

case, and was represented by that upholder of provincial rights, Sir Oliver Mowat. He used this language:

In various cases it has been decided, I am not quite sure whether in this court or in other courts, reference has been made to the resolutions upon which the British North America Act was founded. What degree of importance should be attached to them has not been stated, but at all events it is reasonable for judges to look at them, and if they do find that they throw any light on the subject they should avail themselves of that light.

Therefore, I say that the right hon. leader of this government was right in going back to the history of confederation, to the origin of clause 93 of the British North America Act, in order that he might the better interpret it as the basis of the present measure. We know, from the history he gave this House, that if clause 93 was enshrined in the constitution of this country it was at the request of the Protestant minority of the province of Quebec. Now, Sir, I may say at once that it was not necessary to enshrine that principle of religious equality in the constitution. If we examine the words of Sir John Rose, in the confederation debates, one may easily see that the Protestant minority of the province of Quebec did not require the enactment of clause 93 in the British North America Act. Here is the statement made by Sir John Rose:

Now, we the English Protestant minority of Lower Canada, cannot forget, that whatever right of separate education we have, was accorded to us in the most unrestricted way before the union of the provinces, when we were in a minority and entirely in the hands of the French population. We cannot forget that in no way was there any attempt to prevent us educating our children in the manner we saw fit, and deemed best; and I would be untrue to what is just, if I forgot to state that the distribution of state funds for educational purposes was made in such a way as to cause no complaint on the part of the minority.

That was the statement made by Sir John Rose at the time of confederation. Therefore, I say that in the light of this testimony it was not even necessary for the minority to exact the enactment of that clause 93. Nevertheless, Sir A. T. Galt, in fulfilment of the pledge given to the Protestant minority of Lower Canada, went to London and had that clause inserted in our constitution. Now, the first question which presents itself is that which has been treated this afternoon by my hon. friend from Labelle (Mr. Bourassa), namely, does this clause 93 apply to Quebec and Ontario only, or does it apply to all the provinces? My hon. friend from Labelle has cited the opinion of Lord Carnarvon. I will not weary the House by giving the quotation again, but I will only quote a few words. Lord Carnarvon, in 1866, used the following language:

The object of this clause is to secure to the religious minority of one province the same rights, privileges and protection which the religious minority of another province may enjoy.

The Roman Catholics of Upper Canada and the Roman Catholic minority of the maritime provinces will thus stand on a footing of equality.

But has the local legislature exclusive jurisdiction in matters of education? We are told that the jurisdiction of the provinces is absolute in matters of education. It is not so—on the contrary, it is limited. It is precisely what the Lord Chancellor said in rendering judgment on the second appeal to the Privy Council of the Manitoba minority:

The Act imposes a limitation on the legislative powers conferred. Any enactment contravening its provisions is beyond the competency of the provincial legislation and consequently null and void. In relation to the subject specified in section 92 of the British North America Act the exclusive powers of the provincial legislatures may be said to be absolute. But this is not so as regards education.

Sir, not only is the jurisdiction of provincial legislature restricted in matters of education, but to use the language of Lord Carnarvon:

In the event of any wrong at the hand of local majority, the minority may appeal to the Governor in Council and claim the application of any remedial laws that may be necessary from the central parliament of Canada.

Therefore, the Privy Council declared that in all matters enumerated in section 92, the powers of the legislature are supreme and exclusive, but we have the authority of the Privy Council—the highest authority in the British Empire—that on matters of education this Dominion parliament has certain authority. I can quote not only authorities from the other side of the Atlantic, but I can quote the authority of Mr. Edward Blake, of the late Sir John Thompson, and even of Mr. Dalton McCarthy, the champion of the public school system in this country. On March 6, 1893, Sir John Thompson, speaking in the House of Commons, and addressing himself to the scope of section 93, at a time when the separate school controversy in Manitoba was becoming acute, said:

I take it that the principle is well settled and well agreed upon by both parties in this country, as well as by lawyers and tribunals of justice, that that provision, that qualification, nullifies any Act of a provincial legislature which conflicts with it; and that the legislature of a province, while to a great extent its powers are exclusive with regard to education, steps beyond its power and enacts a void enactment when it enacts a law which prejudicially affects any right or privilege with respect to denominational schools which any class of persons had by law in any province at the time of the union.

Sir John Thompson also quoted from Mr. Edward Blake, who some years before had introduced resolutions for referring a certain class of semi-political questions to the Supreme Court of Canada, and Mr. Blake dealt *inter alia* with section 93, and said: