

Mr. R. L. BORDEN. If you intend to adhere exactly to the constitution.

Sir WILFRID LAURIER. Very well; if you intend to adhere exactly to the constitution. I said we wanted to adhere exactly to the constitution, and the reason why I did not think it would be advisable at this moment to apply section 93, without any qualification, simply to vote for the amendment of my hon. friend which he has just put in the hands of the chairman, and which is as follows:

The provisions of section 93 of the British North America Act, 1867, shall apply to the said provinces in so far as the same are applicable under the terms thereof.

Was, Sir, because that is absolutely meaningless, because you do not mean anything, that there is nothing certain as to what is really the law under such circumstances. You do not know what kind of school system you would have in the Territories if you were to apply that. I call the attention of my hon. friend and the House to this fact that the law of 1875 put in certain prescriptions which were binding on the legislative powers. These prescriptions were that the minority or the majority in any school district would have the power to establish such a school system as they thought fit. Now, Sir, let me call the attention of the House to this, that no less an authority than Sir John Thompson gave his opinion and put it on record that one part of the law passed by the Northwest Territories, the part regarding the organization of school districts, was ultra vires and had no existence in law. Let me again quote Sir John Thompson:

The ordinance respecting schools does not contain the provisions that the statute requires it to contain, but merely contains the provision that the minority may establish a separate school in an organized public school district, thus placing the minority at the mercy of the majority, and only giving the minority the right to establish a separate school, if the majority think proper to organize a public school. It is necessary to point out that the provisions of the Northwest Territories Act, before cited, cannot be abridged by the ordinance and must be considered as still in force, notwithstanding the restrictive terms of the ordinance. In so far as it is attempted by the ordinance to declare the meaning of the Northwest Territories Act, the ordinance fails of that purpose, and is objectionable, as being an interpretation by an inferior legislative body of the Acts of its superior.

The undersigned only refrains from recommending the disallowance of this ordinance, in consequence of its being merely a re-enactment of an earlier ordinance, which disallowance would not affect, and which was allowed to go into operation, probably because attention was not called to this provision. The undersigned has the honour to recommend that the ordinance bringing these revised ordinances into effect, be allowed to go into operation.

Here you have the opinion of Sir John Thompson that a part of the law which was

passed in 1888 with regard to the organization of school districts, and which is still the law in force in the Territories, was unconstitutional, was ultra vires, was null. He did not recommend the disallowance of it, and it was not disallowed; but if it was null at that time, it remains null to this day. Therefore what would be the law today? If you say that section 93 of the British North America Act should apply, to what would it apply? To the law as it was in the ordinances of 1901, or as it was in the Act of 1875? This is a serious question, and it is a question we ought to settle. We do not want it left unsettled to be a bone of contention, with all that that implies. My hon. friend's amendment would settle nothing at all, but would simply throw a bone of contention into these new provinces. My hon. friend says, let the British North America Act apply, whatever it may be. When he is asked what that Act means, he says that is for the courts to determine. Is that satisfactory? Is that the manner in which we should legislate? Is that the way to build up this country? Sir, it is not the way. The only way is to find what the law is at the present time, and then apply it.

Mr. R. L. BORDEN. May I ask my hon. friend what tribunal will determine what his amendment means?

Sir WILFRID LAURIER. The courts must of course determine what our legislation means; but, as was said by the hon. Minister of Justice, we want to do all we can to prevent litigation, not do all we can to facilitate litigation.

Mr. BELCOURT. Before the question is put, might I be permitted to ask the hon. leader of the opposition why, in framing his amendment, he has introduced purely and simply section 93 of the Act of 1867—why he has left out the other provisions of the constitution, as contained in the Act of 1871, the Act of 1875, and the Act of 1886? As I understand, the constitution of Canada is to be found in these four Acts, and my hon. friend proposes to introduce into this Bill which we are now discussing the provisions of the Act of 1867 only. Why has he left out the others?

Mr. R. L. BORDEN. I will answer my hon. friend. It is very unfortunate for his friends that he should have asked that question. In the first place, I followed what the hon. gentleman seems to consider the very bad example of the government, who in section 16, deal specially with section 93 of the British North America Act. If we are to deal with section 93 specially in a particular section, I want to take it exactly as it is, and not with any amendment or alteration. My hon. friend has made a very good point, namely, that we are making no reference to the Act of 1867. He has doubtless observed that there is no reference to that Act in the preamble, and my hon. friend from Hamilton has introduced an