

deal exclusively with matters of education. I am quite aware that the terms of section 22 of the Manitoba Act differs somewhat from the terms of section 93 of the British North America Act, and the differences are pointed out in the report of the same case, at page 270, but the principle is the same. As was stated by their Lordships of the Privy Council, the argument that power is conferred on the legislature of any province to exclusively make laws in relation to education is a fallacious one. The power conferred is not absolute, but limited. It is exercisable only—use the words of section 93—subject to the following provisions. I repeat that it is neither absolute nor exclusive.

In this view of the law let us examine section 16. Dealing with the Territories as the other provinces had been dealt with my intention was to declare section 93 applicable, and I beg those who do me the honor of listening to me to take note that a special provision would not have been necessary, that section 2 of the Bill would have been sufficient were it not that a difficulty might have arisen from the use of the word 'province' in section 93, and because of a doubt which was suggested as to the meaning of the words 'at the union.' Section 93, which would be applicable under section 2 of our Bill reads:

In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union.

My difficulty was with respect to the words 'province' and 'at the union.' My view was that it was possible that these might be construed as applicable exclusively to a province, and could not be made applicable to the Territories as brought in and my firm determination was that there should be nothing left to uncertainty, so far as my responsibility went. My object was to make section 93 applicable, and my object was also to avoid a repetition to perpetuate the existing conditions, with which everybody in the Territories professes to be satisfied. Now, if you take section 16 and read it in the light of that declaration, how would the law be with respect to these Territories? It would read as follows:

In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions: Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the territory at the time of the passage of this Act.

I would have made that applicable to the Territories as if they were provinces, and as if they were provinces at the time this Act comes into effect, that is to say, on the 1st of July next.

Mr. Haggart. Would that cover rules and regulations made under the ordinances?

Mr. Fitzpatrick. My hon. friend is more familiar with that question than I am, because he had to consider them in 1880 under Sir John Thompson. I shall unfortunately be obliged to discuss that later on when I come to the amendment. My intention was to continue the conditions existing at the present time. I had in mind the letter written by Sir John Macdonald to a member of the Manitoba legislature, which was quoted here a few days ago by my hon. friend from Cornwall (Mr. Pringle), and which is printed in the opening pages of the Manitoba School Case by Kribbs, in which Sir John declares that it was the intention of the government in 1870 to give to the minority in Manitoba the right to separate schools—to give them full and ample protection with respect to their schools. I knew that was the intention at that time, and I also knew that the Act, drafted under these circumstances, was submitted for consideration to their Lordships of the Privy Council, and they felt it to be their duty to declare that the man who drew that Act, the draftsman of that day, had failed to carry out the intention of the legislature. I made up my mind that the draftsman of to-day, so far as his limited light allowed him to go, would make no such mistake. Their Lordships, in the Manitoba school case said:

"It was not doubted that the object of the 1st subsection of section 22 was to afford protection to denominational schools, or that it was proper to have regard to the intent of the legislature and the surrounding circumstances in interpreting the enactment. But the question which had to be determined was the true construction of the language used. The function of a tribunal is limited to construing the words employed; it is not justified in forcing into them a meaning which they cannot reasonably bear. Its duty is to interpret, not to enact. It is true that the construction put by this board upon the 1st subsection reduced within very narrow limits the protection afforded by that subsection in respect of denominational schools. It may be that those who were acting on behalf of the Roman Catholic community in Manitoba, and those who either framed or assented to the wording of that enactment were under the impression that its scope was wider, and that it afforded protection greater than their Lordships held to be the case. But such consideration cannot properly influence the judgment of those who have judicially to interpret a statute. The question is, not what may be supposed to have been intended, but what has been said."

"I meant to say what I intended. Perhaps incidentally it may interest the House to know that at the time the Manitoba School Act was passed, and at the time these difficulties arose in Manitoba, the imperial authorities thought proper to interfere when they were called upon to give military assistance to the Dominion of Canada, and at that day the imperial authorities, to their credit be it said, faithful to the traditions of the imperial parliament, the mother of parliaments, the parliament of that people who have always held sacred their movements, acted through their representative, Lord Granville, sent to the Governor-General of Canada a cablegram on the 5th of March, 1870, which reads as follows:

"The proposed military assistance will be given if reasonable terms are given to the Roman Catholic settlers, and if the Canadian Government enable Her Majesty's Government to proclaim transfer simultaneously with movement of troops."

