

...that we have the power to give to these provinces such a constitution or administration as this Parliament deems it expedient to give. But the most that can be said in favor of those who take the contrary view—and it has not been said so far as I am aware—is that inasmuch as the British North America Act, 1871, provides that the Parliament of Canada may from time to time establish "provinces," the word "provinces" as so used must be interpreted having regard to the meaning of that word in the British North America Act, 1871, and therefore the province so established must be an institution corresponding generally with the provinces whose constitution is fixed in the British North America Act. Admitting, for the sake of argument, that that is so, it can only be said that the new provinces shall be constituted, as to correspond in powers with the other provinces so far as, with regard to any subject or class of subjects and the powers of all the provinces are the same. I might labor the point indefinitely and not get much farther on. In addition to the quotations of Sir John Thompson made by the leader of the Opposition, I would refer to a further statement by that gentleman which will be found in "Hansard" of July 26th, 1894, page 6130. It will there be found that Sir John Thompson, one of the greatest constitutional lawyers among the many eminent men who have held the position that I now occupy, held clearly and distinctly that the constitution of the provinces which are now being created is to be settled by this Parliament exclusively. That there may be no doubt of that subject, perhaps I had better read an extract from the "Debate." Sir John Thompson said, in answer to Mr. McCarthy:

"The hon. gentleman's argument, of course, was that if this system—"

"That is to say the school system of the Territories."

"—were allowed to stand until provinces are created, we should, by force of the British North America Act, be unable to withdraw that system, and that it would be riveted on the provinces. As has been shown by the hon. member for Bothwell, the provisions of the British North America Act relate only to the provinces which were entering into the union at that time, and to the provinces which were named in the last section of the Act as entitled to be admitted into the union, and have no relation whatever to the provinces which are to be created out of the territorial districts of the country. That is clearly seen when we come to the British statute of 1871, which, for the first time, conferred the power on this Parliament to create provinces out of our territories, and, as the hon. Minister of the Interior has said, enables this Parliament to decide what the constitution of those provinces shall be. We claim, therefore, that the constitutional system which was established with regard to schools and with regard to the language in 1875, ought to be maintained for the same reasons as those which dictated its creation, and that this condition of affairs should last, at least, while the affairs of the territories are under the control of this Parliament. What the constitution of the future provinces shall be, in view of the pledges which have been referred to, or in view of any other set of circumstances, will be for Parliament to decide when it decides to create those provinces."

Now it seems to me that some consideration should be given to this opinion expressed by so eminent a man, absolutely in line with the opinion on which the Government are now acting. Now, as against the views I have expressed, the opinion of another very eminent man has been quoted, that of Mr. Christopher Robinson. I make bold to say that there is no man in this country who occupies a higher position, not only in the opinion but in the affection of the far, than Mr. Christopher Robinson. The worthy son of a distinguished sire, he embodies in his person all the best traditions of the noble profession to which so many of us belong. I have given evidence of my respect for Mr. Christopher Robinson, for, on a momentous occasion, the most important occasion that I have ever been called upon to select counsel, I have chosen Mr. Christopher Robinson to guard the interest of this Dominion, I refer to the Alaska boundary case. Now what does Mr. Christopher Robinson say—rather, not what does he say, but what is he reported to have said—"because we have not yet got what he said, we have not been favored with the questions that were submitted to him."

Mr. Sproule—I think an explanation is due to the Minister of Justice. Some Hon. Members—Sit down. Mr. Sproule—I am not permitted to make an explanation, if the hon. gentleman will not, out of courtesy, permit me to make an explanation. I will sit down.

Mr. Fitzpatrick—Mr. Speaker, I think I have provoked an explanation. Mr. Sproule—I said that a word of explanation was due to the Minister of Justice. He requested me to hand the questions that were submitted to Mr. Christopher Robinson, and I told him that I would endeavor to get them and supply them to him. When I wrote for them the answer which I received from Mr. Fitzpatrick, the gentleman through whom I was acting, was to this effect, that the questions had not been considered as they were presented, but rather as having regard to the purpose of the Bill. I should have handed that answer to the Minister of Justice, but I did not do so because I thought it would not meet the intention that he had in asking for the question.

