

whatever in respect to education. It simply provides that nothing in any law which may be passed by a provincial legislature 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. Subsection 2 relates exclusively to Upper and Lower Canada and is not relevant, and therefore I will not read it. Subsection 3 reads thus :

Where in any province a system of separate or dissentient schools exist by law at the union or is thereafter established by the legislature of the province, 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 Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

That subsection provides an appeal to the Governor General in Council from any Act or decision of a provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education. Before that appeal lies there must exist a system of separate or dissentient schools at the time the province was admitted to the union, or there must have been established thereafter by provincial authority, such a system and there must have been subsequent provincial legislation affecting these rights.

Then we have subsection 4 of section 93 :

In case any provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

It must be quite evident to any one who examines this section with any care that there is not any original jurisdiction granted by its terms to this parliament in respect to education, that the only power that we have is the power to pass a remedial law and before we can exercise that power there must have existed in the province at the time it was admitted to the union a system of separate or dissentient schools, or there must have been established thereafter by provincial law a system of separate or dissentient schools. There must then have been provincial legislation subsequent to that again, affecting the rights of the minority in respect to these schools. There must then be an appeal to the Governor General in Council ; there must be an order by the Governor General in Council to the provincial authority to apply the remedy in the provincial legislature and there must then furthermore be a refusal by the provincial authority to pass the legislation

which the Governor General in Council may deem expedient and then and then only is this parliament authorized to legislate in any way with respect to education, and then as the clause says :

And as far only as the circumstances of each case require, the parliament of Canada may make remedial laws.

I think I have said that no one can read that section with any degree of care without being convinced that we have no original power. There is only one other section in this Act from which any attempt can be made to spell out any power to this parliament to legislate with reference to education, and that is section 91, which reads :

It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

It will be seen at once that if the subject of education has been assigned exclusively to the provinces under the terms of the Act that then we cannot claim under this section any power to legislate, and education is by the terms of section 93 a subject which is assigned exclusively to the provincial legislatures. Therefore we must rely upon that section and that section only, and as I have pointed out our power there is based upon these four or five conditions precedent which I have already mentioned. That being so it may be asked where we get our authority to constitute these provinces. There is nothing in the words of the original Act of 1867 to give us that power. It is by virtue and by virtue only of section 2 of the Act of 1871 that this parliament gets the power which it is now seeking to exercise. That section is :

The parliament of Canada may from time to time establish new provinces in any of the 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.

It seems to me that the argument of the learned leader of the opposition (Mr. R. L. Borden) with respect to this matter was absolutely conclusive, that that section must be read in connection with the Act of 1886, the last section of which provides :

This Act may be cited as the British North America Act, 1886. *This Act and the British North America Act, 1867, and the British North America Act, 1871, shall be construed together and may be cited together as the British North America Acts, 1867 to 1886.

So that all these several Acts must be read together and construed as one Act, and the power which is granted to this