

struction which their Lordships have put upon the second and third subsections of section 22 of the Manitoba Act is inconsistent with the power conferred upon the legislature of the province to exclusively make laws in relation to education.

The argument is fallacious, say their Lordships, the power conferred is not absolute but limited, it is exercisable only subject and according to the following provisions.

Further on at the foot of the same page, dealing with the same subject, their Lordships say :

It must be remembered that the provincial legislature is not in all respects supreme within the province. Its legislative power is strictly limited. It can deal only with matters declared to be within its cognizance by the British North America Act as varied by the Manitoba Act.

Their Lordships do not seem to take fright at the suggestion that the British North America Act should be varied.

In all other cases legislative authority rests with the Dominion parliament.

Now, Mr. Speaker, here is what their Lordships go on to say :

In relation to the subjects specified in section 92 of the British North America Act, and not falling within those set forth in section 91, the exclusive power of the provincial legislature may be said to be absolute.

That is to say, when they exercise the powers conferred by section 92. But their Lordships continue to say :

But this is not so as regards education which is separately dealt with and has its own code both in the British North America Act and in the Manitoba Act.

There we have it, on the authority of the Privy Council, that there is no power under the British North America Act vested in any province to deal exclusively with matters of education. I am quite aware that the terms of section 22 of the Manitoba Act differ somewhat from the terms of section 93 of the British North America Act, and the differences are pointed out in the report of the same case, at page 270 ; but the principle is the same. As was stated by their Lordships of the Privy Council, the argument that power is conferred on the legislature of any province to exclusively make laws in relation to education is a fallacious one. The power conferred is not absolute, but limited. It is exercisable only—to use the words of section 93—'subject to the following provisions.' I repeat that it is neither absolute nor exclusive.

In this view of the law, let us examine section 16. Dealing with the Territories as the other provinces had been dealt with my intention was to declare section 93 applicable, and I beg those who do me the honour of listening to me to take note that a special provision would not have been necessary, that section 2 of the Bill would have been sufficient were it not that a diffi-

culty might have arisen from the use of the word 'province' in section 93, and because of a doubt which was suggested as to the meaning of the words 'at the union.' Section 93, which would be applicable under section 2 of our Bill, reads :

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

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.

My difficulty was with respect to the words 'province' and 'at the union.' My view was that it was possible that these might be construed as applicable exclusively to a province, and could not be made applicable to these Territories as brought in, and my firm determination was that there should be nothing left to uncertainty, so far as my responsibility went. My object was to make section 93 applicable, and my object was also to avoid a repetition of the Manitoba difficulty. I wanted to perpetuate the existing conditions, with which everybody in the Territories professes to be satisfied. Now, if you take section 16 and read it in the light of that declaration, how would the law be with respect to these Territories? It would read as follows :

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

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 territory at the time of the passage of this Act.

I would have made section 93 applicable to the Territories as if they were provinces, and as if they were provinces at the time this Act comes into effect, that is to say, on the 1st of July next.

Mr. HAGGART. Would that cover rules and regulations made under the ordinances ?

Mr. FITZPATRICK. My hon. friend is more familiar with that question than I am, because he had to consider them in 1894 under Sir John Thompson. I shall unfortunately be obliged to discuss that later on when I come to the amendment. My intention was to continue the conditions existing at the present time. I had in mind the letter written by Sir John Macdonald to a member of the Manitoba legislature, which was quoted here a few days ago by my hon. friend from Cornwall (Mr. Pringle), and which is printed in the opening pages of the Manitoba School Case by Kribbs, in which Sir John declares that it was the intention of the government in 1870 to give to the minority in Manitoba the right to separate schools—to give them full and ample protection with respect to their

Mr. FITZPATRICK.