

Mr. R. L. BORDEN. They may not be taken from them, but the matter will be left absolutely to the people of the new provinces to deal with.

Mr. FITZPATRICK. That is to say that unless there is other and further legislation by the new provinces the existing legislation disappears?

Mr. R. L. BORDEN. No, I do not think it disappears. I think it is continued under section 15 to which I have just referred. It is continued with the other laws of the Territories, because the province has a right to deal with other matters embraced in section 92 or it has a right to deal with the subject under section 93.

Mr. FITZPATRICK. The hon. gentleman contends that section 93 would not be applicable to the Territories because the word 'province' is used in section 93, and under this section it would come in not as a province but as a territory. The result, therefore, would be that they would have no rights or privileges whatever. There would be the question as to whether section 93 would be applicable to these Territories and a decision of the court would be required to ascertain what were the rights and privileges of the minority.

Mr. R. L. BORDEN. Will my hon. friend be prepared to say that there will be no litigation over this section as he proposes it?

Mr. FITZPATRICK. I am not prepared to say that there would be no litigation, but there is one thing I am prepared to say and that is, that in so far as I am concerned my endeavour has been to prevent any litigation by making the matter absolutely clear. I do not think it would be fair to this House if I were to come here with a proposition which would oblige me to say that this matter will have to be settled by the courts. I say this is the place to settle the question. We should take it out of controversy in so far as these provinces are concerned. Let us have the courage to say, now, if we have the power, as I contend we have, what are these rights and privileges which are guaranteed to the minority and prevent another Manitoba school case.

Mr. R. L. BORDEN. If that is the object and intention of the government why does it not deal with section 92 in the same way? There are many questions involved in section 92, the question in regard to jurisdiction over the harbours and foreshores for instance, which is about being again referred to the Supreme Court, and many other matters of that kind and why not cover the whole area?

Mr. FITZPATRICK. That will not do.

Mr. R. L. BORDEN. I know it will not do. It is all very well for hon. gentlemen

opposite to apply his remarks to section 93, but if he wants to make matters plain and certain, he had better devote his attention to section 92. My hon. friend the Minister of Justice is too good a lawyer to claim that the meaning of sections 91 and 92 is beyond question. He knows that there are many matters still in controversy to which I have already referred. If I am not mistaken the government is about submitting to the Judicial Committee of the Privy Council a further question about the legislative power of parliament and of the provincial legislatures, in regard to the foreshores and the fisheries. If we are going to alter the British North America Act, if we have power to change it as we like we had better deal with this question and make absolutely plain for all time to come the area of the legislative power of the Dominion and of the provinces. Let us not stop at section 93. Continue the good work and deal with sections 91 and 92 in the same way.

Mr. FITZPATRICK. I do not intend to detain the House at any length, but I think I ought to say that this short debate has served an exceedingly useful purpose; it has defined the position of the two parties with respect to this much discussed question. My hon. friend (Mr. R. L. Borden), speaking with authority as the leader of the Conservative party, declares to us that the Conservative party are a unit, that those who stand behind him are united in endorsing the views he holds; that is to say, that the wish of the Conservative party is to leave to the future provinces the question of determining what are to be the rights and privileges of the minority.

Mr. R. L. BORDEN. I made no such statement; it may be perfectly true.

Mr. FITZPATRICK. Then if my hon. friend did not make the statement, I apologize for having misunderstood him.

Mr. R. L. BORDEN. My hon. friend asked my opinion, as a lawyer, with regard to the meaning of section 93 of the British North America Act and I stated it. I expressly stated also that I had no doubt, in fact I knew there was a difference on that point. I could not unite the Conservative party on the question of the construction of a statute. I am afraid my efforts must stop short of that.

Mr. FITZPATRICK. I understood my hon. friend to state that he expressed the opinion of the Conservative party when he moved his amendment and then as he after having moved that amendment construed it, and I inferred that those for whom he spoke endorsed the construction he put on it.

Mr. R. L. BORDEN. I am not so confident in my ability as to seek to impose on my hon. friends behind me or upon the Minister of Justice my opinion as to the