

the terms of section 93 by striking out the limitation contained in that section, I have not the least doubt in the world of our constitutional capacity to do it under the British North America Act of 1871. If my hon. friend takes the trouble to look up the opinion of so eminent a predecessor of his own as Sir John Thompson, he will find that Sir John Thompson expresses the same opinion. I think there can hardly be any doubt whatever that we can and should exercise that power. But, Mr. Speaker, if there were any doubt about it; if we passed this Act in accordance with our own judgment and our own discretion, giving these provinces such a constitution as we in our judgment think they ought to have by making a change in section 93, and there were any remote doubt about the constitutionality of that; is it not perfectly clear that all the Prime Minister would have to do would be as was done in the case of the Manitoba Act get a confirming Act from the imperial parliament. There would not be any difficulty about it, and if there were the least doubt that is the course that should be adopted.

Now, Mr. Speaker, if there is any doubt about our power, I say that in fact nobody else but us can deal with it. We are here as the only possible constitutional body to deal with this question upon its merits. Does any one imagine that the imperial parliament is going to discuss this question and undertake to settle it upon its merits? Then, who is going to settle it upon its merits? The imperial parliament would never do that, they would deal with it as we recommended; they would say: you are the governing body; possibly technically you may not have enough power given you by the Act of 1871, but if you have not we will give it to you; it is your business, settle it as you see fit. And Mr. Speaker, that is the only way it can be settled. We are unquestionably in the position of being the only body that can ever deal with the merits of this case.

For my part, Mr. Speaker, I have no hesitation in saying what my own opinion would be: it would be that the province ought to be left entirely free to deal with its own educational affairs. But, I would not get at it in the way that my hon. friend (Mr. R. L. Borden) does, by saying, the constitution does that, but as there is a certain amount of doubt about it I would strike out the limiting clause and I would make it so clear that there would not be any doubt in the minds of any one.

Mr. R. L. BORDEN. If we undertake to do that and do not possess the power under the British North America Acts 1867 to 1868, would not the courts control in the end as they have a dozen times, as they have a hundred times both with regard to provincial and Dominion legislation?

Mr. SIFTON. What was done in the case of Manitoba? Was section 93 of the British North America Act applied *ipsisssima verba*? If my hon. friend will look at it he will find it was not. He will find that in the case of the province of Manitoba a special section was enacted by this parliament and he will find that although questions were raised as to the competence of this parliament to pass that Act, the doubt was not as to the competence of this parliament to pass section 93, but as to other sections. If he will go back further he will find that notwithstanding that questions were raised as to competence of this parliament, the law officers of the Crown in Great Britain said we were perfectly competent, and that the Manitoba Act was within the competency of this parliament. If this parliament had the power in the case of Manitoba to put in a separate provision for the purpose of placing separate schools clearly and distinctly upon the province of Manitoba have we not the power to change section 93 by taking out the limitation? If we can do one thing we can do the other; if we can change a subsection then we can take a subsection out. That proposition is entirely obvious.

I said that so far as I was concerned I thought we had the power to leave the provinces absolutely free, and that for my part if I had my own way that is the policy I would pursue. But I quite recognize the strength of the argument upon the other side. We are face to face with two positions—I shall only detain the House for a few minutes longer; I apologize for speaking at such length.

Some hon. MEMBERS. Go on.

Mr. SIFTON. We are face to face with two propositions. We have the principle of the British North America Act to apply. The leader of the government and myself can agree that we ought to apply the principle of section 93 of the British North America Act, but as to the particular way in which we are to apply that principle we do not agree. But we ought to apply the principle, and when we come to the question: how are we to apply it, we come up against two separate and distinct and irreconcilable propositions. From my standpoint I say: inasmuch as the Northwest Territories are not a constitutionally free community; inasmuch as the ordinances passed are ordinances passed under a special and limited power; therefore when they come into the family of provinces we ought not to apply to them the principle of observing the status quo, because the status quo was not brought about by their own unlimited powers. There is also the view that is presented to us by our friends led by the right hon. the Prime Minister, and held by many other gentlemen here. They say—it was well stated by the