

REPORT
OF THE ROYAL COMMISSION

ON THE TRANSFER OF

The Natural Resources
of Manitoba

HON. W. F. A. TURGEON, CHAIRMAN

HON. T. A. CRERAR

CHARLES M. BOWMAN, Esq.

OLIVER MASTER, M.A., SECRETARY



OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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OTTAWA, CANADA, May 30th, 1929.

The Right Hon. W. L. MACKENZIE KING,
Prime Minister of Canada.

My dear PRIME MINISTER,—We have the honour to transmit, herewith, the report of the Royal Commission on the Transfer of Manitoba's Natural Resources, pursuant to the Order in Council of August 1, 1928, P.C. 1258, a copy of which is likewise attached hereto.

Your obedient servants,

W. F. A. TURGEON, *Chairman*,
T. A. CRERAR,
C. M. BOWMAN.

... CANADA ...

WILLINGDON

GEORGE THE FIFTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas **KING**, Defender of the Faith, Emperor of India.

To ALL TO WHOM these Presents shall come, or whom the same may in anywise concern, **GREETING**:

WHEREAS, pursuant to the provisions of Part 1 of the Inquiries Act, Revised Statutes of Canada, 1927, Chapter 99, His Excellency the Governor General in Council by Order P.C. 1258 of the first day of August, 1928, a copy of which is hereunto annexed, has authorized the employment of the Commissioners therein and hereinafter named to inquire and report as to what financial readjustments should be made for the placing of the Province of Manitoba in a position of equality with the other Provinces of Confederation in respect of the administration and control of its natural resources as from its entrance into confederation in 1870,

Now KNOW YE, that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable WILLIAM FERDINAND ALPHONSE TURGEON, a Judge of the Court of Appeal of Saskatchewan; the Honourable THOMAS ALEXANDER CRERAR, of the City of Winnipeg, in the Province of Manitoba; and CHARLES MARTIN BOWMAN of the Town of Waterloo, in the Province of Ontario, Esquire, Chairman of the Board of Directors of the Mutual Life Assurance Company of Canada, to be Our Commissioners to conduct such inquiry concerning and for all and singular the matters and purposes upon, as to and for which we are by the aforesaid Order in Council authorized to appoint Commissioners,

To HAVE, HOLD, EXERCISE AND ENJOY the said Office, place and trust unto the said William Ferdinand Alphonse Turgeon, Thomas Alexander Crerar and Charles Martin Bowman, together with the rights, powers, privileges and emoluments unto the said office, place and trust of right and by law appertaining during pleasure.

REPORT OF ROYAL COMMISSION

AND WE DO HEREBY under the authority of the Revised Statute respecting Inquiries concerning public matters, confer upon Our said Commissioners, the power of summoning before them any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as Our said Commissioners shall deem requisite to the full investigation of the matters into which they are hereby appointed to examine.

AND WE DO HEREBY require and direct Our said Commissioners to report to Our Governor General in Council the result of their investigation together with the evidence taken before them and any opinion they may see fit to express thereon.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed. WITNESS:

Our Right Trusty and Well-beloved Cousin Freeman Viscount Willingdon, Knight Grand Commander of our Most Exalted Order of the Star of India, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Commander of Our Most Eminent Order of the Indian Empire, Knight Grand Cross of Our Most Excellent Order of the British Empire, Governor General and Commander-in-Chief of Our Dominion of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this first day of August, in the year of Our Lord one thousand nine hundred and twenty-eight and in the nineteenth year of Our Reign.

By Command,

(Sgd.) G. R. SHIBLEY,

Acting Under-Secretary of State.

P.C. 1258

CERTIFIED to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by the Deputy of His Excellency the Governor General on the 1st of August, 1928.

The Committee of the Privy Council have had before them a report dated 14th July, 1928, from the Right Hon. W. L. Mackenzie King, Prime Minister and President of the Privy Council, submitting that following a conference held at Ottawa on the 3rd and 4th days of July, 1928, between representatives of the Government of Canada and of the Government of Manitoba, an agreement was concluded as to the method and basis of settlement of the question of the administration and control of the natural resources of the said Province of Manitoba, as follows:—

1. The Province of Manitoba to be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources, as from its entrance into Confederation in 1870.
2. The Government of Canada, with the concurrence of the Government of Manitoba, to appoint a commission of three persons to inquire and report as to what financial readjustments should be made to effect this end.
3. The Commission to be empowered to decide what financial or other considerations are relevant to its inquiry.
4. The findings of the Commission to be submitted to the Parliament of Canada and to the Legislature of Manitoba.
5. Upon agreement on the financial terms following consideration of the report of the commission, the respective Governments to introduce the necessary legislation to give effect to the financial terms as agreed upon, and to effect the transfer to the province of the unalienated natural resources within its boundaries, subject to any trust existing in respect thereof, and without prejudice to any interest other than that of the Crown in the same.

6. Pending this transfer, the policy of the Government of Canada in the administration of the natural resources of Manitoba to be in accord with the wishes of the Government of the Province.

The Committee, therefore, on the recommendation of the Right Hon. the Prime Minister and President of the Privy Council, advise that, pursuant to Part I of the Inquiries Act, Chapter 99, Revised Statutes of Canada, 1927,—

The Hon. W. F. A. Turgeon, a Judge of the Court of Appeal of Saskatchewan,

The Hon. T. A. Crerar, of the City of Winnipeg, Province of Manitoba, and

Charles M. Bowman, of the Town of Waterloo, in the Province of Ontario, Esquire, Chairman of the Board of Directors of the Mutual Life Assurance Company of Canada,

(the Commissioners agreed upon by both Governments), be appointed Commissioners to conduct such inquiry, and that they be authorized to engage the services of such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants as they deem necessary or advisable.

(Sgd.) E. J. LEMAIRE,

Clerk of the Privy Council.

Report of the Royal Commission on the transfer of the Natural Resources of Manitoba

By an Order of the Privy Council approved by His Excellency the Governor General on August 1st, 1928, these Commissioners were appointed and instructed to inquire into and to report upon the financial readjustments which should be made to effect the end of placing the Province of Manitoba "in a position of equality with the other Provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1870."

The subject matter of the inquiry being one of financial accountability between the Dominion of Canada and the Province, giving rise to many questions of a controversial character, opportunity was given to the two Governments concerned to be represented before us by counsel. We have, therefore, had the great advantage of hearing the views of both sides as to the nature and extent of the rights assigned to Manitoba by the Order in Council and as to the respective liabilities of the Dominion and of the Province to each other in the light of the situation thereby created. We had before us on behalf of the Dominion Hon. Lucien Cannon, Solicitor General of Canada, Mr. A. R. McMaster, K.C., and Mr. C. P. Plaxton, K.C., while Mr. A. B. Hudson, K.C., Mr. W. Craig, K.C., and, with them, Prof. Chester Martin of the University of Manitoba appeared for the Province.

THE OBJECT AND INTENT OF THE ORDER IN COUNCIL.

Admittedly the object of the Order in Council is to place the Province of Manitoba in the position in which it would have been had it come into Confederation in 1870 vested with the ownership and control of its natural resources to the same extent

and with the same rights and limitations as have always prevailed in the case of Ontario, Quebec, Nova Scotia and New Brunswick, who entered the Union in 1867. The position to be created for Manitoba is one of equality in all respects with the older Provinces; nothing less but also, of course, nothing more than equality of treatment is intended to be brought about.

The difficulty of the task before us is great in any event, but we think it can be reduced very considerably by a reasonable method of approach. After fifty-nine years of federal administration of Manitoba's resources it is beyond all possibility to say now, with accuracy, in what position the Provincial Government would be to-day, in respect to its finances and its assets in the form of Crown property, if it had administered and controlled the resources of the Province, on its own account, from 1870 onward. It is hardly necessary to state this fact, because it arises naturally from the circumstances, and it is the first consideration which must come to the mind of anyone reading the Order in Council. It was not, we believe, the intention of either party to this controversy that the Commission should attempt to attain what must remain practically unattainable. We think the true intention of the Order in Council to be that, having regard to the rights which are now conferred retroactively upon Manitoba, but which can be exercised by the Province in respect only to the unalienated portion of her domain, we should ascertain whether the Province has received in the past adequate consideration for the use made of her resources while these rights were withheld. The value of what the Province has lost must be weighed in the light of all the circumstances involved, and must then be compared with the value of the consideration received, of whatever nature this may be. When this first result has been attained, a method must be devised for adjusting the financial difference found to be existing between the parties.

