

Speaker, that I do not think my learned friend has any too well answered the point that we have equal rights in dealing with the conditions under the Act as we would have in making an Order in Council and stipulating how a particular province is to come in. I was going to say, Mr. Speaker, that if we wished to ascertain what powers the fathers of confederation thought they possessed, under the conditions of the confederation, the best time for us to search for information on that point would be in 1870, when the conditions of the compact were fresh in their minds.

We hear a great deal about this section 93 giving exclusive power to the province. Would it not be well to look at this Act in the light cast upon it by some of the decisions of the Privy Council, and those are decisions which we should not lightly cast aside even if they do run contrary to our own opinion. A great many contend that this section 93 gives the province unlimited powers to deal with matters of education. It seems to me that our hon. friends who read the Act in such a light simply stop at the end of the first two lines:

In and for each province the legislature may exclusively make laws in relation to education.

But there are four other sections which these hon. gentlemen do not read at all. There is also a decision of the Privy Council right in point upon that section; and it seems to me that in order not to be misled any longer as to its full force, effect and meaning, it would be well to quote that decision. This is what the Privy Council said in dealing exactly with that proviso:

Before leaving this part of the case it may be well to notice the argument urged by the respondent that the construction which their lordships have put upon the second and third subsections of the section of the Manitoba Act is inconsistent with the powers conferred upon the legislatures of the provinces to exclusively make laws in respect to education. The argument is fallacious. The power conferred is not absolute but limited. It is exercisable only subject and according to the following provision. The subsections which follow, whatever be their true construction defining the conditions under which alone provincial legislatures may legislate with reference to education and indicate the limitations imposed on and the exceptions from their power to legislate exclusively, their right to legislate is not enjoyed properly speaking exclusively, for in the case specified in subsection 3 the parliament of Canada is authorized to legislate on the same subject. There is, therefore, no such inconsistency as is suggested.

That is the decision of the Privy Council. It shows that in the British North America Act, from cover to cover, there is no such thing as giving to any province the exclusive powers to deal with education. I take the responsibility of saying that there is not to-day such a thing in this country as any province dealing exclusively with education. I heard the hon. member for East

Grey (Mr. Sproule) asking the hon. member for Assiniboia (Mr. Scott) the other day whether or not there was a province in the Dominion which had a free hand to deal with education. I say there is not. There are provinces in the Dominion to-day which are free to pass one Act. Nova Scotia to-day is perfectly free to pass an Act that will contain some terms in respect to the separate schools; but once the Nova Scotia legislature passes such an Act it cannot change it. Or if it should, it would be subject to an appeal to the government of the Dominion for remedial legislation. Therefore it can well be said that there is no province in the Dominion to-day which has this wonderful, absolute right to deal with the question of education as it sees fit.

There is another point to which I would direct attention, as showing the intention of this part of the Confederation Act. It would be well for us to try and understand, without any haste or passion or feeling in this matter, how these questions were understood from the beginning. Some day in February, 1867, these clauses 92 and 93 were under consideration in the House of Lords. Now, whatever feeling there may be in this House and country over the question, I think we will all admit that the House of Lords would approach it with a great deal of calmness and give it due consideration, and that not one of the venerable gentlemen who occupy seats in that House would be in the slightest degree nervous about explaining what these clauses really meant. We find Lord Carnarvon dealing with this question calmly and judicially. As to clause 93, he said:

Lastly, in the 93rd clause which contains the exceptional provisions to which I refer, your lordship will observe some rather complicated arrangements in reference to education. I need hardly say that that great question gives rise to nearly as much earnestness and division of opinion on that as on this side of the Atlantic. This clause has been framed after long and anxious controversy in which all parties have been represented and on conditions to which all had given their consent. . . . The object of the clause is to secure to the religious minority in one province the same rights, privileges and protection which the religious minority in another province may enjoy. The Roman Catholic minority of Upper Canada, the Protestant minority of Lower Canada and the Roman Catholic minority of the maritime provinces will thus stand on a footing of entire equality.

That is the explanation which Lord Carnarvon gave in 1867, and I submit to you that that was the way in which the late Sir John Macdonald and the framers of the Manitoba Act understood it in 1870.

I would ask you to note the strong resemblance between clause 93 in the British North America Act and the Manitoba Act.

In and for the province the said legislature may exclusively make laws in relation to education, subject to the following provisions.