They were prepared to give the assistance asked for at that time by the Canadian Government on condition that reasonable terms should be given to the Roman Catholic minority. These terms are contained in the Manitoba Act of 1870. What happened subsequently it is not necessary for me to say. Dealing now with section 16, I would like to say that the second paragraph in that section was added—although in my judgment absolutely unnecessary—because it was thought advisable to re-enact the provisions of section 11 of the Act of 1875. This was for the purpose of making it quite clear that this parliament was merely carrying out a solemn promise already made. That very paragraph was intended to give legislative sanction to the conditions now existing with respect to grants in aid of education. At the present time these grants are dependent upon an annual vote of the legislature, and it was clear to me that the annual grant made by the legislature gave to those who benefit by it a right or privilege within the meaning of section 93. And I thought that if separate schools are to exist, they should be made effective for the purposes for which they were intended and should be placed to use the words of Mr. Balfour, in a position in which they can effectively play their necessary and inevitable part in the scheme of national education. I have given you now, Mr. Speaker, the whole secret of section 16. Where now are the shackles, the manacles, the invasion of provincial rights? What are we doing? I say that in the future history of our legislation and of the records of this parliament, it would be a serious reflection upon the people of the Dominion if the solemn promises made in 1875, repeated in 1880, and oft repeated since, were not carried out.

It is unnecessary for me to go over what occurred in 1875. That will be found in the debates of the Senate and the House of Commons when the Bill was introduced. All that has been gone over repeatedly, but let me draw attention to a fact not yet mentioned, namely, that a year later, in 1876, the Keewatin Bill was introduced by Mr. Mackenzie, and from the Bill clause 11 of the Act of 1875 was omitted. On being asked for an explanation, Mr. Mackenzie spoke as follows:

"The Bill is only temporary in its character. Section 11 refers only to the Act of last session. The laws established by this Bill are those in force at the present moment in the Northwest Territory—neither more or less. The Act of last session proposed the creation of a municipal system and conferred practically all the powers of self-government as a province. It is only when such powers are exercised that the clause in question comes into operation."

After some discussion, Mr. Blake said: "The Act of last session has not yet been put in force. At present all the Territories of the Northwest are governed from Manitoba. The Act of last session proposed, and I think rightly proposed, a system which gave rudimentary representative institutions coincidentally with its going into effect. The Bill of this session takes off a very small portion of the enormous territories of the Northwest for the particular purpose which my hon. friend the premier clearly explained. If this territory is annexed to Manitoba the laws of that province relating to schools will apply to it. If reannexed to the Northwest Territories, Mr. Haultain, on the other hand, arguing against the proposition and seeking to convince the people that it was to their interest to remain in the Northwest Territories and that the boundaries of Manitoba should not extend westward. And what, Sir, were the reasons given by Mr. Haultain to induce them to resist the blandishments of Mr. Roblin and to oppose the extension of the Manitoba boundary? The joint debate is reported in the Regina 'Leader' of January 20, 1902, and Mr. Haultain's argument is summed up in these words: 'Good roads, Railways, Schools, Water.' Referring to the school question, he says:

"With the school system you are fairly well contented, so I need not dwell upon the subject." I said a moment ago that I expressed no opinion as to the relative merits of public and separate schools. Not because I entertain any doubt myself as to the proper system of education, or as to the necessity for the religious teaching in our schools; not because I do not believe in the voluntary school, for undoubtedly I do believe in that school, because I think that school is the only school consistent with absolute freedom of conscience for which I have always stood. As for the common school, bringing all the children together, so that there may be uniformity, I have very little to say. My view has been that the individual ought to be developed. I do not want uniformity any more than I want monotony—both stand practically in the same light, so far as I am concerned. I believe in the doctrine of self-help. Perhaps, later on, I may have occasion to say a few words more about that doctrine. I argue that what was said and done in 1875, what was said and done in 1876, and in 1880, and 1885, and 1891, puts upon this parliament the imperative obligation to give effect to the term of promises and pledges then made. In 1875, Hon. George Brown, when section 11 of the Act of the Northwest Territories of that year was up for consideration said:

"The moment this Act passed and the Northwest became a part of the union, they came under the Union Act, and under the provisions with regard to separate schools." It is true that Hon. George Brown was not a lawyer, but he had taken a prominent and important part in the confederation debates, and he must be presumed to have understood the meaning of the British North America Act. He said that if guaranteeing separate schools to the minority in the Territories, were allowed to continue until the Territories come into the union, then those schools became part of their constitution. Not only was that the view held by Hon. George Brown, but Mr. Dalton McCarthy, in 1891, speaking

of the clause relating to separate schools, which he wished to have repealed, said: "Now, we insist by the clause of the Act of 1875, which has been included in the various consolidations of the legislative powers of the Northwest Territories which have been made from time to time, that they shall have separate schools, and if we continue insisting that that system shall prevail up to the time we create provinces in the Northwest, then the application of this clause of the first subsection of section 93 of the British North America Act, to which I have referred, rivets for all time upon the new provinces the system of separate schools."