The main object of this inquiry being to produce equality of treatment between Manitoba and the older Provinces, it will

be proper at the outset to define the position of these Provinces with respect to their natural resources. This will afford us the foundation upon which Manitoba's position must be secured.

CONDITIONS PRIOR TO CONFEDERATION.

The term "natural resources" is used to designate all Crown lands, mines and minerals situated within the territory forming part of the Province, and all royalties incident thereto. The former Province of Canada, composed of Upper Canada and Lower Canada, and which entered Confederation as the two Provinces of Ontario and Quebec, obtained the control of its natural resources by Imperial legislation some years before Confederation. The same was the case in respect to Nova Scotia and New Brunswick. The reason for the cession to these Provinces of the control and benefit of the property of the Crown was the necessity of this property being used by the Provinces for the raising of a revenue to carry on self-government. But in each case the value of this property to the Province as a source of revenue had been very considerably reduced by the action of the Imperial authorities, and those appointed by them, who had administered these resources, principally, of course, the Crown lands, for purposes of their own and without due regard to the financial interests of the colony. The situation in this regard is set out very fully and very clearly in Appendix "B" in the third volume of Lucas' edition of Lord Durham's Report. This Appendix "B" is the report made by Charles Buller who was appointed by Lord Durham to report to him upon the subject of Public Lands and Emigration in British North America. Buller's report was made in 1838. It is very exhaustive and has always been accepted as an accurate portrayal of the conditions which existed in the country at that time. We cannot do better, to give an idea of the situation, than to quote here very briefly from what Buller has to say regarding the agricultural lands of each of the colonies.

Referring first to Lower Canada:—

“The exact area of the Province of Lower Canada is as yet undetermined. Bounded to the south by the States of the Union and the Province of New Brunswick, it has no defined limit to the north, and little is known of the capabilities of that part of the country. The surveyed portion is divided into seigniories and townships. The land comprised in the seigniorial districts amounts to about 8,300,000 acres, and the surveyed lands in the townships amount to 6,169,963 acres. Of the former the whole has been granted by the Crown, subject to an obligation to concede to actual settlers; and, 4,300,000 acres have been thus conceded. The quantity of land disposed of for other than public purposes in the townships is about 3,500,000 acres.”

Secondly, regarding Upper Canada:—

“The area of the surveyed parts of this Province is stated to be 17,653,544 acres. Out of this there have been reserved for roads 450,000 acres, for the clergy 2,395,687; there have been granted and appropriated 13,660,838 (total, 16,506,525), and there remain to be granted 1,147,019.”

Regarding Nova Scotia:—

“The area of land of the Province of Nova Scotia may be estimated at 8,000,000 acres. Of this amount it is assumed that less than 6,000,000 of acres are fit for cultivation. And nearly the whole of this available land is included in the 5,750,000 acres which have been already granted. It is estimated by Mr. Morris, the present surveyor-general, that of the 2½ millions of acres yet remaining at the disposal of the Crown, not more than one-eighth is suitable for the purpose of settlement.”

And with reference to New Brunswick:—

“The area of the Province of New Brunswick is about 16,500,000 acres. Of this quantity there have been granted 3,000,000 acres, and sold 1,400,000; in all, 4,400,000. Of the quantity still remaining at the disposal of the Crown, it is estimated that about 11,000,000 acres are fit for settlement.”

These figures, it will be seen, refer to agricultural areas only, and we have nothing to show that any of the other natural resources of the Provinces had been disposed of. But the figures show that the Provinces received their resources, not in their entirety, but after some depletion. And in no case was compensation paid for past alienations. The resources, such as they were, were handed over to the local authorities together with the

responsibility of defraying the cost of local government. The Provinces received equal treatment in this respect, that each one acquired what was left of the natural resources within its territory, however great or small the value of these resources may have been in one case or another.

PROVISIONS OF THE CONFEDERATION PACT.

At Confederation it was decided to make of the natural resources the cornerstone of provincial finance. The Provinces transferred to the Federal Government most of their other sources of revenue, including notably the collection of customs duties, but they retained for themselves the use and control of the Crown lands, mines, minerals and royalties as a source of income. This decision was arrived at, it would appear, not by virtue of any pre-existing, fundamental doctrine of government sought to be put into effect, but as a matter of practical expediency. Self-government, and with it certain rights and assets, including the public lands, had been conceded to each of the Provinces by the Imperial Government. These provinces had decided to divide this self-government, and necessarily, therefore, their rights and assets, between two jurisdictions, a federal and a provincial. They were entirely free to make whatever division might appear to them advisable. In fact, the resolutions of the Quebec Conference of 1864 expressly provided in the case of Newfoundland that, in the event of that colony entering Confederation, its Crown lands, mines and minerals would be surrendered to the Federal Government, and the Province would receive in consideration of this surrender an annual subsidy of \$150,000. But Newfoundland decided to remain outside Confederation, and the result therefore was that all original Provinces did retain their natural resources. It was in this manner that the main principle of provincial finance was created.

The equality established among these four Provinces by the Confederation pact was one of method rather than of pecu-

niary benefit. Each Province kept what it had, regardless of its value, just as it surrendered to the central government its other sources of revenue regardless of their value. But the results obtained in each case up to the present have shown that great differences exist in these respective values, because the revenue yielded annually from the natural resources is much greater in some Provinces than in others. Thus we find that for the five-year period ending in 1926, the latest in respect to which the figures are available to us, the average annual net receipts from the natural resources of these four Provinces amounted, in Nova Scotia to \$619,858, in New Brunswick to \$862,277, in Quebec to \$3,068,779, and in Ontario to \$3,894,058. These figures are based upon the classified summary of provincial receipts and expenditures as published by the Dominion Bureau of Statistics and are perhaps not all-inclusive, but they are quoted merely to suggest the wide differences between the resources revenues derived by the various Provinces.

It may be well to add that, of course, none of these Provinces received from the central government any consideration for alienations of natural resources due to outside control before the Provinces entered the Union. We repeat then that the basis of equality in respect to natural resources, agreed upon in the case of the four original Provinces, was that each Province merely retained what belonged to it at the time it came into Confederation. And the nature and extent of this ownership and control, vested in the Provinces, were set out in provisions in the British North America Act applicable to all of them alike. These provisions will be found in Section 109 and in Paragraph 5 of Section 92 of that enactment, which are as follows:—

Section 109.—“All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such Lands, Mines, Minerals or Royalties, shall belong to the several Provinces of Ontario, Quebec,

Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same."

Section 92 enumerates the "Subjects of exclusive Provincial Legislation" and Paragraph 5 of this section specifies as one of such subjects.—

"The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon."

It will be noted that in these sections, and frequently in the proceedings before this Commission, and in this report, reference is made to "lands belonging to the Province," to the "ownership" of the natural resources being vested in the Province, etc. It may be well for the sake of clarity to point out that we are aware that these expressions are not strictly accurate, but are used merely as a matter of convenience, and that we shall continue to use them upon that understanding in this report. The resources are vested in the Crown, which is one and indivisible, and the expressions to which we refer mean only that the Dominion or the Province, as the case may be, is entitled to their administration and control and to the beneficial use of the revenues derived from them.

(Ontario Mining Co. vs. Seybold (1903) A.C. 73 at page 79)

It appears therefore from the foregoing that the four original Provinces of Confederation received equal treatment in regard to their natural resources in this respect—that each retained what it had possessed previously, regardless of natural differences of volume and value, and regardless also of all past acts of administration affecting this value. And, moreover, the control of the natural resources vested in the Province was not so vested, absolutely, but was expressly made "subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same" (B.N.A. Act, sec. 109). It

follows that a Province entering the Union after Confederation could be said to be placed in a position of equality with the others if it retained the administration and control of the natural resources within its boundaries still held by the Crown, but subject to pre-existing trusts and to interests vested in others at that time.

But whatever may be said of differences of value, and of restrictions contemplated by law, the fact remains that it was one of the fundamental principles of Confederation that each Province was to enjoy, as a source of revenue, the administration and control of the Crown lands, mines and minerals within its territory and of all royalties incident thereto. When Manitoba was created in 1870 this principle was departed from, and not only was it departed from, but it was not even recognized as being applicable in any manner to the new Province. The singular character of the treatment accorded to Manitoba in 1870 can be made more apparent by reference to what occurred in the case of those Provinces which entered Confederation subsequently to the creation of Manitoba. We refer, of course, to British Columbia, Prince Edward Island, Alberta and Saskatchewan. We believe it will conduce to a better understanding of the whole situation which now confronts the Commission if we deal first with the facts relative to each of these four Provinces. We shall then return to the case of Manitoba and pursue onwards until the end, in the light of all the facts brought out, the problem of dealing equitably between that Province and the Dominion, which is the task demanding our immediate attention.

BRITISH COLUMBIA

Of the case of British Columbia there is little to be said. That Province came into the Union in 1871, having previously had the enjoyment of its natural resources for its own revenue purposes, and it retained its rights in this respect. This was pointed out by Lord Watson in delivering the judgment of the

Privy Council in "Attorney-General of British Columbia vs. Attorney-General of Canada," (14 App. Cas. (1889) 295), where his Lordship says at page 301: "The title to the public lands of British Columbia has all along been, and still is, vested in the Crown; but the right to administer and to dispose of these lands to settlers, together with all royal and territorial revenues arising therefrom, had been transferred to the Province before its admission into the federal union." When, therefore, it was set out in the terms of union, as it was set out, that the provisions of the British North America Act should apply to British Columbia in the same way and to the same extent as they applied to the original Provinces, section 109 was made effective in respect to the new member of Confederation, because the Crown lands of the Province "belonged" to the Province at the time of the union, in the language of that section, and therefore they continued to belong to it. And the natural resources of British Columbia have proven to be very valuable. The average annual net receipts of the Province, similarly compiled for the period of five years already referred to in the case of the older Provinces, are \$3,605,239. The area of the Province is 355,855 square miles.

PRINCE EDWARD ISLAND

The case of Prince Edward Island, which entered Confederation in 1873, was much more complicated. Canadian authorities were anxious to secure the entrance of the Island into the Union, but the Government of the Island were at first reluctant to join. Ultimately, the financial position of the Island was an important factor in securing their consent. (Keith's "Responsible Government in the Dominions" (2nd Ed.), Vol. 1, p. 509).

There were no revenue-producing Crown lands in the Island. The entire Crown domain had been alienated by the Imperial

authorities in 1767. Upon this question Charles Buller had the following to say in his report made in 1838 and already referred to:—

“The history of Prince Edward Island, so far as relates to the system of land-granting, is most brief. The whole of the land was granted in one day to absentee proprietors upon terms which have never been fulfilled. To this original profusion may be attributed all the evils under which this island has laboured, and to which, in spite of unremitting exertions on the part of the provincial legislature to enforce upon the Home Government the necessity of applying some remedy, it is still exposed. In every other colony there has been such a degree of laches upon the part of the Government as in equity to preclude it from any enforcement of the original conditions upon which grants were made; but in Prince Edward Island scarcely at any time have five years been suffered to elapse without some appeal to the colonial minister, praying that the Crown would resume the grants it had made, as a measure not merely legally justifiable, but as the only measure that could free the Province from the evils that these excessive grants had inflicted. Upon one occasion the representations of the Assembly temporarily prevailed; process of escheat was adopted, and two townships were resumed by the Crown; but the influence of the absentee proprietors prevailed with the Home Government to stop the measures which had been commenced, and from that time to the present nothing has been done to enforce the settlement of the grants, the greater number of which yet remain chiefly in a wild state.”

When the proposals for union with Canada were under discussion, Prince Edward Island was still suffering, and had continued to suffer without redress, from the conditions created for her by the Home Government and described by Buller. The application to her, as a Province, of Section 109 of the British North America Act would have conferred upon her nothing more than a mere theoretical right, since there were no revenue-producing natural resources left in the Province, and consequently nothing “belonging” to her from which she could derive revenue. But Prince Edward Island was, in regard to Canada, an independent, self-governing unit of British North America, who could not be forced into Confederation without her consent; and she was therefore in a position to lay down terms. During the negotiations between the Island and the Dominion, the Dominion

Government recognized the right of the Province to administer and control its Crown lands if there were any, and went so far, at one time, as to offer to endeavour to secure for the Island, from the Imperial Government, compensation for the loss of the lands which that Government had alienated. (Can. Sessional Papers, 1870, Vol. 5, Paper No. 31, p. 7.) But nothing was done in pursuance of this offer. Finally, it was agreed that the Dominion Government would: (1) pay to the Island \$45,000 a year to make up to her for the lack of revenue due to the total alienation of her Crown lands, and (2) loan to the Government of the Island a sum not exceeding \$800,000 to enable that Government to re-purchase some of the alienated lands held by large proprietors, in order to use them for settlement and revenue purposes. The paragraph of the terms of settlement between the Dominion and the Province which deals with this subject reads as follows:—

“That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, the Dominion Government shall pay by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per centum per annum, upon any sum not exceeding eight hundred thousand dollars which the Dominion Government may advance to the Prince Edward Island Government for the purchase of lands now held by large proprietors.”

The cases of British Columbia and Prince Edward Island illustrate the importance attached in the scheme of Confederation to the possession by the Provinces of their public domain as a source of revenue. In the first case this right was conceded to the Province without question by the mere application of Section 109 of the British North America Act. In the second case, special arrangements had to be made to meet the peculiar circumstances found to exist and to put the Province in the same position as if she had had Crown lands “belonging” to her at the time of the union. The Province was subsidized and granted assistance to acquire lands already disposed of, which thereupon

would become Crown lands belonging to her by virtue of the British North America Act.

ALBERTA AND SASKATCHEWAN

The policy of provincial control of the natural resources was not followed in the cases of Alberta and Saskatchewan, but recognition was given at the outset to the financial obligations devolving upon the Dominion by reason of this departure. These Provinces were created in 1905. Their position was similar to Manitoba's in this—that they were not independent, pre-existing, self-governing entities, as were British Columbia and Prince Edward Island, free to enter Confederation or to remain without, according to the suitability of the terms offered them. Their territory was already part of Canada, and the conditions of their provincial status were fixed by Parliament in pursuance of the powers which that body conceived to belong to it by virtue of Section 2 of the British North America Act, 1871, which reads as follows:—

“The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.”

Section 109 of the British North America Act was not made applicable to the new Provinces, but, instead, it was provided in the Alberta Act and in the Saskatchewan Act that the natural resources of the Provinces should be “administered by the Government of Canada for the purposes of Canada.” The reasons for the retention of the Crown lands in federal control on this occasion were similar to those given in the case of Manitoba in 1870, to which we shall refer later. They were, in the main, the desire of the Federal Government to increase the population of the country by the continuation of its free homestead

policy, and to make use of these lands for national railway purposes. This latter motive was made evident later when the policy was announced of funding the proceeds of the sale of pre-emption lands and homesteads in Alberta and Saskatchewan to help pay the cost of constructing the Hudson's Bay Railway.

But, while the public lands of these Provinces were withheld from them recognition was given, at the moment of their creation, to the fact that an allowance should be made to them for the loss of revenue which they would suffer by the adoption of the Dominion's policy. The case was put very plainly in the Bills creating the Provinces, in the form in which they were first presented to Parliament. The land subsidy clauses of these Bills, as originally drafted, made it clear that the amount of the allowance provided for the Provinces "in lieu of lands" was arrived at upon a basis both of area of Crown lands and of actual population, provision then being made for the increase of this allowance from time to time with the increase of population. The area given was admittedly much less, in the case of each Province, than the total unalienated area of Crown lands within its territory. But it appears from what was said in enunciating the policy of the Dominion Government, that the lands really required for Dominion purposes were those fit for settlement and which might have been made revenue-producing by the Provinces if handed over to them. These were the lands which the Dominion intended to dispose of in pursuance of its policy of rapid settlement and development with no regard, or little regard, for revenue, and the deprivation of which would prevent the Provinces from raising sufficient income for their needs of government.

