

particular time, which he calls—improperly I think—the union, he is obliged under the constitution to provide in the Bills now before us for the continuation of the system of separate schools. Now, my understanding of the constitution is that subsections 2 and 3 of clause 93 of the British North America Act was intended to apply to provinces that had provincial autonomy before entering the union. Even at the time of confederation there were provinces, Prince Edward Island and British Columbia, which did not then enter the union, but which have entered since. Had either of these had a system of separate schools before entering the union, these subsections of clause 93 would apply, as it applied also to Ontario and Quebec. But these subsections do not apply in the case before us at all. Because, these provinces are being carved out of territory that is already in the union, and never had provincial autonomy, but has had only such legislative authority as was delegated by this parliament under laws made in 1875 and later. The contention of the First Minister, as I have said, is that because they have separate schools we must perpetuate that system. But is that the contention of the Finance Minister (Mr. Fielding) as well?

Mr. FIELDING. I thought I had dealt with that point in my remarks last night. I know of no method whereby the word 'must' can be applied to the action of any member of this parliament. But I said I thought that the trend of the constitution created conditions which amounted to a moral case of a very strong character in that direction.

Mr. SPROULE. I understood the minister further to say that this is all based on a moral claim.

Mr. FIELDING. I have said again and again that my opinion was—if a layman may presume to have an opinion in these matters—that there is not and cannot be a legally binding obligation upon this parliament, but that every member of this parliament must vote according to the dictates of his judgment and his conscience.

Mr. SPROULE. I am speaking not with reference to the votes, but with reference to the provisions of the Bill. I would suggest that the Minister of Finance and the First Minister might hold a conference and agree, in order that they may do as they should do, speak on behalf of a united cabinet—

Mr. FIELDING. If the hon. gentleman (Mr. Sproule) will try to settle the differences among his own friends, I think he will have ample employment.

Mr. SPROULE. It is my duty to deal with a government measure and with the government behind that measure, and with

Mr. SPROULE.

the principles of constitutional government, one of which is that a cabinet shall not be divided in presenting a measure to the House. Yet these hon. gentlemen are divided to-day. I need not ask the Minister of Finance how long he has taken to analyze this Bill and reach the conclusion he has reached? We were told he did not see in the light in which he now sees it until a short time ago. He may claim to be excused on that ground for not having a very definite knowledge of the measure. But the father of the Bill says, that the constitution compels him to do what he now proposes. Now, to satisfy myself I thought I would apply to an authority whose opinion would be respected in this House, one who I have heard the right hon. Prime Minister and other hon. members on the other side quote approvingly more than once. I say this because the contention was set up that on account of separate schools being there to-day, we were not free, in giving the provinces provincial autonomy, to ignore those schools and allow the provinces to legislate according to their own judgment. I submitted the question to Mr. Christopher Robinson, K.C., who is well known I think, as high a constitutional lawyer as can be found in this country. I submitted several questions which were embraced in the speech of the First Minister, and I wish to read his opinion, because it is in my judgment in accord with the opinion announced by the leader of the opposition yesterday, and buttressed by many citations of constitutional authorities. Mr. Robinson says:

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.

They have the right to do it.

This would require more consideration than I have been able yet to give to it, and must ultimately be settled by judicial decision.

Remember, it is not the question whether we have any power to interfere with the province at all, it is a question of whether this parliament must do it, not whether we have power to do it.

I am asked, however, whether parliament is constitutionally bound—

The First Minister says: I am constitutionally bound.

I am asked whether parliament is constitutionally bound to impose any such restriction, or whether it exists otherwise, and I am of opinion in the negative.

Now I am not directing this to the Minister of Finance, because he does not hold that opinion, but I am directing it to his premier who does hold it, with a view to getting the different members of the cabinet in accord.