Mr. Fitzpatrick—There is absolutely no harm done; I have absolutely no complaint to make against the hon. member for Grey (Mr. Sproule). Now let me see what Mr. Christopher Robinson said. We have the positive opinion of Sir John Thompson, now let us see what Sir Christopher Robinson said, as I find it in the "Hansard":

"The right of the Dominion Parliament to impose restrictions upon the provinces about to be formed, in dealing with the subject of education and separate schools, is, I think, not beyond question."

Mr. Sproule—May I be permitted to say one word here? The Minister of Justice used the expression "What Sir Christopher Robinson is reported to have said." I here hand to the hon. gentleman the paper which Mr. Christopher Robinson signed with his own hand. Mr. Fitzpatrick—Mr. Christopher Robinson said:

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"The right of the Dominion to impose restrictions upon the provinces about to be formed, in dealing with the subject of education and separate schools, is, I think, not beyond question. This would require more consideration than I have been able yet to give it, and must ultimately be settled by judicial decision. I am asked, however, whether Parliament is constitutionally bound to impose any such restriction, or whether it exists otherwise, and I am of opinion in the negative. It must be borne in mind that I am concerned only with the question of legal obligation. What the Parliament ought to do or should do in the exercise of any power which they may possess, is not within the province of counsel."

I do not really think it is worth while for certain newspapers in this country to quote the opinion of Sir Christopher Robinson and say that his opinion is that, on this important constitutional question, there can be no doubt the Government is wrong. I am not aware that this Government considers that it is bound constitutionally to impose any restrictions; but I am aware that this Government believes that in equity and in good conscience it ought to enact section 16 of the Bill.

Now for the present I will follow the example of the leader of the Opposition, and deal exclusively with two features of this Bill; first, the question of the land, and second, the educational provisions. Let me draw the attention of the House to this fact that the leader of the Opposition, careful lawyer as he undoubtedly is—in his presence I will not say more—does not go beyond this:

"May I not further suggest that even if there were any danger—and I do not think there is—it would be the task of good statesmanship to have inserted, if necessary, a provision in this Bill with regard to free homesteads and the prices of those lands, and obtain to it the consent of the people of the Northwest Territory?"

That is to say, we are to give them all the lands with a string tied to them. That is so far as my hon. friend would care to go.

Mr. R. L. Borden. No, the hon. gentleman is hardly doing me justice. I said in the first instance that it would be a proper policy to hand the lands over to the control and administration of the provinces; then I said if the government declined to do that on account of a reason that has been suggested by the Prime Minister, I thought at least that might have been done which the Minister of Justice has just quoted.

Mr. Fitzpatrick. I stated my hon. friend's opinion so far as I could gather it. I do not wish to misrepresent him, because I have had my own experience in reading my own speeches. I understood him to say that we had power to retain some control over these lands while granting them to the legislatures of the provinces.

Mr. R. L. Borden. In order to make myself perfectly clear, I would like to say a word—I do not want to interrupt my hon. friend, for I know how difficult it is to make a consecutive legal argument with constant interruptions, those who have practised in courts have had some experience of that. What I meant to say is simply this, that I thought the lands ought to be handed over, but if we are to concede the principle that the government do not intend to hand them over, then in that case the best thing to do was that which I suggested. I did not intend at the time to deal with the question of legislative power. I may say besides to the Minister of Justice that I think the question of the lands stands so far as legislative power is concerned on a somewhat different basis from that of the educational clauses.

Mr. Fitzpatrick. In dealing with the lands I refer to section 109 of the British North America Act which is made applicable exclusively to the original provinces by name, and applicable to each of the provinces in which the lands were vested at the time of confederation. At the time of confederation the lands referred to in section 109 were the property of the provinces that were coming into the confederation. In the present instance the lands are vested in the Sovereign in the right of the Dominion and we would require a divesting Act to part with them. If this Act were simply silent the public domain would remain in the Crown, where it now is. Here again we have the authority of precedent. In the Manitoba case the same principle was applied, and has been explained by the Minister of Finance (Hon. Mr. Fielding) and other speakers, that principle was never departed from, notwithstanding the repeated requests of Manitoba. I shall not weary the House with a repetition of the answers given by former governments of the requests of Manitoba for the control of their lands. Incidentally, I may say, however, that this question was under consideration in the Swamp Lands Case in the Privy Council in 1901. Honorable members will remember that under a Dominion statute it is provided that all Crown lands in Manitoba which are shown to the satisfaction of the Dominion Government to be swamp lands shall be transferred to its benefit and use. The Government of Manitoba claimed that they were entitled from the date of the statute to the profits on each parcel of lands which had eventually and after a process of selection been transferred. The Privy Council held that the lands did not inure to the benefit and the use of Manitoba until they were transferred.

