

clauses are strictly confined to provinces. Now, I ask, was this accidental? I say no. That Act was contested and scrutinized in every line. If I recollect aright the British North America Bill was printed five times, and on every occasion it was thoroughly scrutinized and contested. There were men on both sides of the question. Quebec was strongly represented by men who had the interest of separate schools at heart. I think it is not too much to say that those gentlemen would have given a very careful attention to everything that might possibly affect the rights of their friends in the Territories; and yet, with all that care and oversight, there is not one word put in section 93 or its subsections relating to Territories; and why? For the very reason, the principle, that runs through the whole of section 93 and its subclauses; because a territory has no representative; it has no power; it could not bind itself. A province could pass laws and could repeal or alter the laws, but they wanted to lay down the rule that a province having once given privileges in the nature of separate schools or religious education, should be debarred from ever withdrawing them, or, where they had the power of repeal, as in some cases they had, and to repeal, or amendment, the privileges so granted should be affected, or if by any act of authority, they should be affected, then in such cases the Dominion should have the power to grant remedial laws. But no such application of the principle is made to a territory or to anything that occurs during the territorial period. There is no pretense from first to last that anything done on behalf of a territory by the Dominion shall bind it when it becomes a province. There is an absolute exclusion of everything relating to the territorial period from section 93 and its subclauses. But it is quite clear to my mind that the moment any province is either united, or established, at once the law as to education comes into operation; and as to that province section 93 and its subclauses apply, though it may be that under the conditions only one of the subclauses may apply to the particular province, and that only on the happening of future events.

I think it may be useful, even after all the discussion we have had, if I should refer to the circumstances in which the several provinces stood at the time of confederation, and how this clause 93 and its subclauses affected them. The four original provinces in confederation were the two Canadas, and New Brunswick and Nova Scotia. Ontario and Quebec (the two Canadas) were in a different position from any other. Both those provinces had, in the exercise of their legislative functions, by-laws of their own legislature established separate schools. It was therefore considered right and just that those who had acquired, by the free will of the people of those provinces, certain privileges with re-

Mr. BARKER.

gard to education, should not afterwards be deprived of them.

Section 93, the main clause, which confers the power on all provinces, is in these words:

In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions.

Then comes the first subsection, which is the strongest and most effective of all the subsections, for a statute passed contrary to it is null and void.

(1) Nothing in any such law 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.

Clearly, that section applied to both Ontario and Quebec because such rights or privileges existed in those two provinces at the union, and it has such effect that if any attempt were made by either Ontario or Quebec to repeal or impair those rights or privileges that attempt would be ultra vires and the law would be null and void. That is the special feature of that subsection, and that is an important thing to bear in mind when we come to consider what my hon. friend the Minister of Justice is proposing with regard to these new provinces, because it is that section, altered for the occasion, which he uses and applies to them.

The second subsection of section 93 I need not read, because it applies in its very terms to the provinces of Ontario and Quebec alone.

The third subsection is as follows:

(3) Where in any province a system of separate or dissentient schools exists 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 clause also applied to Ontario and Quebec, and was intended to protect the minority in those provinces against any attempt to impair by any act or decision of authority, the privileges they had been granted.

The fourth subsection is simply a remedial clause, which enables this parliament, in the case of an appeal under subsection 3 to do justice in the premises.

So you see that, as regards Ontario and Quebec, section 93 of the British North America Act of 1867 and all its subsections apply, but the other two provinces of Nova Scotia and New Brunswick were in a different position. Neither of those had denominational schools at the time it entered confederation. Therefore, subsection 1 could not possibly apply and never can apply to either of them. They have not established separate schools to this day, so that subclauses 3 and 4, in fact none of the subclauses have come into operation with regard to them; but one part of subsection 3