Therefore we have the opinion of Hon. George Brown, confirmed by that of Mr. Dalton McCarthy, that if the system of separate schools exists in the Territories at the time when they came into the union as provinces, that system becomes part of their constitution and we cannot interfere with it. Mr. R. L. Borden. Did not he withdraw that later on? Mr. Fitzpatrick. Possibly. But it seems to me that I have gone several times through all the debates on that subject and do not recall reading of any withdrawal on his part. It may have escaped my attention—

Mr. Fielding. Does the hon. gentleman (Mr. R. L. Borden) mean in the same debate? Mr. R. L. Borden. Yes, a little later on. Speaking purely from recollection, in answer to Sir John Thompson, he did withdraw it. Mr. Fitzpatrick. I saw that part. It is not a withdrawal—at least, that would not be the construction I would put upon it. Some days ago, the work of Mr. Clement on the constitution was quoted by the leader of the opposition against the position of the government. Mr. Clement, of his own motion, without being solicited, wrote to me on March 10th, in a letter which he inclosed a typewritten document headed 'The Legal position of a new province as to education,' in which he deals with this question. He says:

"The federal parliament cannot create a new province with an area of legislative power greater or less than that assigned to the original provinces by the British North America Act. It follows that section 93 of the British North America Act—the clause defining the legislative jurisdiction of the provincial assembly over education—must, proprio vigore and without possibility of amendment by federal legislation be operative in any new province immediately upon its creation as a province. Therefore, if there should be at the time when a new province is established which is, in my opinion, the meaning of the words 'at the union' in section 93, any right or privilege in respect to denominational schools existing by law there, such right or privilege shall be protected by section 93."

Now, Mr. Clement, without hesitation, declares in the same sense that Mr. Dalton McCarthy did, namely, that if there are separate schools in existence in the Northwest Territories at the time these Territories come into the union—that is to-day—these separate schools are consequently entitled to the constitutional protection afforded by section 93. There is the opinion of Mr. Clement which was quoted against me the other day by the leader of the opposition.

May I now deal for a moment with the amendment of my hon. friend the leader of the opposition? I have attempted to make the position of the government absolutely clear, would it not now be proper for us to know exactly what the position of the leader of the opposition is? Is it to ignore existing conditions, and public engagements resulting from the legislation of the past in this House, and the speeches made in support of them? Is it his intention to say to the Roman Catholic minority of the Northwest Territories that they should not have that protection that other minorities in all the provinces of the Dominion now have? I have read the amendment naturally with care, and I must confess that I have been at a loss to understand exactly his position on that point.

Now I will deal with one or two of the minor criticisms that have been offered against this legislation. It has been made a matter of reproach to the government that we did not declare our policy on this school question before the last election. Our policy, the policy of the Liberal party, was absolutely clear, it was not necessary for us to make any declaration, our policy was to follow the law in the letter and in the spirit, our policy was to give effect to the legislation introduced in 1875 by the greater leader of the Liberal party, the Hon. Alexander Mackenzie, to give effect to that policy by our legislation. What about the opposition? Did they declare their policy on this question when they went up and down the country discussing the question of autonomy to the Northwest Territories? Did they declare what their policy was with respect to separate schools? I have yet to learn that they did. I think it would have been somewhat embarrassing to them to do so at the time of the spectacle we have had in this House during the last few weeks. They would have had one policy for Ontario and another policy for Quebec; and as to the policy in the other provinces, I leave it to the imagination of each one to conceive what it might have been.

Now, another criticism that has been made is that Mr. Sifton has not consulted about this Bill. Mr. Speaker, I have little to add to what I have already said incidentally on that subject. I can say now that Mr. Sifton, handed to me personally a draft Bill as prepared by those who represented the Northwest Territories, and that on that Bill were written in his own hand-words with respect to this question (of schools, which I understood is the only question that we differed about. I have the notes here, which I will read:

"Make memo of present provisions in law relating to the Northwest Territories as to public schools and provisions in other constitutional Acts. Beyond that, I never had a conference with Mr. Sifton, beyond that he is in no respect responsible for section 16 of this bill. Now I have endeavored at all times to shut my eyes and to close my ears to the side chatter which we hear in the streets; I have endeavored at all

times to ignore the pressional maligner who goes about for the purpose of endeavoring to create disturbances among neighbors. So far as I am concerned—I speak out openly, I have nothing to hide, nothing to be afraid of, either here or outside—I say that the honest differences that have existed, if any have existed, between Mr. Sifton and myself with respect to this Bill, are differences which any two self-willed and perhaps rather going-minded men, might have. But they have never extended beyond that, and any man who says they have, any man who, either in this House or out of it, says anything to the contrary, says what he knows to be untrue.

