

construction of a statute. I did say on behalf of the gentlemen on this side of the House that I did believe that they would accept loyally the result of applying section 93 whatever it might be, and I stated further my own opinion of what it would be.

Mr. FITZPATRICK. I understood the hon. member to say that his amendment gives expression to the wish of the united Conservative party. Of course it is not possible for us on this side to accept the principle contained in his amendment. I take it that there may be doubt with respect to section 93 as to whether or not, in view of the words used in that section, 'province' and 'union,' section 93 would be applicable in its entirety to the new provinces. That I consider is a matter of doubt. Some good lawyers say that section 93 would be applicable.

Mr. R. L. BORDEN. And the hon. gentleman, as I understand his previous argument, thinks that that doubt can be removed by virtue of the powers conferred on us by the British North America Act, 1871.

Mr. FITZPATRICK. I have absolutely no doubt about that. There may be some doubt about section 93, but no doubt as to our right to legislate with respect to this matter. I consider that point was absolutely set at rest at the time the Manitoba Act was passed, and if it was necessary thereafter to find confirmation of what was done at that time, it can be found in the Act of 1871. So far as we are concerned we submit that the territories now coming in as provinces should be dealt with as if they were provinces now. The parliament of Canada undertook when we assumed legislative jurisdiction over these Territories to give to these territories a constitution similar in principle, or rather similar in so far as the circumstances would permit to those enjoyed by the then existing provinces. This parliament gave them the power to deal with the question of education and under the Act of 1880, section 93 is specifically made applicable to the Territories; under that legislation a system has grown up in the Territories, which if they were provinces, section 93 would make applicable to-day and I say it is our bounden duty to give effect to the legislation which we passed and under which this system was created. That is the position we take. We say that rights and privileges have been created under that provision, and we say: Give effect to them. Hon. gentlemen say that no rights and privileges exist and we are not under obligation to consider them.

Mr. SPROULE. That was not the position of the Hon. David Mills in 1884.

Mr. FITZPATRICK. Of course I differ with my hon. friend as to the construction to be put on Mr. Mill's position, but I do not want to play the part of echo; I like to give my own opinion.

Mr. R. L. BORDEN

Mr. SPROULE. Nor was that contention put up when Mr. Dalton McCarthy moved his motion on the ground that if this was allowed to continue, afterwards, when we came to erect these Territories into provinces and give them a constitution, vested rights and the privileges which they enjoyed might be plead as a bar against any amendment to the constitution then. That was not contended at that time.

Mr. FITZPATRICK. Mr. McCarthy and George Brown both contended that as a result of the passing of this legislation by this parliament, that is to say of the Act of 1875, with respect to schools, if that legislation was allowed to continue in force until the present moment had arrived, that is until the time came to give provincial autonomy, the result would be that we would be obliged to continue on that system that would create rights and privileges which might have to be accepted. That was the opinion of Brown and McCarthy and of a greater lawyer than either, Sir John Thompson.

Mr. HAGGART. Is it your opinion? ,

Mr. FITZPATRICK. It is my opinion.

Mr. SPROULE. I can only say that Mr. McCarthy did not hold to that contention after Sir John Thompson's explanation, because he said: I frankly confess I have not looked into it as closely as the Minister of Justice has done, and, therefore, I would not stand upon my own opinion to the same extent, but for fear that this should be plead afterwards as a justification for continuing these rights then I will move my motion. In supporting that motion I remember distinctly that I referred to the custom which prevailed in this House, especially amongst lawyers, of pleading vested rights and precedents as a justification for continuing rights acquired, and I said because of that, because that might be plead in the future, I will feel constrained to vote with the member for North Simcoe (Mr. Dalton McCarthy), which I otherwise would not be disposed to do.

Sir WILFRID LAURIER. My hon. friend (Mr. R. L. Borden) a moment ago put to me one or two questions to which he wanted an immediate reply. I said at that moment I did not choose to reply. I am sure my hon. friend and the House generally will agree that when a question is put to an hon. member it is for him to select the manner in which he will answer.

Mr. R. L. BORDEN. Hear, hear.

Sir WILFRID LAURIER. I thought the moment was not convenient for me to give an answer, because I could not give such an answer as my hon. friend wanted to have, simply yes or no. The question was asked: Why do you not apply the provisions of section 93 at once without anything more?