At a later stage in the debate on these Bills the fear was expressed that the reference in them to the area of Crown lands, in lieu of which the subsidies were being provided, might give rise at some time in the future to the claim by the Provinces that their beneficial ownership of the lands had been admitted, impliedly at least, by the language used, and that the retention

of these lands by the Dominion was in effect an expropriation of them at a price fixed by the Dominion. This, it was suggested, might lead to difficulties in the years to come. In accordance with this view, the reference to area was removed from the land subsidy clauses of the Bills, the reference to population alone remaining. But while this was done, the amounts provided to be paid by way of subsidy, based originally on both considerations, were left unchanged. The subsidy clause of the Bills as finally drafted, which is the same in the case of each Province, is given here in full. It is important to set it out because its provisions have since been adopted and applied to Manitoba. It is now Section 20 of the Alberta Act and also of the Saskatchewan Act. It will be noted that, in addition to the permanent annual subsidies, a further allowance running for a five-year period was made to the Provinces, in lieu of lands, to assist in the construction of public buildings.

"20. Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars;

Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

2. As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five years from the time this Act comes into force, to provide for the construction of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars."

While the policy pursued in respect to these two new Provinces in 1905 asserted the legal right of the Dominion to retain for its own use the Crown lands within the territory, it recognized, at least, very clearly, that a Province could not be expected to assume its full measure of financial responsibility unless it had, as a source of income, the equivalent of what these lands might reasonably have been expected to yield if it had obtained possession of them.

MANITOBA

Having before us this brief review of the situation in respect of natural resources in the other Provinces of Canada, we feel that we have cleared the way which leads towards Manitoba's case, and that we can now apply ourselves with greater ease and assurance to the task entrusted to us by the Order in Council under which we have been pursuing our labours. Bearing in mind the object sought to be attained by this Order in Council, which, as we understand it, is to place Manitoba, in so far as is now possible, in the position of a fully autonomous and fully endowed member of Confederation, we think it admissible to proceed by inquiring in the first place into the treatment which the Province has received from the time of its creation down to the present. We can then decide whether, in view of the situation thus revealed, Manitoba is in as good financial position as she would probably have been in had her right to the administration and control of her natural resources been conceded from the beginning. If we find that the treatment accorded her in the past has been inadequate, it will become our duty to determine what financial concessions should be made to her to-day, in addition to the transfer to her of the unalienated portion of her public domain, in order to place her in the full enjoyment of her rights as a Province.

THE POLICY ADOPTED IN MANITOBA.

The Province of Manitoba was created by the Manitoba Act (33 Vict. C. 3 Can.) which passed the Canadian Parliament

on May 12th, 1870, and became effective on July 15th following, the day upon which Rupert's Land and the Northwestern Territory became part of the Dominion of Canada by virtue of an Imperial Order in Council dated June 23rd of that year. As a result of the manner in which the birth of the original Province of Manitoba took place, its territory was never an unorganized part of Canada but was a Province from the very beginning. This was the intention of Parliament in passing the Manitoba Act, the first section of which commences as follows:—

“1. On, from and after the day upon which the Queen, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, under the authority of the 146th Section of the British North America Act, 1867, shall, by Order in Council in that behalf, admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, there shall be formed out of the same a Province, which shall be one of the Provinces of the Dominion of Canada and which shall be called the Province of Manitoba, and be bounded as follows”

It follows that when the area described in the Manitoba Act came into Canada on July 15th, 1870, it entered immediately into a Province for which provision had already been made.

But although Manitoba was given the name, and in other respects the status, of a Province, from the very beginning, it was not treated as a Province in respect of the natural resources within its boundaries. It received neither lands nor cash subsidies in lieu of lands. This anomalous state of affairs continued during the first eleven years of the life of the Province, save only that a payment of \$20,000 was made to the Province in 1879 on account of the School Lands Trust Fund, to which full reference will be made later.

The area of the original Province of Manitoba was 8,913,920 acres. This area may be said to have consisted prac-

tically altogether of good agricultural land ready for settlement. The unit thus formed was approximately seven times the size of Prince Edward Island and, while its population was barely 20,000, its situation on the continent and the character of its soil were such that the rapid increase of its population was apparent from the first.

In creating the Province of Manitoba out of the territory just then made part of Canada, Parliament assumed that it had the power to confer upon the Province any constitution which it might be inclined to devise, having regard to the interests of Canada as a whole. We do not presume to discuss the legal questions involved in this determination of Parliament because, of course, it would be quite beyond our competence to do so. It would appear, however, that any doubts which might have existed as to the power of Parliament to do what it did in regard to Manitoba were removed by the Imperial Statute known as the British North America Act of 1871 which declared the Manitoba Act "to be and to have been valid and effectual for all purposes whatsoever" from the time of its enactment.

Acting then in what it conceived to be the interests of Canada as a whole, Parliament retained in the possession of the Dominion Government the Crown lands of the Province. The object of the Dominion in acquiring Rupert's Land and the Northwestern Territory had been to consolidate Canada from coast to coast, to establish railway communication throughout the country, and to settle the western prairies as rapidly as possible by means of a free homestead policy. Railway construction, necessary for national purposes, was to be secured by means of grants of western lands. It was feared that, if the lands were handed over to the Province, they would be used by the Province as a source of revenue, and this would hinder or delay the objects sought to be attained by the Dominion. And then, of course, the lands would not be available for Dominion railway land grants. Therefore, it was provided by section 30 of

the Manitoba Act that the public lands of the Province should "be administered by the Government of Canada for the purposes of the Dominion."

THE EARLIER SUBSIDY ARRANGEMENTS.

The situation created for Manitoba in 1870 was exceptional in every way. The Province did not have its natural resources as a means of revenue, as did Quebec, Ontario, Nova Scotia, New Brunswick and British Columbia; no allowance was made to it for the lands retained, as was the case with Alberta and Saskatchewan in 1905; and it received no financial assistance whatever on this account, as was provided for Prince Edward Island in 1873. Despite the protests of the provincial authorities, nothing was done to alleviate this hardship until 1882. In 1881 the boundaries of the Province were increased very considerably, extending its area to 47,188,480 acres (44 Vict. C. 14), and at the following session of Parliament the yearly sum of \$45,000 was voted "as an indemnity to the province for the want of public lands" (45 Vict. C. 5). This was the first recognition given by Parliament, saving always the School Lands Trust Fund legislation, to the principle that Manitoba was entitled to receive some consideration for the handicap placed upon its finances by the terms of its constitution.

In 1885, a new arrangement was made by statute (48-49 Vict. C. 50). The annual subsidy was increased to \$100,000, the swamp lands in the Province were turned over to the Provincial Government to be reclaimed and sold for provincial revenue purposes, and a land grant of 150,000 acres was made as an endowment for the maintenance of a provincial university.

The annual subsidy of \$100,000 provided by the Act of 1885 remained unchanged, at that sum, for twenty-seven years. In the meantime the population of the Province had increased with great rapidity, and in 1911 it had reached the figure of 461,394. In the meantime, also, the new Provinces of Alberta and Sas-

katchewan had been created and had been dealt with in respect to their lands upon comparatively generous terms.

THE READJUSTMENT OF 1912.

Finally, in 1912, a new arrangement was made with Manitoba, and that arrangement still subsists. In the first place the boundaries of the Province were extended to their present limits. Then, Parliament decided to place the Province in a position of equality, in respect to land subsidies, with the Provinces of Alberta and Saskatchewan. Moreover, it was decided to make the new arrangement retroactive so as to take effect from July 1st, 1908. The settlement of 1885 was undone in so far as it was possible to undo it. The annual subsidies made payable to Alberta and Saskatchewan in 1905 were applied to Manitoba according to the ratio of its population. This population being estimated to have been over 400,000 on July 1st, 1908, the sum payable from and after that date, until the population should reach 800,000, became \$562,500 annually. In addition to this increase in subsidies, a grant of \$267,026 which had been made to Manitoba in 1898 to assist in the construction of public buildings (61 Vict. C. 4), was deemed in the Act of 1912 to have been made in lieu of lands, and was supplemented by an amount sufficient to make it equal to the amount granted Alberta and Saskatchewan for a similar purpose in 1905, as appears by the legislation affecting those Provinces and cited above. On the other hand, the Province was made to give up or to pay for the benefits it had received under the legislation of 1885, except the annual subsidies. The swamp lands conveyed to the Province, but still unsold, were handed back to the Dominion. The monies received by the Province, as the net proceeds of swamp lands sold, were found to amount to \$2,769,856.66, and the Province was made to pay interest on this sum at the rate of five per cent yearly, to be deducted from the annual subsidies. The 150,000 acres of land granted as an endowment to a provincial university were valued at \$300,000 and on this sum, also, interest at the rate of five per

cent was charged the Province by way of an annual reduction. The interest payable each year on these two sums amounts to \$153,492.82, which amount, being deducted from the annual subsidy of \$562,500, leaves the net sum received annually by the Province, under the legislation of 1912, at \$409,007.18. Parliament considered that this arrangement established equality of treatment, in respect of public lands, between Manitoba on the one hand and Alberta and Saskatchewan, on the other, from and after July 1st, 1908. Section 5 of the Act of 1912 (c. 32), setting out these new financial terms, is as follows:—

Compensation
to province
for public
lands.