Now there is another point to which I wish to refer. A criticism has been offered as to the composition of the subcommittee that was appointed by the government to confer with the representatives of the Northwest Territories with respect to the provisions of this Bill. I would like to say that it is somewhat embarrassing to answer the charge that a man should not be Minister of Justice or form part of that committee because he happens to be a Roman Catholic. The Prime Minister was a member of that committee. Was it improper that the Prime Minister should be a member of this important subcommittee? Is it a fault in him that he is a Roman Catholic? It is a matter of conviction with him. Is it proper that the Secretary of State, the official channel of communication between this government and the government of the Northwest Territories, should be a member of that committee? Is it any crime in him that he should be a Roman Catholic? Was it proper that the Minister of Justice should be a member of that committee? I am technically responsible for the drafting of this Bill. Was it not right that I should give an opportunity to consider the representations of those who were the delegates of the people of the Northwest Territories in order that I might know how to draft the Bill? I won't say it is my fault that I am a Roman Catholic, because it is. That sort of criticism, it seems to me, cannot hurt anybody.

Now a reference has been made to an opinion expressed by me long ago about the elementary schools in Quebec. I did criticize the elementary schools in Quebec, because I thought they were bad. I told the people who were interested, and upon whose votes I depended for my election, that I thought their schools were bad and they ought to improve them. They have set about improving them. But let me draw the attention of the House to this fact, that the elementary schools criticized are not the clerical schools of the province of Quebec, they are the schools that are under control of school trustees, which trustees are elected by ratepayers—those are the schools that I criticized. The clerical schools of the Province of Quebec are the colleges of that province where we were all educated; and without saying anything in favor of the system of education in the province of Quebec—you have heard some of our French colleagues from that province speak in this House, and may I not say of the school system that produces the men who represent that province, and the men who made these speeches, what was said of the Greeks of old, that they are justified of their children?

Now, Mr. Speaker, after having apologized for trespassing so far on the attention of this House, I want to say a word in praise of the calm and dignified attitude in the present circumstance of the people of the Province of Quebec, that much maligned province which was said to be so deficient and backward in the cause of education. Take the facilities for higher education offered by Laval University, and you shall find that the blessings of a liberal education are brought within the reach of a poorer class of people in the Province of Quebec than in probably the case in any other country in the world. There are no great endowments to make fees a matter of slight consequence, but the spirit of self-sacrifice is abiding tradition within its walls, and its doors are open to all comers because its professors are content to work for a mere pittance.

On the other hand, nowhere has private wealth recognized its public duties with greater generosity than in that province. It is not necessary to recall in the presence of the members of the Canadian House of Commons the names of the men whose benefactions have endowed McGill University with the revenues of a principality. We must all admit to-day that the hammer stroke that drove home the last rivet in the last rail in the line which now unites the west and the east with a band of iron did something more than complete one of the greatest engineering feats of the kind. It put an end to the old era in which Canada was a mere geographical expression for a number of sundered and mutinous and sometimes squabbling provinces, and it gave to the conscious nation what it shall ever show in the face of trial—a backbone of steel. This scheme originated in the Province of Quebec and was carried to a successful completion by men from that province. I shall not attempt to forecast the future, or to say what fate Heaven holds in store for the people of the Northwest Territories—a people so blessed in the past, and so greatly expectant of the morrow, and so truly the heirs of the best that the old world had to give. The earth and the riches thereof is stretched out before them, inviting them to the work of developing to the utmost the resources of their great inheritance and the task may well occupy the noblest energies of their children and of their children's children.

But if they look back to the small beginnings of Canadian history they shall see that fidelity and constancy have been the conspicuous qualities in the characters of both the great stocks from which the Canadian people are mainly derived. It may, therefore, be inferred without rashness that they are not likely to run after strange fads, but rather to stand in the ancient ways, true to the principles of justice and fair-play, and not likely to be driven by strikes or affected by even the most brilliant stars as I have heard it sometimes suggested; but instead thereof, a free and contented people, to work out their destinies in these young provinces under the benign influence of the generous, equitable principles of the Canadian constitution.

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