The fruits or produce now in dispute arose while the administration of the lands was with Canada, and have been duly applied to Canadian uses.

That is to say while Canada was administering the public domain in Manitoba and the Territories in such a way that the profits arising therefrom inured to the benefit of the Dominion. Something might be said in favor of the principle that these lands might be administered in such a way that the profits arising therefrom would inure to the province or territory in which the lands are situated, but in the Privy Council the question arose incidentally and therefore it was not even considered beyond the fact that those lands were vested in the Dominion and the title of the Dominion to the lands has never been raised in the courts and in connection therewith no doubt has been expressed. Therefore, constitutionally it seems to me that our right to deal with it seems to me that our right to deal with these lands in the way we are dealing with them cannot be questioned.

It must not in addition be overlooked that when the Territories became part of the Dominion they had no revenue, and in addition to the payment of £300,000 sterling to extinguish the Hudson Bay Company's rights, Canada had immediately to assume the whole burden of government without any compensation in the way of revenue except such as it derived from the sale of public lands. I would not wish to repeat what had already been said, as the subject will require to be more fully considered in committee, but it seems to me that not only under the provisions of the constitution, not only for the reasons urged by the hon. member for Brandon (Mr. Sitton) with respect to immigration, not only for the reasons set forth in the different Orders in Council prepared by preceding governments, but because the people of Canada have been obliged to incur all these liabilities with respect to these Territories, that we have not only the right but we have the duty to retain the possession of these lands. Perhaps incidentally I might mention that in the debates on confederation the question was considered, and it is gratifying to see that the Hon. George Brown, discussing the question of immigration, indicated the inconvenience that would result from a separate administration and a different policy as between the government of the Dominion and the provincial governments, and he practically went upon the lines that are being urged here in support of the government's position.

Now I come to the crucial point, the education provisions, section 16. And here, Mr. Speaker, I have to stand humbly before the House, perhaps in a penitent mode, and to make the admission that I drew that clause. Apparently there are few in this House who do that clause honor.

Mr. R. L. Borden: You look pretty guilty.

Mr. Fitzpatrick: I look pretty guilty but I do not look nearly so guilty as I feel. I drew it with my own hand, clause by clause, line by line, word for word. It is one of the two clauses of the whole Act for which I am personally responsible. The other is the clause that has reference to the Canadian Pacific Railway contract. I will not now say anything, as I fear I have detained the House long enough, on the amended clause. That I shall be prepared to deal with and to justify when it is moved in Committee.

Now, if I have succeeded in establishing my first point, namely that this Parliament has the power to insert in this Bill the provisions contained in section 16 with respect to education, the next question to be considered will be, are these provisions under all the circumstances fair and reasonable, and in view of the pledge given and of the legislation passed by this parliament, is there a moral obligation to enact this clause? My principle, if I have a principle in politics, is to hold sacred my covenants. There is, to use the words of the Privy Council in the second Manitoba case, a "parliamentary compact made with the people of the Northwest" and I want, so far as it is possible to do it, to hold sacred my covenants and to see that compact observed. We are told that the provinces were not consulted about this Bill and especially about this provision of the Bill. Let me say that as far back as 1900 the territorial government drew a bill and submitted it for the consideration of the government, to which they expected parliamentary sanction would be given. I have here in my possession a Bill drawn in 1902 which they submitted to the government and which I presume they caused to be inserted into the provisions which they desired to have in their new constitution. What is there in that Bill?

Mr. R. L. Borden: That is the "Haultain Bill."

