

at all in that way; that we can not only create a province, to be subject afterwards to the application of the British North America Act, but that we can by the Act of creation legislate for the province so as to vary the jurisdiction provided by the British North America Act. I think that there can be no doubt at all that that is the opinion of the Minister of Justice and the theory of the government.

Mr. FITZPATRICK. Do I understand my hon. friend's opinion to be that if we create a province it then falls automatically under the provisions of the British North America Act? If that be conceded, what would become of the existing school legislation of the Northwest Territories?

Mr. MONK. Under section 93 of the British North America Act the existing legislation would be maintained.

Mr. FITZPATRICK. But that legislation was made when there was no province but only a territory.

Mr. MONK. I stated that if we created out of a territory a province, the legislation of the territory on educational matters, previous to its erection into a province, would be maintained.

Mr. FITZPATRICK. Under what section?

Mr. MONK. Under the section of the British North America Act, which I do not wish to quote as it would take too long. But the proposition of the government is very different. It is that we are absolutely the master. I pressed my hon. friend the Minister of Justice one evening, when we were providing for a new distribution of seats after five years, on that point. I called his attention to the fact that by that provision we were violating the law as contained in the British North America Act, which provided that a distribution could only take place after the decennial census, and my hon. friend explained that we were not bound by that very clear provision of the Confederation Act. In support of that view he pointed to the closing clause of the British North America Act amendment of 1886. But we need not go so far as that. The British North America Act provides expressly that Crown lands vest in the province, and we are legislating absolutely in an opposite sense. We are keeping the Crown lands by virtue of a formal clause in this Bill. On another occasion I asked my hon. friend the Minister of Inland Revenue if he went so far as to say that we could reserve to ourselves exclusive jurisdiction on the subject of agriculture, which is one of those assigned to the provinces under the British North America Act. He said that we could. Then my hon. friend, the leader of the opposition, asked if we could keep under our jurisdiction the important subject of property and civil rights, and he said we could undoubtedly. I asked him if clause 93 of the British North Am-

erica Act applied and if we could amend it. He said it did apply and we could amend it. I have, therefore, good ground for saying that, according to the interpretation of the government we are not bound by the British North America Act, and can legislate with absolute power on all subjects mentioned in that Act, and there is no such theory as the application automatically of the British North America Act to any new provinces we may create. I explained my view at that time, and my hon. friend from Hamilton (Mr. Barker) went a great deal more fully into that point. Section 2 of the British North America Act of 1871, which is rather a long section to quote, according to our interpretation, merely gave us the power to provide the necessary machinery for the creation of a province, but once the province was created, it became subject to the British North America Act.

As to what Mr. Haultain said, I have not here the papers which contain all the documents connected with the negotiations between the government of the Territories and the government here regarding the creation of these two provinces, but hon. gentlemen will find, by reference to those documents, that Mr. Haultain's view was shown by his draft Bill and expressed throughout all his comments upon it, and it is that the British North America Act should apply, and consequently section 93 should apply. This is precisely what my hon. friend from Labelle (Mr. Bourassa) asked for in his amendment; and I stated under my view of our powers, that I thought that was the best perfection we could have. But I stated that it would be necessary probably to modify the words of Mr. Haultain's draft Bill. I had not that Bill before me at the moment. But the principle was admitted that section 93 was to be applied, and I thought that was all the protection which the minority could claim in any newly-organized province. The Minister of Justice and other hon. gentlemen on that side representing the government, contended that our powers are far more extensive. Then we had clause 16 as at first brought down. Well, that clause provided for the application of section 93, and in applying that section we always find the difficulty of determining whether the schools at present in the Northwest are or are not denominational schools. But it immediately continues in these words:

Subject to the provisions of said section 93, and in continuance of the principle heretofore sanctioned under the Northwest Territories Act—

In continuance, that is to say, of the statute of 1875.

—it is enacted that the legislature of the said province shall pass all necessary laws in respect of education, and that it shall therein always be provided (a) That a majority of the ratepayers of any district or portion of the said province . . . may establish such schools therein as they think fit . . . (b)