects here held a very unfortunate position. They were naturalized simply for the Province in which they lived, and had lost their status as subjects of the country which they left. This

was brought under the notice of the Government at that time, and an intimation was given that it would receive the attention of the Government. The law gave the Dominion permission to declare aliens subjects of Her Majesty, after they had performed certain conditions. After having given those parties privileges as subjects, the Act should be left for the sanction of Her Majesty, and then those subjects naturalized here, would be placed in a position which they were entitled to hold. The way our naturalization laws have been administered heretofore is rather taking away a right instead of conferring it; it being almost impossible for naturalized subjects to get passports into the United States at the time passports were required. It was then spoken of as a great grievance, and the Government should have provided a remedy, either by representation to the Imperial Government, or by legislating upon the subject, and declaring the condition of the person as a naturalized subject. There are only two ways in which they could look upon this subject—one is to give aliens the rights and privileges which they would have had if born under the rule of England; the other is to give them certain specific rights—the rights of descent—of property, and other rights of that kind. This bill is quite unsatisfactory, and will not attain the object sought to be attained, that is, to give a status which the law has not before given.

Hon. Mr. McCully said the right of legislation in regard to aliens was expressly conferred upon this Parliament in the twenty-fifth sub-section of the ninety-first section of the Union Act. This Legislature then has the power of conferring all the rights and privileges upon aliens, that the Imperial Government could have in any portion of the Empire. It certainly would hardly be expected that this Legislature would confer any power or privilege to extend beyond the Dominion itself; but it is exceedingly desirable that in all the Provinces there should be the same Act making these rights uniform within the Dominion. There were many citizens from the United States, from Germany and elsewhere, who came into Nova Scotia, and connecting themselves more particularly with the mining interest, found it necessary to obtain titles to land, but he had never heard any complaints in regard to the operations of this law. He would not say anything more at present, but when the bill came up in detail for another reading he would give it some further consideration.

Hon. Mr. McCrea said the Imperial Act made a clear distinction between the powers of the General and Local Legislatures. Parliament had the right to confer citizenship upon aliens, while the Local Legislature had the power to legislate upon property, and civil rights. The 91st section of the Union Act gave Parliament the power to treat upon naturalization and aliens, while the 13th subsection of the 92nd section reserved to the Local Legislature the right to treat upon property and civil rights in the Province. This Parliament has the right to grant to aliens all the privileges of British born subjects; the moment this is granted all civil rights follow. The question then arises whether we have the right to confer upon aliens, while they are aliens, the right of transmitting property by descent, which they can do under this Bill. True, we have the right to make laws regarding aliens, but the right to confer civil rights upon them belongs to the Local Legislature.

Hon. Mr. Hazen said that Parliament had the right to say how aliens should be treated, but they had not the power to say what rights of property they should have, that power being expressly reserved for the Local Legislatures. The bill under consideration treated of property, and affected the rights of individuals. The 94th section of the Union Act says: "Notwithstanding anything in this Act the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the Courts in those three Provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted: *but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province, unless, and until it is adopted and enacted as law by the Legislature thereof.* If we pass this Bill will it be a law of this kind? and if this section means anything at all we are interfering with the rights of property by this act. A bill of this kind was brought before the New Brunswick Legislature in 1855 and rejected. In 1858 it was again introduced and thrown out on a division of 21 and 16. In 1859 the Bill was again rejected on a division of 20 and 14. In 1860 the Bill was read a second time, and in 1861 the law was passed; but the clause allowing aliens to hold and transmit

property was rejected. He made this statement to show how this measure had been regarded in New Brunswick, and he would fail in his duty to that Province if he did not point out where this bill would interfere with their rights.