Mr. Fitzpatrick: The Haultain Bill, yes, the Bill of 1902. This Bill will be found in a return which was brought down last year or the year before and annexed to it there is a memorandum explaining each one of the provisions. What does that Bill say in section 2? And bear in mind that section 2 of that Bill is almost in terms section 2 of the Bill now under consideration of this House. Section 2 of the Bill presented to us by the people of the Northwest Territories contains this provision:

"That on and after the first day of January, 1903, the provisions of the British North America Act, 1867, except those parts thereof which in terms made, or by reasonable intendment may be held to be especially applicable to or to affect only one or more but not the whole of the provinces under that Act composing the Dominion, and except so far as the same may be varied by this Act."

Rather suggestive that they think we have the right to vary the terms of the British North America Act.

"Should be applicable to the province of... in the same way and to the same extent as they apply to the other provinces of Canada, and as if the province of... had been one of the provinces originally intended by the said Act."

What does that mean? The provisions of the British North America Act; do they include section 93, the educational clause, or if it was not their intention that that section should be made applicable to them why did they not except it? Now we have more than that. Mr. Haultain in the letter I have mentioned says:

"With regard to the question of education generally you are now aware that the position taken by us was that the province should be left to deal with the subject exclusively subject to the provisions of the British North America Act, thus putting them on the same footing in this respect as all the provinces of the Dominion except Ontario and Quebec."

To properly appreciate what this means, let us see what is the position of the other provinces of the Dominion with respect to education, and I will make bold at once to make this statement: that there is not to-day in the whole Dominion of Canada a single province which has the power to legislate exclusively with respect to education—not one province of the Dominion of Canada. The distribution of legislative power by the British North America Act as between the provinces of the Dominion, is made in sections 91, 92 and 93 of that Act. Section 91 enumerates the power of the parliament of Canada, and enumerates the matters coming within the classes of subjects over which the exclusive legislative authority of the parliament of Canada extends. Section 92 enumerates the classes of subjects in respect to which the legislature of each province may exclusively make laws;

and section 93 deals especially with legislation respecting education, and provides; and what? "In and for each province the legislature may exclusively make laws in relation to education—"

Does it stop there? No, it goes on to say:—subject and according to the following provisions. Can there be any doubt now as to whether or not the provinces have the right to deal exclusively with education. If it was intended that the province should have exclusive legislative jurisdiction with respect to education, why not have included that subject among the classes of subjects enumerated in section 92, and assigned exclusively to the provinces, or why not have eliminated all reference to the subject of education, which, in that case might have been included under the heading "provinces" and civil rights in the "provinces" section 92, again under "matters of a merely local or private nature in the province." Either of these two enumerations would include education. The answer is, that parliament intended to deal with this difficult question so as to make exceptional provisions differing according to each province, and my argument is that by section 93 of the British North America Act, 1867, the power of each province is expressly limited: First the right to denominational schools which any class of persons has by law in each province at the union must be preserved. That is quite clear. Second; where in any province a system of separate or dissentient schools exists by law at the union, or is therefore established an appeal shall lie to the Governor-General in Council from any act or decision of any provincial authority affecting any right or privilege of the minority. And third: The powers, privileges and duties conferred to Upper Canada upon separate schools and school trustees of the Roman Catholics, are extended to the dissentient schools of Protestants and Roman Catholics in Quebec.

These limitations not only provide expressly exceptional provisions for different provinces, but also in effect, so far as there were denominational schools at the union, established as many different systems as there are provinces. By the Manitoba Act there are different provisions, and the limitations so far as denominational schools are concerned, is expressed in even broader terms than in section 93 of the British North America Act. Nobody doubts that Ontario, Quebec, that Nova Scotia and New Brunswick are provinces, notwithstanding this diversity in matters of education. It has never been suggested that Manitoba is not a province, although further exceptions as to education have been introduced in her case. It cannot reasonably be argued that in creating a new province the Dominion is bound to make its powers with regard to education corresponding to those of any particular one of the older provinces. And, if we are obliged to make them correspond to any particular one of the older provinces, to which shall we make them correspond? All the provinces are treated alike, mark you, Mr. Speaker, with the single exception of Quebec, with respect to which province there is an express limitation placed upon its powers in the interest of the Protestant minority.