“5. Inasmuch as under the provisions of this Act the province will not have the public land as a source of revenue, there shall, subject to the provisions hereinafter set out, be paid by the Government to the province, by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

The population of the province being assumed to be on the first day of July, nineteen hundred and eight, over four hundred thousand, the sum payable until such population reaches eight hundred thousand shall be five hundred and sixty-two thousand five hundred dollars.

Thereafter until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars.

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

1885, C. 50
amended,
Transfer
of swamp
lands to
Government.

2. Section 1 of chapter 50 of the statutes of 1885 is repealed, and all lands (known as swamp lands) transferred to the province under the said section 1, and not sold by the province prior to the time at which the terms and conditions of this Act have been agreed to by the Legislature of the province, shall be retransferred to the Government.

Deduction
respecting
swamp
lands.

3. The sums payable to the province under subsection 1 of this section shall be subject to a deduction at the rate of five per cent per annum upon the difference between the aggregate of the sums for which the said swamp lands were sold by the province and the aggregate of the sums from time to time charged

to the province by the Government in connection with the selection, survey and transfer of such lands and of the sums expended by the province which may be fairly chargeable to the administration and sale of such swamp lands.

4. The difference referred to in the next preceding subsection shall be determined by the Governor in Council after audit on behalf of the Government. Determination of amount.

5. The sums payable to the province under subsection 1 of this section shall also be subject to a deduction by reason of the allotment of land, to the extent of one hundred and fifty thousand acres, granted as an endowment to the University of Manitoba under section 2 of chapter 50 of the statutes of 1885, to wit, to a deduction of five per cent per annum upon the sum of three hundred thousand dollars. Deduction respecting lands granted to Manitoba University.

6. This section shall be held to have come into force, in so far as the provisions directing and affecting the half-yearly payments in advance under subsection 1 of this section are concerned, on the first day of July, nineteen hundred and eight, and shall have effect as if the first half-yearly payment thereunder was due to be made on that date. Commencement of payments under s-s 1.

7. There shall be deducted from the aggregate of the sums payable under the next preceding subsection at the commencement of this Act all sums received on and after the first day of July, nineteen hundred and eight, by the province from the Government on account of indemnity in lieu of public lands. Deductions respecting indemnity in lieu of public lands.

8. As an additional allowance in lieu of public lands, there shall be paid by the Government to the province, one-half on the first day of July, nineteen hundred and twelve, and one-half on the first day of July, nineteen hundred and thirteen, to assist in providing for the construction of necessary public buildings, two hundred and one thousand seven hundred and twenty-three dollars and fifty-seven cents, a sum equal to the difference between the total payments made by the Government to each of the provinces of Saskatchewan and Alberta, under *The Saskatchewan Act* and *The Alberta Act*, respectively, for the like purposes and the sums already paid by the Government on account of the construction of the Legislative Buildings and the Government House at Winnipeg. Allowance for provincial public buildings.

NEGOTIATIONS LEADING TO THE PRESENT INQUIRY.

But while the legislation of 1912 was intended to establish equality in respect to financial treatment among the Provinces which had been carved out of Rupert's Land and the Northwest Territories, it was not intended to operate as a final settlement of the natural resources question in these Provinces. The ultimate task of transferring to the Provinces their public domain on equitable terms was left to the future, but it was not lost sight of. This is evidenced by what was said in the House of Commons by the Prime Minister of Canada, the Right Honourable Sir Robert Borden, when introducing this legislation on March 4th, 1912:—

“Because, I repeat once more, these three provinces (Alberta, Saskatchewan and Manitoba) stand in a different category from the other six provinces of the Dominion. The other six provinces have their natural resources, their public domain, mines, minerals and other assets of that kind; these three provinces have not those assets. Having in regard these considerations our policy and our proposal is, in the first place, to put Manitoba upon the same just and fair basis as that which has already been granted to Alberta and Saskatchewan, and then to take up, at the earliest opportunity, the question of the terms upon which the natural resources of all three prairie provinces shall be handed over to the administration of these provinces.” (Hansard, p. 4269.)

There then followed a period of negotiations between the Dominion and the Western Provinces which did not lead to any satisfactory result for about ten years. Finally, on April 21st, 1922, during the progress of a conference between representatives of Manitoba and of the Dominion, the present Prime Minister of Canada, the Right Honourable W. L. Mackenzie King, made the following statement in the House of Commons (Hansard, Vol. 2, p. 1018):—

“As between the Government of Manitoba and the Dominion Government it has been agreed,—

(1) That it is desirable and just that such adjustments be made between the Dominion of Canada and the Prairie Provinces with respect to their natural resources as will give full recognition to the principle that in this respect they are entitled to be placed in a position of equality with the other provinces of Confederation.

(2) That the Government of Canada will negotiate an agreement with the Prairie Provinces with the above object in view, such agreement to be subject to ratification by Parliament and the respective Legislatures.

(3) That failing agreement on any point as between the Dominion and the Province of Manitoba all such items so in dispute shall be referred to arbitration.

(4) That any awards made by such arbitrators shall be subject to ratification by Parliament and the Legislature of Manitoba."

Further negotiations having failed to secure agreement between the Dominion and the Province on the matters left unsettled by the above statement of the Prime Minister, and it having become apparent that a full inquiry by a tribunal empowered to weigh the facts and the arguments to be adduced by both sides, would be necessary before the rights and liabilities of the two Governments to each other could be determined, this Commission was appointed by the Order in Council, already referred to, of August 1st, 1928.

THE TASK OF THE COMMISSION.

The important paragraphs of this Order in Council, for present purposes, are those numbered 1, 2 and 3, which we think it convenient to quote here:—

- "1. The Province of Manitoba to be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources, as from its entrance into Confederation in 1870.
- "2. The Government of Canada, with the concurrence of the Government of Manitoba, to appoint a commission of three persons to inquire and report as to what financial readjustment should be made to effect this end.
- "3. The Commission to be empowered to decide what financial or other considerations are relevant to its inquiry."

It is the plain intention of the Order in Council that the Province of Manitoba is to be dealt with now as if it had come into Confederation in 1870 in the same position as Ontario, Quebec, Nova Scotia and New Brunswick—that is, as an independent, self-governing entity, having "belonging" to it the lands, mines and minerals within its territory, still unalienated,

and the royalties incident thereto, which it was to continue to administer and control for provincial purposes, "subject to any trusts existing in respect thereof and to any interest other than that of the Province in the same."

Under this Order in Council the Crown lands of the Province, remaining unalienated, will be transferred to the Provincial Government as a matter of course. The task of this Commission has to do with that portion of those lands which has been alienated by the Dominion Government since July 15th, 1870. Has the Province received adequate consideration for the resources which have been lost to it by the carrying out of Dominion policies? If not, what "financial readjustments" (to use the language of the Order in Council) should be made now to render justice to the Province and thereby establish the desired "equality" in the only way in which it can be established at this date? The resources disposed of by the Dominion cannot now be returned. In the light of the Order in Council the retention of those resources in 1870 must be looked upon as an expropriation for which adequate compensation, or the balance justly due as adequate compensation, must now be paid.

THE BALANCING OF CLAIMS.

We find, after having given our most careful consideration to the facts and the arguments laid before us during the course of our inquiry, that the consideration which Manitoba has received in the past cannot be deemed adequate in a settlement to be made with her upon the basis of the Order in Council. We shall endeavour to set out, as briefly and as clearly as possible, the reasons which lead us to this conclusion, the principles which must be applied in measuring the Dominion's liability, and the amount of relief in dollars and cents to which we believe the Province to be entitled.