Hon. Mr. Hamilton could not agree with those who had spoken, in regard to the right of this Parliament to legislate on this subject. They had as much right to legislate upon this subject as they had to make laws respecting bankruptcy and insolvency, as that would concern the transmission of real estate in the various Provinces of the Dominion, as much as this. Then, again, they might take the question of marriage and divorce; a law made on the subject would affect the rights of property all over the Dominion. If you could not say what rights aliens should have, or should not have, how could you legislate at all upon naturalization and aliens. If a subject cannot be restricted or advanced, we cannot legislate upon it. The paragraph referred to in the Act is to be read in connection with other clauses, and an interpretation given to it not inconsistent with the other clauses of the Act, therefore he could not agree with those who think there is a doubt about the power of Parliament in reference to this Bill. The Imperial Parliament up to the present time have declined to recognize naturalized subjects outside of the various Provinces in which they had been naturalized. To obviate this difficulty it is proposed, after this Bill receives the sanction of Parliament, to open a correspondence with the Imperial Government in order to obtain for aliens who have been naturalized in this Dominion, the same privileges as naturalized subjects in any other portion of the Empire.

Hon. Mr. McCrea said that notwithstanding what had fallen from the Postmaster-General the case appeared to be strictly analogous with the laws of the United States. There it was held that Congress had no authority to deal with the rights of property, they may deal with the naturalization of foreigners and give them all the rights of subjects, but it required statutory enactment to enable aliens to hold or transmit property by descent. This power which we propose to give by this Bill is not given by Congress, but by the different States of the Union. He quoted from "Kent's Commentaries" and other American authors to show that it was only the State legislators that had the right to give to aliens power to enjoy property, and in conclusion asked the

House to give the subject every consideration before passing the Bill.

Hon. Mr. Sanborn said the Hon. Postmaster-General had failed to convince him that this Parliament had the power to grant the privileges to aliens which were contained in this Bill. If Parliament carried out this principle in the case of marriage and divorce as mentioned by his hon. friend, it would involve every branch of property, and revolutionize all the laws of the Provinces. It was never intended that they should have this power, as it properly belonged to the Local Legislatures, but anything regarding the legality of marriage came within the jurisdiction of the Dominion Parliament. Then in the case of bankruptcy and insolvency, it would never do to apply the same bankrupt law to Quebec as to New Brunswick and Nova Scotia. A bankrupt law is not a permanent but temporary law, enacted for the purpose of relieving existing difficulties, and in enacting the law it is absolutely necessary that it should not be general and universal, as it would have to be adapted to the local law, in its machinery and procedure. There are not the same difficulties to be encountered in carrying out this law, as there are in carrying out the law respecting aliens, and the law of marriage, because in these cases you have to deal with something which enters into the permanent organization of society, and when you make changes they cannot be remedied hereafter.

Hon. Mr. Wilmot remarked that a bill similar to this had been brought up year after year in the New Brunswick Legislature, and rejected. He thought if there was any question, or any doubt, in regard to their right to legislate upon this subject, the Local Legislature should have the benefit of that doubt. None of the measures which they had passed during the first part of the Session had been agreeable to New Brunswick, therefore, they should be very careful in passing a measure which had been so repeatedly rejected in the Legislature of that Province. He then referred to an estate, part of which was in New Brunswick and part in New York; the heirs to the estate who resided in New York claimed their share of the property in New Brunswick, which they could not inherit being aliens, and the Government gave it to them; but the heirs in New Brunswick could not get their share of the estate in New York. This he did not consider evenhanded justice, as they had as much right to the estate as the others.

Hon. Mr. Mitchell said his hon. friend (Mr. Wilmot) was not quite correct in his statement. He (Mr. Mitchell) was a member of the Government at that time, and they thought it was immaterial to them what any foreign Government might do; it was their duty to deal with what came under their jurisdiction. According to the laws of this country all the children in a family get an equal share in the estate. In this case neither party were legally entitled to the property, which consequently reverted to the Government of the country. They considered as neither party had a legal right, the heirs in New York had as equitable a right as the heirs in New Brunswick, therefore they decided that all should share alike. His hon. friend asked them to give New Brunswick the benefit of any doubts arising, in regard to the power of this Parliament to deal with the subject, assigning as a reason the state of feeling existing in New Brunswick. He thought they should decide upon the legal construction of the Act without any reference to what the state of feeling in New Brunswick may be. He differed with his hon. friend about the peculiar condition of New Brunswick, which would call upon them to make especial concessions on a point like this. Though this Bill had been rejected for eight successive years in New Brunswick, it had been rejected upon very different grounds from what we are now asked to reject it upon. It was rejected because the Legislature of New Brunswick was adverse to extending those liberal principles which the policy of Canada now seems anxious to extend to aliens. Public opinion in that Province has changed with the progress of liberal ideas, and if this subject were now to be brought up in the Legislature of New Brunswick, it would be likely to be adopted, and the policy conceded to allow aliens the right to hold property.

