

teed them for all time. My hon. friend says, however, that these Territories are not provinces and consequently this section does not in terms apply to the new provinces. Conceivably that is true. There is a doubt in my mind as to whether or not these Territories, not being provinces, come within the wording of section 93; and in the technical meaning of the term, the minority might not have those rights and privileges which they enjoy under the School Ordinance. That is the letter of the law, but what is the spirit?

Mr. SCOTT. Was that point ever raised in the Manitoba case? Manitoba was not a province either.

Mr. FITZPATRICK. It could not be raised in the Manitoba case because in that case there was a special section which provides that the minority shall have not only the rights and privileges which exist by law but also those which exist by practice.

Mr. R. L. BORDEN. Manitoba became a province at the moment it entered confederation.

Mr. FITZPATRICK. I am charging no narrowness or fanaticism to my hon. friend the leader of the opposition. I believe the view he has given to be his conception of the spirit of the British North America Act, and that he is seeking to apply that Act, but I put this question to him? Have we not at present in the Territories conditions which are practically analogous to those which exist in a province? At the time the Territories came in, did we not petition the home authorities to give us the power to legislate with respect to them? And did we not, at the same time, give the undertaking that we would give them institutions similar to those which existed in the provinces?

Mr. R. L. BORDEN. If we had power, under the Act of 1871, to absolutely disregard section 93 of the British North America Act, then of course there is no further question. We cannot make a new section 93. If, on the other hand, we are bound to observe section 93, it does not seem to me that we can increase our power by passing any Act restricting the powers of a territorial legislature, and then, the following year, when creating a province, say: there you have restrictions operating upon the territorial legislature and the provincial legislature must also be governed thereby.

Mr. FITZPATRICK. My answer is *cadit questio*. Proceeding on the assumption that we are dealing with these Territories, under the Act of 1871, as Manitoba was dealt with and British Columbia and Prince Edward Island and every province brought into the Dominion since confederation, we are applying to these new provinces the same principle we applied to those provinces. If these Territories were coming in as provinces, created previous to this time, there

would be no question as to the application of section 93, and all the rights and privileges guaranteed the minority under existing legislation would be continued; but because they do not come within the word 'province' my hon. friend says: your door is barred and section 93 of the British North America Act does not apply. My answer is that when these Territories were brought into confederation, they were brought in under a compact entered into between the people of Canada and the imperial authorities. We find in the petition to the imperial authorities the following language:

That the welfare of the sparse and scattered population of British subjects of European origin, who inhabit these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as the circumstances will admit, to those that exist in the several provinces of the Dominion.

That was the allegation of our petition. We asked for legislative control over these territories on conditions that we would give them institutions similar in principle to those existing in the provinces. That prayer was granted. In the Order in Council it was provided:

It is hereby ordered and declared by her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in her Majesty by the said Acts of parliament, that from and after the 15th day of July, 1870, the said Northwest Territories shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited address.

The terms and conditions were that we would give these Territories political institutions bearing analogy, as far as the circumstances would admit, to those existing in the provinces. That was in 1870 or 1871. What then did we proceed to do? In 1875 we gave these Territories a constitution in accordance with the solemn compact entered into with the imperial authorities. In that constitution what did we provide? We provided for separate schools, or rather we provided, under section 11 of the Act of 1875, for a system of education. That is the letter of our constitution. At the time that constitution was given these Territories, in the execution of our solemn undertaking towards the imperial authorities, the man who was responsible for section 11 of the Act of 1875 stood up in this House and gave expression to the hope that by that Act we had settled for all time this vexed question of education in so far as these Territories were concerned. I need not repeat his words. Mr. Blake then said to the people of Canada: We are taking out of provincial politics and out of municipal control this vexed question of education and are settling it for all time in so far as these Territories are concerned. Those great men who then sat in parliament, those men who had been