We shall deal first with the extent of the liability now cast upon the Dominion, that is, the limitations within which that liability must be deemed to arise. We think that the time spent

in the beginning of this report in setting out the situation at Confederation in respect to the original Provinces will shorten our task in this particular. We have seen how, in entering the Union, each Province kept what it had within its own provincial territory, for better or for worse, regardless of losses in the past which had been great in most cases, and of the superior or inferior value of the resources of other Provinces. (We are leaving aside for the moment the case of Prince Edward Island which came in in 1873 and with which a special bargain had to be made because the Province had no resources at all). Bearing these considerations in mind we take it that the Dominion Government is not accountable to Manitoba for any alienations of territory that may have been made, before the creation of the Province, by the Imperial Government, the Hudson's Bay Company or any other authority. And alienations of natural resources made before the life of the Province began, that is before the time of "the Union" as we understand this expression in Section 109 of the B.N.A. Act, constitute no claim against the Dominion, and any charges or reservations created during that period must now be accepted by the Province as limitations upon its rights of ownership, and as being in the nature either of "trusts" or of "interests other than that of the Province" within the meaning of section 109. The rule which we are adopting in this particular, and which we think to be the rule deducible from what has already been decided by the Courts, is that when in any Act or Deed, existing before July 15, 1870, any alienation, charge or reservation is provided for, which specifically or by necessary implication is referable to land in the Province, the right of the Province to the land is bound thereby; but not in other cases. As an instance of such a reservation which we consider to be binding upon the Province, we would mention the Hudson's Bay Company's reservation mentioned in the Deed of Surrender. This merely means, of course, that Provinces getting a share of what is known as the "fertile belt," the choicest part of Rupert's Land, must take it as they find it. We find that in

those portions of Rupert's Land which were annexed to Ontario and Quebec in 1912, these Provinces are considered to be bound by the reservations in the Deed in respect to Hudson's Bay Company posts.

As an example of an alienation arising out of a past transaction which we think would not be binding upon the Province, we suggest a case which might likely have occurred. If the Dominion had attempted after July 15, 1870, to realize the 300,000 pounds paid to the Hudson's Bay Company as part of the consideration for its Surrender, by a sale or an encumbrance of lands in Manitoba, (and the intention to do this was announced at one time by the Dominion Government), such an Act would not have been binding upon the Province, but would have been a use made of provincial lands for a Dominion purpose for which the Dominion would be accountable under the Order in Council. Let it be mentioned once again that in making these statements we are not presuming to decide any legal questions. We are simply indicating the rules we have adopted for our own guidance in arriving at our conclusions.

In the same manner as in the above case, and by an analogy which we think is conclusive, the Province is not entitled to compensation for any alienations, charges or reservations which may have been made by any governing authority, in any territory which now forms part of the Province, but which was not included in the Province at the time such alienation, charge or reservation, was made. This last statement is important because it must be remembered that Manitoba has had three different areas since its creation: the first and smallest area provided in 1870, the second area following the extension of boundaries, in 1881, and the present area which was formed by the annexation of what has been called the "hinterland" in 1912. In our opinion the Dominion is not accountable to Manitoba for anything done in this hinterland before 1912, nor for anything done before 1881 in the territory which was added to the Province in that year. Before their annexation to Manitoba those areas were no more a

part of that Province than they were part of Ontario or any other Province, and Manitoba has no more claim in respect to them for past transactions than have Ontario and Quebec for similar transactions in the territory they acquired in 1912.

It follows from the foregoing that the Dominion is liable to the Province for such alienations as have taken place since July 15th, 1870, in the original territory known as Manitoba; since 1881, in the territory of the Province as extended in that year; and since 1912 in the whole of the present area of the Province. The loss occasioned by any alienations or other transactions which were made or which took place in the respective areas prior to the above dates must be borne by the Province according to the intention, as we understand it, of section 109.

In the second place no claim can be entertained for any natural resources alienated by the Dominion for purely provincial purposes. In saying this we have particularly in mind the School Lands and the School Lands Trust fund. By legislation enacted in 1872 and in 1879 sections numbered 11 and 29 in every surveyed township in Manitoba and the Northwest Territories were set apart as an endowment for the purposes of education in the Province and the Territories. The lands were to be sold from time to time by public auction, the moneys realized to be invested in Dominion securities, and the interest arising therefrom to be paid to the Government of the Province, or the Territories, to be distributed towards the support of schools. This means that one-eighteenth of the surveyed lands of Manitoba are being administered by the Dominion for a purely provincial purpose, the support of education, and the income realized paid to the Province. We have already stated that Manitoba received its first payment out of this fund in 1879, the sum of \$20,000. Payments have been made to the Province every year since then, and these payments at the end of the fiscal year 1927-28 had reached the aggregate of \$6,243,351.13. By the terms of paragraph 5 of the Order in Council, the Province will receive the unsold school lands and its portion of the School Lands Fund,

along with the other natural resources, to be administered by the Province subject to the conditions placed upon this administration by the legislation of 1872 and 1879. During the last five years the annual return to the Province from this source has averaged slightly over \$300,000. Incidentally, the amount of this net income, derived as it is from the administration of only one-eighteenth of the surveyed area of the Province, furnishes a good example of the value of the Crown lands in this area.

HOMESTEAD AND RAILWAY LANDS.

We have next to consider counter-claims advanced by the Dominion in mitigation, but not in total denial, of the claims of the Province. We refer now to lands used for free homesteads and for grants to railways. It is urged upon us that the use made of these lands redounded, in part, to the interest of the Province, and that the total claim of the Province should be reduced accordingly. We are willing to concede something to the views of the Dominion in this matter. But before proceeding to a consideration of the particular cases, we think it well to point out that in dealing with this natural resources question, the matter we have to consider is the financial result of Dominion policies upon the Government of the Province. During the proceedings we thought that the expression "the people of Manitoba" was used too frequently by both sides. The people of Manitoba are also residents and tax-payers of Canada, and the people of a Province may be very wealthy and its Government very poor. We are dealing here not with two peoples, but with two institutions, the Government of the Province and the Government of Canada, each having certain responsibilities of government and each entitled normally to certain sources of revenue to meet its expenditures. The real questions raised by the subject now immediately under discussion, are, on the one hand, to what extent have the finances of the Provincial Government suffered by reason of the appropriation of the lands of the

Province to free homesteads and grants to railways, and, on the other, to what extent have the financial responsibilities of the Provincial Government been relieved, and its expenditure lessened, by this policy.

Now, dealing first with free homesteads, it must be remembered that a rapid increase of population throws upon a Provincial Government a heavy burden of expenditure for education, road-building, the administration of justice, etc. It is wrong, we think, to assume, as we have been asked to assume, that, if the public lands of Manitoba had been handed over to the administration of the Provincial Government, the Government would have adopted a free homestead policy similar to that of the Dominion. On the contrary, we find all along, from what was said by exponents of the Dominion policy in 1870 and down to the creation of Alberta and Saskatchewan in 1905, that the assumption entertained was that Manitoba, and later the new Provinces, if given the control of their lands, would use them, not for free homesteads, but for the purpose of revenue. It was feared from the very beginning that Manitoba, if allowed the control of its lands, would adopt a policy of settlement by land sales, which would necessarily prove to be slow, and would thus defeat the desire of the Dominion to bring about rapid settlement for the general benefit of Canada. But it must be remembered that in such a case, the case feared by the Dominion authorities, the lands remaining unsold and unsettled from time to time would still be an asset in the hands of the Provincial Government, which in the meantime would enjoy, as ready money, the proceeds of the lands sold. Naturally it was in the interest of the Province to see its population increase. Its prestige in the Dominion, its representation in Parliament, and even, of course, the amount of the per capita grant to the Provincial Government, would all be enhanced with the growth of population. But we think that a Provincial Government would not have lost sight of its own financial welfare in the pursuit of its desire to see the Province grow. The various considerations

involved would have tempered each other. In all probability the selling price placed upon the lands for settlement purposes would not have been high at the beginning, and for some years, in respect at least to certain areas of the Province, a system of free grants would have been established. Still we think that a judicious land settlement policy, conceived wholly in the interests of the Province, could have produced considerable revenue, particularly at the time of, and after, the construction of railways. The revenues derived from School Lands are some indication of that. In all, the Dominion Government has given away nearly 8,000,000 acres of Manitoba's good agricultural land to homesteaders. We think that the claim of the Dominion should be allowed to this extent that we should not tax that Government with an amount equal to the actual value of those lands. Such a charge would be excessive. Justice can only be done by reducing it in a degree commensurate to the sacrifice which we think the Provincial Government might reasonably have been expected to make to assure the growth of population of the Province.

