

THE SENATE.

Ottawa, Tuesday, 1st May, 1888.

THE SPEAKER took the chair at 3 o'clock.

Prayers and routine proceedings.

NISBET ACADEMY BILL.

THIRD READING.

HON. MR. GOWAN, from the Committee on Standing Orders and Private Bills, reported Bill (15) "An Act to incorporate the Nisbet Academy of Prince Albert," without amendment.

HON. MR. VIDAL moved the third reading of the Bill.

HON. MR. POWER—I think that I called the attention of the House to this Bill at an earlier stage, and I wish to direct attention to it again now. It was understood that the matter might be discussed at this stage. This Bill incorporates a number of gentlemen under the name of trustees of the Nisbet Academy of Prince Albert. The first clause tells us what they are incorporated—

"For the education of the youth of both sexes in the various branches of liberal culture and classic and scientific knowledge, and for the imparting of moral and religious instruction in harmony with the principles of the Presbyterian Church in Canada."

The second clause states that the corporation may acquire and enjoy lands, tenements and real and moveable property for the purposes of the Academy.

Another clause says that the principal and first male assistant of the Academy, together with the three members of the Board of Management, nominated by the Board annually for the purpose, shall constitute the Executive of the Academy, to whom shall be entrusted the reception, academical superintendence and discipline of the students and of all persons within the Academy.

Now it appears from the Bill that it is a purely educational measure, a Bill which provides for the incorporation of a high class school at Prince Albert. It

is not proposed that there shall be branches of that school in any of the provinces or any other territory than the territory in which Prince Albert is situated, so I think it is a purely local bill. Under the British North America Act the subject of education is a local matter. I do not mean to say that it is not possible under the strict letter of the law that this Bill might come within the jurisdiction of this Parliament, but the spirit of our legislation ever since Confederation, since the passing of the British North America Act, has been to leave educational questions with the local authorities, and the territories have now representative institutions, not of course in as complete a form as we have in the provinces, but still they have representative institutions, and they are authorized to deal with this matter, and it seems to me that for this Parliament to undertake to deal with a matter like that which constitutes the subject of this Bill, is to act in contradiction to the practice that has been adopted, and to the spirit of our constitutional law. I find that, in the North West Territories Act, chap. 50, Revised Statutes, the different sections from 11 to 16 give the various powers of the Governors-in-Council of the several territories, and section 14 says:—

"The Lieutenant-Governor in Council shall pass all necessary ordinances in respect to education."

And then sub-section two of the same section says:

"The power to pass ordinances conferred upon the Lieutenant-Governor by this section is hereby declared to have been invested in him from the 7th May, 1880." Then it is laid down that the Governors-in-Council of these territories shall have such powers as shall be conferred upon them by the Governor-in-Council of the Dominion, with this qualification: "But such power shall not at any time be in excess of the powers conferred upon the Legislatures of the several Provinces by the ninety-second and ninety-third sections of the British North America Act, 1867."

Now the 93rd section is the one which confers upon the local legislatures the right to deal with education. As I understand it, the Governor-in-Council of

the Dominion has authorized the territorial Governments to incorporate bodies such as that which seeks for incorporation by the Bill before us; and although in the present matter the question is of very little consequence, still, as the principle is one of moment and the passing of this measure may be hereafter spoken of as a precedent, I think it is well that the House should not finally deal with it without having considered the question with some little care.

HON. MR. ABBOTT—The point which my hon. friend raises is one which turns entirely on the construction of the Constitutional Act. His proposition is this: while he admits that the Dominion Parliament has jurisdiction over the North-West Territories, he contends that it has delegated that power to the Lieutenant-Governor in Council by the Revised Statutes, chap. 50; and his argument must go so far as to say that the Parliament of Canada has divested itself by that Act of any jurisdiction over these subjects, and has vested the Lieutenant-Governor in Council of the North-West Territories with exclusive jurisdiction over them, in order to sustain any opposition to this Bill. Now, the abandonment of jurisdiction is never to be presumed. The abandonment of any power granted by the Constitution to the central authority is not to be assumed without some specific ground for doing so, and I find none in the clause which my hon. friend cites. This clause, it is true, gives the Lieutenant-Governor in Council such powers to make ordinances for the government of the North-West Territories as the Act confers upon him, which are not to exceed the powers of provincial legislatures under sections 92 and 93, of the British North America Act, with which we are all familiar. Section four, says that the Lieutenant-Governor in Council shall pass all necessary ordinances in respect of education, with provisos as to minority schools. Now this is not exactly in the first place an ordinance respecting education: it goes much further than that. It creates a corporation, and gives to it powers to hold property which it would not possess under the law of mortmain which prevailed under the law of