Hon. Mr. Hazen said the bill not only gave aliens power to hold property, but it made enactments affecting civil rights in New Brunswick. It was most unwise to pass a law which might be the subject of doubts and litigation. Eminent lawyers had spent nine or ten months in London preparing this Union Act, but still doubts arose on every side in regard to constructions to be put upon it.

Hon. Mr. Tessier said they should have some way of deciding what are the powers of the General Government and what are the powers of the Local Government, Section 94 of the Union Act makes provision for uniformity of laws relating to civil rights in Ontario, Nova Scotia and New Brunswick,

but no provision is made for Quebec. Why is that distinction made, and that power confined to the civil rights of three Provinces? It shows that the framers of the Union Act would not allow the laws of this Parliament to conflict with the local laws of Quebec, and in the case of Ontario, Nova Scotia and New Brunswick only with their approval. The law should not come into operation until approved of by the Local Legislatures of those three Provinces. The hon. Postmaster-General said if the Federal Legislature has a right to legislate on marriage or divorce, it does away with the objection that we are infringing upon civil rights. He (Mr. Tessier) said no, it did not do away with that objection. The question of marriage and divorce was a public question, and not a question of civil rights. After the dissolution of marriage, the parties are governed by the laws of different Provinces. The Federal Parliament has the right to confer the rights of a British subject upon any foreigner living within the Dominion of Canada, and he may become a subject for military service and have some other privileges, but as to civil rights, the power to confer them belongs to the Local Legislature, and we infringe those rights by this Bill. He believed that this Federal Parliament had not right to declare that an alien, while an alien, has a right to inherit or hold property, or any other civil right, unless these civil rights are granted to him by the Local Legislature. In the Province of Quebec the same laws exist in regard to this matter as exist in Ontario, but in New Brunswick the law is different, there you conflict with civil rights and infringe upon the rights of the Legislature of New Brunswick in allowing aliens to hold property before being naturalized.

Hon. Mr. McCully said it was scarcely possible to legislate upon any subject, but civil rights are affected in some way or other. Take

for instance the subject of militia; the Militia Law concedes certain civil rights to volunteers. According to the Union Act, we have the right to legislate regarding "naturalization and aliens". Suppose "naturalization" was left out, and we were going to legislate upon the subject of aliens. It is not supposed we are going to legislate upon the subject of aliens in a foreign country; the Act means that this Legislature has the power to legislate, and give aliens a status and right in the Dominion which they did not possess before. We have the right to naturalize them while giving them certain privileges, or to give them privileges without naturalization. The first clause of the Act respecting aliens in Nova Scotia provides that an alien may hold, convey, and transmit real estate, and yet continue to be alien. That is the status there given to an alien, but the moment you naturalize him, the very act makes him a British subject, and he does not hold property as an alien, but as a British born subject. The question arises in making a law to qualify an alien to hold real estate, whether or not it interferes with the right of Local Governments to legislate upon property and civil rights. He held that it was not an interference with any of those rights, although he quite agreed with some honorable members that it was a subject well worthy of discussion in this House, and they could not be better employed than eliciting the opinions of members upon it. It seemed to him that if they held they had no right to legislate upon this subject, they would strip the House, denuding it of many of the privileges, and much of the powers, it was evidently intended it should have, and which are requisite and necessary to discharge the duties imposed upon it under the British North America Act.

The bill was then read a first time, and referred to a Committee of the whole House on Thursday next.

The Senate then adjourned.