We next have the question of land grants made to railways. These grants are of two kinds: those made to construct national railways, such as, notably, the main line of the Canadian Pacific, and those made for branch line construction, that is for lines running from point to point in the Province, usually to connect with a trunk line, and which may reasonably be held to have filled a provincial purpose, that is, a purpose towards which the Provincial Government would have contributed of its lands if it had owned them. To subsidize the construction of non-provincial railways the Dominion Government contributed nearly 3,000,000 acres of Manitoba's lands. The Canadian Pacific Railway Company's main line alone took up 2,182,750 acres. Elsewhere in Canada it has always been understood that federal undertakings are carried on at federal expense. An illustration of this is afforded by the building of the National Transcontinental Railway, undertaken in 1904. This railway undoubtedly produced great local benefit in New

Brunswick, Quebec and Ontario. But none of these Provinces were called upon to contribute of their money or their lands to its construction. In this regard the case of Ontario offers a good example of a federal undertaking enhancing the value of provincial assets, and also of the line of demarcation between federal and provincial responsibility in railway development referred to above. The National Transcontinental runs through Ontario from east to west along the northern portion of its inhabited area. Its construction opened up for settlement, and thereby added to the value of, large tracts of territory belonging to the Provincial Government; but without any cost to that Government. But at the time of its construction the Government of Ontario was anxious to secure railway communication in a northwesterly direction from Thunder Bay to Superior Junction on the Transcontinental main line. In order to have this branch line built, from one point in the Province to another, the Government of Ontario paid a subsidy.

Another illustration of federal responsibility for national undertakings is to be found in the case of the British Columbia land grant to aid in the construction of the Canadian Pacific Railway. The reference we are now making is to Article II of the Terms of Union concluded between Canada and British Columbia in 1871. By this Article British Columbia agreed to transfer, and subsequently did transfer, certain of its Crown Lands to the Dominion Government to be used in financing the construction of the railway. But in consideration of this transfer Canada agreed to pay, and has paid, to the Province the sum of \$100,000 annually down to the present time. Again we find that in 1884 (47 Vict., c. 8), Parliament voted \$2,394,000 to the Government of the Province of Quebec in consideration of that Government having constructed a railway from Quebec to Montreal and from Montreal to Ottawa, the Act declaring that the railway was in certain respects "a work of national and not merely provincial utility."

If, therefore, Manitoba had been in possession of its natural resources when the Canadian Pacific Railway was built, and that undertaking, being of utmost national importance, had been carried through by the Dominion at its own expense, the Provincial Government would have seen its assets grow in value by the construction of the railway as the Government of Ontario saw its northern area enriched by the building of the National Transcontinental.

And it is no answer to the claim of the Province in this matter to say that "the people of Manitoba" approved of the policy of the Dominion in giving them railway communication by way of land grants, or that if the public lands had belonged to Manitoba, and the Federal Government had failed to act, the Province would have used its lands to build through railways. Had this happened, these railways would have been none the less "works of national and not merely provincial utility" as was the case with Quebec in 1884. And again we might say, with equal plausibility, that if Canada had not built the National Transcontinental through northern Ontario, the Provincial Government would have been compelled to build a line through that territory some day, at the expense of its own resources.

The Dominion Government contributed approximately 575,000 acres of Manitoba's lands to branch line construction in the Province, and it should not now be charged with this item for reasons which will appear sufficiently from what has already been said.

CLAIMS RELATING TO INDIAN TREATIES.

We shall deal now with a specific claim pressed upon us very strongly by counsel for the Dominion in reduction of the demand of the Province for financial relief. We refer to the Dominion's claim arising out of Indian treaties. In the early years of Manitoba the Dominion Government concluded three treaties with tribes of Indians for the extinguishment of the In-

dian title in Manitoba and the Northwest Territories and, as a result, bound itself to pay certain annuities, known as treaty money, to the Indians concerned. The annuities paid to date amount to several millions of dollars. We are asked to make the Province liable for these annuities in return for the transfer to it of the Crown Lands affected by the treaties. But it must not be forgotten that by the terms of the Order in Council, we are bound to consider all matters from the point of view of the Province having been entitled to the control of its natural resources from 1870 onwards. We find then that it was expressly decided by the Privy Council in the case of *Canada vs. Ontario*, (1910) A.C. 637, and the earlier cases therein referred to, that the Dominion has no legal claim against a Province or against the lands of a Province when an Indian treaty is concluded, because the undertaking to pay annuities to the Indians constitutes no charge upon the land, which remains the beneficial property of the Provincial Government. It is merely another instance of an act of the federal authority working incidentally to the benefit of a Province. But we are told that since the above decision was rendered in 1910, the Dominion has set up a new rule of procedure in regard to the making of Indian treaties. At present, it appears, no such treaties are made except with the concurrence of the Province and upon the Province agreeing to pay the costs incurred. No doubt similar provision will be made for the future, should the occasion arise, in respect to the Province of Manitoba. But we can find nothing in the Order in Council which we can construe as an intention to make Manitoba pay now for expenses incurred 50 or 60 years ago, when it is admitted to us that no other Province has ever paid the Dominion in similar cases, except in one instance lately since the adoption of the new procedure, when the treaty was made at the request of the Province. It is safe to say that no Province has ever paid, or could be compelled to pay, the expenses of an Indian treaty entered into prior to 1910. And here again it so happens that we have direct precedent to guide us.

When parts of Rupert's Land were annexed to Ontario and Quebec, by Act of Parliament in 1912, no reference was made in the statutes to provincial liability for past transactions of this kind, but provision, satisfactory from the Dominion's point of view, was made for the future. No doubt a similar provision respecting Manitoba will be made part of the legislation to be brought down pursuant to the Order in Council to effect the transfer to Manitoba of its Crown lands. We think we should take this opportunity to add that we conceive it to be our duty to deal only with claims arising clearly out of the administration of the Crown lands in Manitoba. There may be other matters outstanding in the way of claims and counterclaims between the Dominion and the Province, but we cannot attempt to decide them. We are concerning ourselves only with the question of Manitoba's lands and the amount of compensation now due to the Province in respect of those lands, making due allowance for any equities in respect to them coming to the Dominion. We cannot inquire further to ascertain whether the claim of the Province in respect of its lands is not met wholly or in part by some counterclaim of a different origin. We hope that we have made our position sufficiently clear and that we have succeeded in setting out, in a manner that may be understood by all concerned, the considerations in support of and in opposition to the claims of the Province to which we have given weight in arriving at the conclusions which we are now about to state.

CONCLUSIONS:

We find then that in the area of 8,913,920 acres which comprised the original Province of Manitoba practically the whole of the land was of good agricultural quality; and that after allowing for the alienations and reservations which were made under circumstances binding upon the Province, this area was much more nearly intact than were the agricultural areas of Ontario, Quebec, Nova Scotia or New Brunswick when those Provinces first secured control of their lands or when they

entered Confederation. When the extension of boundaries of 1881 took place the total land area of the Province rose to over 41,000,000 acres of which approximately 25,000,000 were made up of good, fertile land. These are the potential sources of provincial revenue which the Dominion Government retained in 1870 and again in 1881 to be administered for Dominion purposes. Since then we have had the extension of boundaries of 1912 by which the great hinterland, of an area of over 100,000,000 acres, was added to the Province. This hinterland contains comparatively little land of agricultural value and its vast extent adds considerably to the financial responsibility of the Provincial Government. On the other hand we find that the purposes for which the Dominion retained the agricultural lands of the Province have now been achieved; the railways have been built and the lands settled. The remaining resources represent for the present, at least, a bill of expense, and these are the resources which are now being handed over to the Province. No doubt they contain great possibilities for the future and may in time be made productive. But they are not the kind of resources which the Dominion really intended to retain, according to their policy as announced from time to time. The figures submitted to us indicated that for the last ten years the average net annual deficit to the Dominion in the administration of Manitoba's natural resources amounts to roundly \$430,000. The time has no doubt come in Manitoba when, Dominion necessities having been satisfied, and the resources set apart to meet them having been practically exhausted, the Dominion Government should pay in full for the value it has received and leave to the Province the responsibility of administering what is left.