It is a complete error to imagine that the right to separate schools in Ontario is created by the British North America Act; that right is merely preserved by that Act, and there is no exceptional provision for Ontario. The conditions applicable to Ontario are those applicable to New Brunswick, to Nova Scotia, to Prince Edward Island and to British Columbia; the difference being that at the time of confederation the Catholics of Ontario had rights and privileges with respect to their schools by law in the province and they did not have these rights in some of the other provinces. Again I repeat: there is not in the whole Dominion of Canada to-day a single province that enjoys an exclusive right to legislate with respect to education. Then, why in the name of provincial rights can we justly be called upon to give to these new provinces a power which no other provinces possess? Let me quote on this point the opinion of their Lordships of the Privy Council in the second Manitoba School Case. Here is what their Lordships say, page 279 of the Manitoba School Case, 1894, edited by the Canadian Government:

Before leaving this part of the case say their Lordships, it may be well to notice the argument urged by the respondent, that the construction which their Lordships have put upon the second and third subsections of section 22 of the Manitoba Act is inconsistent with the power conferred upon the legislature of the province to exclusively make laws in relation to education.

"The argument is fallacious, say their Lordships, the power conferred is not absolute but limited, it is exercisable only subject and according to the following provisions. Further on at the foot of the same page, dealing with the same subject, their Lordships say: "It must be remembered that the provincial legislature is not in all respects supreme within the province. Its legislative power is strictly limited. It can deal only with matters declared to be within its cognizance by the British North America Act as varied by the Manitoba Act."

Their Lordships do not seem to take fright at the suggestion that the British North America Act should be varied.

"In all other cases legislative authority rests with the Dominion Parliament."

Now, Mr. Speaker, here is what their Lordships go on to say: "In relation to the subjects specified in section 92 of the British North America Act, and not falling within those set forth in section 91, the exclusive power of the provincial legislature may be said to be absolute."

That is to say, when they exercise the powers conferred by section 91. But their Lordships continue to say: "But this is not so as regards education, which is separately dealt with and has its own code both in the British North America Act and in the Manitoba Act."

There we have it, on the authority of the Privy Council, that there is no power under the British North America Act vested in any province to

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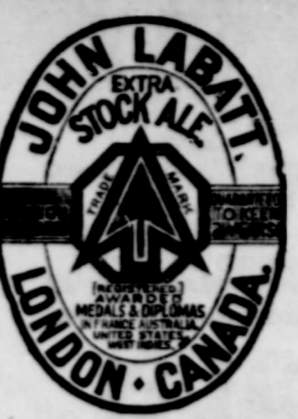
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Mr. S. A. Cassidy, of Ottawa Permanently cured after years of Suffering by the Great Canadian Kidney Remedy.

Ottawa, Ont., May 8.—(Special)—While all Canada knows that Dodd's Kidney Pills are the standard remedy for all Kidney Complaints, it may surprise some people to know they cure such extreme cases as Stone in the Kidneys. Yet that is what they have done right here in Ottawa.

Mr. S. A. Cassidy, the man cured, is the well-known proprietor of the Bijou Hotel on Metcalfe street, and in an interview he says: "My friends all know that I have been a martyr to Stone in the Kidneys for years. They know that besides consulting the best doctors in the city and trying every medicine I could think of, I was unable to get better."

"Some time ago a friend told me Dodd's Kidney Pills would cure me. As a last resort I tried them, and they have cured me."

"I could not imagine more severe suffering than one endures who has Stone in the Kidneys, and I feel the greatest gratitude to Dodd's Kidney Pills."

If the disease is of the Kidneys or from the Kidneys, Dodd's Kidney Pills will cure it.

The little boy picked himself out of the puddle where his rude playmates had thrown him. He wiped the mud from his velvet trousers, his silk stockings, and his lace collar, and straightened out his golden curls, and as well as their demoralized and bedraggled condition would permit. "This," he said, bitterly, "is what comes of being mamma's little pet."

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"How long," asks a contemporary, "can one live without air?" It depends upon the air. Most people could live a long time without some of the airs which have been popular during the last twelvemonth.