

Mr. FITZPATRICK. My hon. friend picks two or three words out of the section and attempts to construe these words without regard to the context. He has to look at the whole context in order to understand the true intent and meaning of each word; he has to look to the words 'Protestant and Catholic' which are mentioned further on in the section, and which are practically the governing words; that is to say, the schools which are to be established are those which will provide for the necessities of these two classes of persons. Now my hon. friend, if he is anxious to understand what the intention of the legislature was at the time this section was introduced, has only to refer to the debates of that time, and he will find that, dealing with that particular section which was introduced at the suggestion of Mr. Blake, Mr. Blake said:

There should be some provision in the constitution by which they should have conferred upon them the same rights and privileges in regard to religious instruction as those possessed by the people of the province of Ontario. The principles of local self-government and the settling of the question of public instruction it seemed to him ought to be the cardinal principles of the measure.

His meaning was that they should have conferred upon them the same rights and privileges in regard to religious instruction as those possessed by the people of the province of Ontario; and Mr. Blake who was the father of the clause, used these words in explaining it, and pointed out that the intention was to provide for a separate school system as between Protestants and Roman Catholics. Then the hon. gentleman will find further on, if he wishes to inquire, that by the ordinance of the Northwest Territories of 1884, effect was given to that section in the sense indicated by Mr. Blake, who was responsible for it.

Mr. R. L. BORDEN. Was effect given to it in such a sense as to empower a majority of each district to establish schools of any character they saw fit?

Mr. FITZPATRICK. That is a separate school system.

Mr. R. L. BORDEN. But we are dealing with a majority school system.

Mr. FITZPATRICK. The minority in a district are entitled to establish a separate school in that district; that is section 25 of the ordinance of 1884.

Mr. R. L. BORDEN. Upon a well recognized principle, as a particular part of this section deals with separate schools we are not to suppose, without express words, that another part of the same section is also dealing with separate schools. A particular part of this section deals with the minority schools, whether Protestant or Roman Catholic; the minority of the ratepayers, whether Protestant or Roman Catholic, may establish separate schools therein.

Mr. FOSTER.

My hon. friend from North Toronto (Mr. Foster) had to construe the words to which he drew attention, because the Minister of Justice was founding his argument upon them—'may establish such schools therein as they think fit.' It seems to me that the results which have been pointed out by the member for North Toronto would ensue by the adoption of the interpretation of the Minister of Justice. Sir John Thompson certainly never adopted that interpretation, or we would have heard something about it in his report to council. His only objection to this ordinance, which he considered carefully, and he was a great lawyer, and would not be apt to overlook a point of this kind—his only objection was not that which is raised by the Minister of Justice to-day; his objection was that the ordinance provided for the establishment of schools only in districts where majorities had decided to create the area into a school district. Now it does seem to me, with all deference to my hon. friend the Minister of Justice, that it is not possible to place such an interpretation upon this clause as that which he has suggested. That certainly was not the interpretation which occurred to the Minister of Justice in the first instance when he drew section 16, No. 1, because he himself told us in this House that he intended section 16, No. 1 to preserve the rights as they are at present, and therefore he could not have had this point in his mind then. It is obviously something that has occurred to him since.

Mr. FITZPATRICK. They had all these rights in 1875.

Mr. R. L. BORDEN. If my hon. friend the Minister of Justice had had this argument in his mind, if he had held this opinion which he has put forward to-day, at the time he drafted section 16, No. 1, he could not have stated in this House, as he did state, that section 16, No. 1 was designed to preserve the rights of the minority as they exist in the Northwest Territories to-day. Those two things would be absolutely inconsistent; therefore I am within my right in insisting that the interpretation now relied upon is not the one that occurred to the Minister of Justice when he was drafting that clause. It did not occur to him for the very good reason that an interpretation of this kind is one to which the Minister of Justice would only resort when he found no other one would meet the case. To say that you must interpret this clause in that way is going very far indeed, much beyond any canon of legal interpretation with which I am familiar. As I pointed out, you have power vested in the legislature of the Territories to enact laws with regard to education; you have a limitation upon that, a proviso attached to it that the majority may establish 'such schools as they think fit.' But that does not permit them to establish schools of any such character as they see