England on the 15th July, 1870, which is the law of the North West Territories. It goes so far as to give to this corporation which it creates, the power to hold lands in mortmain, which, it is not contended, the Lieutenant-Governor in Council could give—or at all events, there is no express authority to the Lieutenant-Governor in Council to exercise such power, and if he holds it, he does not hold it to the exclusion of the jurisdiction of the Dominion. I hold with respect to the constitutional point, that the conferring of power to pass ordinances concerning education, does not confer on that body any exclusive jurisdiction over institutions for educational purposes, and that if there be jurisdiction in the Lieutenant-Governor in Council to pass such an Act as this it is jurisdiction concurrent with that of the Dominion. Neither this House nor any branch of the Legislature of Canada should, or I hope will, hold that the Dominion has divested itself of its legislative authority over the North West Territories, by creating a body of this description vested with the administration of the Territories. I contend therefore that this subject is one which has not by any law, or by the Constitution, been vested exclusively in the Lieutenant-Governor in Council of the North West Territories, and it involves the exercise of a jurisdiction which is not, at all events, confined to the Lieutenant-Governor in Council, and for which I hold the interposition of this Parliament, the supreme authority for the North West Territories, is necessary. I understand from the Law Clerk of this House that this Parliament has passed several acts of this description since the creation of the Government of the North West Territories. As a matter of precedent, as well as of theory as to the jurisdiction of the Dominion Parliament, I think this Bill ought to be allowed to pass.

HON. MR. SCOTT—I am really not in a position to express an opinion on this Bill. I was not aware that it would come up to-day, and I am not equal to the passing of an opinion on the constitutional question raised by the hon. member from Halifax. The Bill is in its last stage: it comes from

the other House, and I presume there will be no objection to allowing it to stand.

HON. MR. ABBOTT—I am willing that it should have every possible discussion. Does my hon. friend ask that it should stand over?

HON. MR. SCOTT—Yes, for a couple of days.

HON. MR. VIDAL—There is no reason why we should postpone the third reading of the Bill. Similar powers have been given to other corporations in the North-West Territories. The paramount jurisdiction of the Dominion Parliament over the North-West Territories has been held to be unquestionable.

HON. MR. MILLER—After hearing the argument of the leader of the House I have no doubt that, although certain authority has been given to the Government of the North-West Territories, still, as the hon. gentleman has said, I cannot see that any legislation which has taken place excludes this House from interfering. In fact those Territories have not yet received such a form of Government that this House could not at any time sweep it away. When a regular system of constitutional government, such as prevails in the older Provinces, is established in the Territories, then the question of education must go to these Provinces; but as it is now, everybody will admit that this Parliament would have the power at any moment of sweeping away the whole governmental system of the North-West Territories and establishing in its place some such system as prevails in the Provinces. That being the case, this Parliament cannot have divested itself of the power of legislating on any and every subject with regard to these Territories. Because if we had gone that far, and established a settled system of provincial government in the Territories, then the question of education would, of necessity, go to them as a matter of right; but not having gone so far that this Parliament could not sweep away the system now in force in that country,

and establishing a system such as we have in the Provinces, I do not think that the Territorial Government has exclusive jurisdiction over the subject of education.

HON. MR. VIDAL—I agree with the hon. member from Richmond that had these North-West Territories been made into provinces there would have been no question whatever about the jurisdiction, but I ask the House to permit me to call attention to this fact: In 1883 we passed an Act to create the Society of the Oblat Fathers, giving them precisely the same powers.

HON. MR. MILLER—If my memory serves me, we passed two or three bills giving partly educational privileges and partly privileges of another character.

HON. MR. VIDAL—This Bill gives privileges of an educational character. As recently as 1886 we passed another Act incorporating the Sisters, the Faithful Companions of Jesus, giving to them similar powers. It seems to me very odd that when the Presbyterian Assembly ask for an Act of incorporation of the same character they should meet with this opposition.

HON. MR. MILLER—I do not think that is the ground of opposition at all.

HON. MR. SCOTT—I have not passed an opinion on the subject at all.

HON. MR. POWER—I think it was only last year, or the year before, that the North-West Territories received additional powers—powers beyond those which they had enjoyed before—and the district which had formerly been called by the general name of the North-West Territories, or at least a large portion of that region, was divided into four Territories, each of them having a legislature of its own of a certain kind, so that the question is not now in the same position as in 1883. I do not think there has been any change made since 1886.

HON. MR. MILLER—To what does my hon. friend allude?

HON. MR. SCOTT.

HON. MR. POWER—To the division of the North-West into four Territories.

HON. MR. MILLER—For the purposes of representation in the House of Commons.

HON. MR. POWER—Yes, and it will be remembered that some three years ago we introduced the system of electing members of the local Council. I did not say that this Parliament had not the power to do what they are asked to do: I said I thought it was contrary to the spirit of the Constitution and to the general drift of our previous legislation. The matter is not one of any special consequence in itself of course.

The motion was agreed to and the Bill was read the third time and passed.

THE RULES OF THE HOUSE.

MOTION WITHDRAWN.

The Order of the Day having been called—

That a Select Committee be appointed to consider the Rules of the House, with a view of making such changes, *if necessary*, as may ensure greater *liberty* of speech on questions of great *public importance*.—The said Committee be composed of the Honorable Messieurs Abbott, De Boucherville, Howlan, Miller, Almon, Kaulbach, McInnes (B. C.), Macdonald (Midland), Bellerose and the mover.

HON. MR. ALEXANDER said:—From what transpired yesterday I could not fail to observe that the members of this House have not very much confidence in my judgment. The leader of the House, whom we all honor and esteem so highly, expressed views in that direction. When a gentleman of the large, legal and parliamentary experience of the Leader of this House takes the course which the hon. gentleman from Inkerman took yesterday, one of my age and of my limited experience might well pause before proceeding further with motions of the same character. The great respect which I feel, and have always felt, for the members of this House and especially for its present Leader, lead me to conclude that it is wiser to withdraw my motion.

The motion was withdrawn.

CENTRAL ONTARIO RAILWAY BILL.

MOTION.

HON. MR. READ—Before the Orders of the Day are read, I move that the petition of the Central Ontario Railway Company, praying for the passing of an Act amending their Act of Incorporation, reported upon by the Select Committee on Standing Orders and Private Bills on the second day of April last, be referred back to said Committee for further consideration. I may say that this petition was not reported favorably on, and I am informed that it has been taken under consideration again and favorably reported upon by the House of Commons. This motion is simply to refer it back to our Committee to see what action they will take upon it.

The motion was agreed to.

THE FISHERIES TREATY.

DEBATE CONTINUED.

The order of the day having been called:

Resuming of adjourned Debate on the motion of the Honorable Mr. Abbott for Second Reading (Bill 65) Treaty between Her Britannic Majesty and President of the United States.

HON. MR. KAULBACH said:—Yesterday before six I was following the hon. member from New Westminster in his vagaries over the British North American Continent, even to the Alleghannies, and I think it is well that it happened to be six o'clock; otherwise I might have very imprudently followed the subject much further than it deserved. My hon. friend was contending that England had not been loyal to us; that she was indifferent and supine as regards her British North American colonies, and he made assertions which to my mind were not in the interests of Canada. My contention then was, as it is to-day, that England has always stood loyal to her colonies, and if the colonies were as truly loyal to England, the empire would be strengthened instead of weakened.