

Mr. R. L. BORDEN. Making it impossible. I will read his language in order to make that perfectly plain, because I think the Minister of Justice will agree with me that, apart altogether from any question of disallowance and apart from any question of remedial legislation, (which, as I think, did not exist), the ordinances could not override the statute of 1875. There might be some question as to how you would get at it in the courts, the ordinances might be inconsistent with the Act of 1875, but they could not in any way have any effect over that Act. If the Act of 1875 remains unrepealed and if we enact such legislation here as continues that statute as part of the constitution of the new province, then despite all the ordinances the Northwest Territories might make, the Act of 1875 would be in force in the future. There is no doubt about that, in the opinion of lawyers who have carefully considered the question. The opinion of Sir John Thompson, to which I am referring, is this :

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.

That is all I desire to say about this question at present. I would ask the Minister of Justice what is his view as one of the law officers of the Crown with respect to the combined effect of sections 2 and 16? I may say also in that connection what has been already pointed out many times in this House, that the views of certain hon. gentlemen to which I have referred with regard to the effect of sections 2 and 16 would hardly seem to be borne out, having regard to the fact I am about to mention, namely, that the ordinances of the Northwest Territories themselves—those which are referred to in the amended clause 16 which we shall discuss presently—contain in so many words all that

is effective of the Act of 1875 for the purpose of establishing separate schools. The particular passage to which I refer contains the Act of 1875 in so many words. I refer to section 41. It contains that Act with the exception of the provisions for assessment which are contained in other portions of the ordinance. Therefore, so far as the ordinances are concerned, you have in them all the effective portion of the Act of 1875, which concerns the protection of the rights of the minority in respect of public schools. That makes it still more expedient that we should have—if not now at some date which will be convenient to my hon. friend—a statement of the views of the administration as to the combined effect of these two sections.

Mr. FITZPATRICK. It will be my duty, when the amendment is moved, to explain the differences which exist between the amended clause and clause 16 in the original Bill. In the meantime I might point out my views of the constitutional question because in my judgment this is to a very large extent a constitutional question and has to be considered from that standpoint. Section 2 would bring into effect section 93 of the British North America Act, if section 16 were not in this Bill at all. If section 16 were omitted, section 93 of the British North America Act would be applicable; but then we would meet this difficulty, a doubt arises as to whether section 93 can be considered as applicable to the Northwest Territories in view of the fact that in the first provision of that section the words used are 'the rights and privileges in force in the province at the union.' Technically while these Territories may have practically all the legislative powers of a province, they are not a province; now within the meaning of section 93 of the British North America Act, and it was to avoid the difficulty that I substituted in section 16 in the first paragraph the word 'territory' for 'province.' Then the other difficulty that would have arisen is what is meant by the words 'at the date of the union.' In my opinion there can be no doubt that the date of the union is the date at which the Territories came into the Dominion as a province and not the date at which these Indian territories were brought into the Dominion as territories. It was to make that point clear also that I amended the first clause in the way I did.

Mr. R. L. BORDEN. Does my hon. friend regard section 16 as exercising upon section 2 the restrictive effect which hon. gentlemen on the other side have contended it does?

Mr. FITZPATRICK. My argument now is that section 16, read in the light of these words in section 2, 'except in so far as varied by this Act'—is to be substituted for section 93; and section 93 is not applic-