Since the lands of Manitoba were retained in 1870, without any recognition being given to what may now be called the rights of the Province, and since we are convinced that from that time down to 1912 no attempt was made to deal with the Province upon the basis of the value of the lands retained, we think that under all the circumstances which now surround the question, we cannot do better than to go back to the beginning and endeavour

to do now what ought reasonably to have been done in 1870 if the spirit of the Order in Council had then governed those in authority. If the idea had then been accepted that Manitoba was entitled to occupy, in respect to its public lands, a position of equality with the other Provinces of Canada, but that, nevertheless, these lands had to be surrendered to the Dominion for reasons of paramount national importance, arrangements would have been made at once to compensate the Province suitably and adequately for the loss of property which it was being called upon to consent to, and new arrangements, based upon the same considerations, would have been made in 1881. We have applied ourselves to the task of doing now, retroactively, what we must assume ought to have been done from the first. But we are able to do it in the light of the full liability of the Dominion as it now appears to us from all that has taken place, making proper allowance to the Dominion where such allowance is due.

We look upon this as a final settlement of the public lands question between the Dominion and the Province. We consider the payments we are about to suggest as the purchase price which is now to be paid to Manitoba for the lands of which it has been deprived from 1870 down to to-day. We propose therefore a plan of annual subsidies, based, as they ought to be, upon both the area and the population of the Province from time to time, beginning in 1870 and to run on from year to year for all time. In arriving at the amount of these subsidies we have given due weight, we think, to whatever can fairly be credited to the Dominion as against the claim of the Provincial Government. We are placing a light appraisal on the loss to the Provincial Government in respect to homestead lands, we are allowing the Dominion the benefit of lands used to subsidize branch line construction, and are holding to its credit the sums paid by it to the Province under the legislation of 1898 and of 1912 to aid in the construction of public buildings. We also recognize, in favour of the Dominion, the further fact that the subsidies we are recommending for future years, as will presently appear, are generous in their terms.

We are giving effect to these considerations in favour of the Dominion in two ways, (1) by fixing a moderate figure for the subsidies payable in respect of past years, and (2) by disallowing all claims of interest upon arrears. And, of course, we are setting off, against the sum now due for back subsidies, all subsidies already paid under earlier arrangements, as well as the value of the swamp lands and the University lands granted under the legislation of 1885.

Upon the above basis we are providing an annual subsidy of \$60,000 for eleven years between 1870 and 1882 during which the Province received no subsidy whatever. From 1882 on, for a period of twenty years, we provide a subsidy of \$187,500, to meet the increase in area and population. From 1901-2 down to 1908, we provide a subsidy of \$375,000 on account of increased population. And finally from and after 1908 we adopt the subsidy scheme enacted in 1905 in respect to Alberta and Saskatchewan and applied to Manitoba in 1912.

The difference between the total sum of the subsidies which we recommend as payable from 1870 down to the present and the sum of all credits due to the Dominion, is \$4,584,212.49. This is the sum that Manitoba is to receive in cash, as the balance due for past arrears. From now on, until the population reaches 800,000, the Province will receive annually \$562,500. When the population reaches 800,000 this sum will be increased to \$750,000. Finally when the population attains the figure of 1,200,000 the amount payable annually will rise to \$1,125,000 and will remain unchangeable thereafter. The following tables will show the figures of area and population in Manitoba as they have appeared from time to time:—

(1) *Area of Manitoba*—

1870..	8,913,920 acres
1881..	47,188,480 "
1912..	161,172,480 "

(2) *Population of Manitoba (census years)*—

1871..	25,228
1881..	62,260
1891..	152,506
1901..	255,211
1906..	343,082
1911..	461,394
1916..	553,860
1921..	610,118
1926..	639,056

It is necessary for us to make particular reference to our manner of dealing with Manitoba's accountability for swamp lands and university lands received by the Province under the statute of 1885. By the arrangement made in 1912, the swamp lands remaining unsold were handed back to the Dominion, and the Province was charged, in perpetuity, with an annual payment of interest, at the rate of five per cent, upon the amount which it realized from the sale of swamp lands, which was \$2,769,856.66, and upon \$300,000, the estimated value of the university lands. This item of interest was retained annually from the subsidy of \$562,500. It is apparent that this arrangement regarding swamp lands and university lands was made upon the basis of the Crown lands being considered definitely as the property of the Dominion: hence, among other things, the return to the Dominion of the unsold swamp lands. We are not finding fault with what was done in 1912 in regard to this matter. The arrangement was arrived at by agreement and was considered fair by both parties. But it has now run its course because the basis for it has disappeared. It must be set aside as being no longer applicable to the new relationship which is being instituted between the Dominion and the Province in regard to the Crown lands. The present settlement being made upon the basis of the lands being the property of the Province, and of the Dominion being called upon to pay for what it has retained, this arrangement of 1912 must be modified. The unsold swamp lands will come back to

the Province, as a matter of course, pursuant to the Order in Council. And from now on, instead of the Province being placed in the position of paying interest to the Dominion on account of part of its own lands, we think the proper adjustment to make is to credit the Dominion, once for all, with the sum of \$3,069,856.66, the value of the University lands and the swamp lands given to the Province, and to deduct this sum from the total amount due the Province for arrears. Without this deduction the aggregate arrears amount to \$7,654,069.15. The proper deduction being made, the balance left is \$4,584,212.49, as above stated, and the annual subsidies will be payable henceforth in their entirety as set out in the Alberta Act and the Saskatchewan Act.

We have completed our task and we submit the settlement, above outlined, as the best solution we can devise after having given the subject-matter of the inquiry our most careful consideration. The question of evaluating the natural resources of a Province is a most difficult one of its very nature, and in the present case it has become very much more difficult by the complications with which Manitoba's case has been surrounded. The great delay in establishing the principles of a permanent settlement and the consequent numerous proposals and counter-proposals which have been made, and the various arrangements devoid of any clear principle which have been entered into, from time to time, have complicated the situation almost beyond the possibility of clear, unanswerable solution. We are well aware that from the great mass of material which has been accumulated around this question during past years a case might be prepared to show that our present proposals do not do full justice to Manitoba, and another case, equally plausible, to show that the Dominion is being treated unfairly. We have no doubt that it was because of this peculiar character of the subject, with all its complications, that the two governments concerned decided to refer the question between them to a continuous and exhaustive inquiry. We think that the recommendations we are

making as the result of such an inquiry are the most reasonable that can be drawn from the facts.

We have refrained, in this report, from entering upon a lengthy, detailed discussion of the facts and figures associated with the various aspects of the case. Such a course would have necessitated the presentation of a voluminous and tedious mass of material which it has been our specific duty to examine and consider. We should be again confusing rather than clarifying the issue, were we to attempt here to review in detail the data and the arguments relating to the countless factors entering into the complicated problem which we have been commissioned to reduce to definite conclusions.

During the course of our inquiry we have had to call frequently upon the Department of the Interior for information which had to be extracted, with considerable labour and research, from the records of that Department. We wish to acknowledge the Department's courtesy and co-operation not merely in that connection but also with respect to a wide variety of other assistance which was placed at our service and which greatly facilitated the organization and carrying on of our inquiry.

In conclusion we wish to express our gratitude to Mr. Oliver Master, the Secretary of the Commission, for the most valuable assistance we have received from him throughout the inquiry. Mr. Master occupies the position of Economic Adviser to the Natural Resources Intelligence Branch of the Department of the Interior. We feel that we have been particularly fortunate in having had the benefit of Mr. Master's great fund of knowledge and of his keen industry during the whole course of our labours. The effect of his assistance has been to allow us to terminate our task much earlier than would otherwise have been the case.

All of which is respectfully submitted.

W. F. A. TURGEON, *Chairman.*

T. A. CRERAR,

C. M. BOWMAN.