

tain 2,000,000 of people. That is my right hon. friend's argument when reduced to its essential terms. He quotes from section 93 of the British North America Act; let us look at that section:

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.

Was it not decided in the Barrett case in 1892, that the inhabitants of the Northwest Territories comprised within the limits of the province of Manitoba had no right to separate schools either by law or practice at the time Manitoba became part of confederation. Was not that decided, and is not the date on which the Territories became part of confederation exactly the same date on which Manitoba became part of confederation and became a province of Canada?

Subsection 2 of section 93 is not very material because it relates solely to Ontario and Quebec. Subsection 3 of 93 reads:

Where, in any province, a system of separate or dissenting schools exists by-law at the union or is thereafter established by the legislature of the province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

And section 4 provides:

In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

It will be specially observed that in subsection 3 the word, 'prejudicially' is not found. It says:

—an appeal shall lie to the Governor General in Council from any Act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

In the letter to which the Prime Minister has called attention, Mr. Haultain has quoted certain words of Mr. Blake, which are very cogent in considering this question. Mr. Blake in 1869 said:

It is perfectly clear on great and obvious principles that the basis of union settled by
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the British North America Act is not capable of alteration by parliament.

To the same effect is the opinion of the well known and very able writer Mr. Clement in the second edition of his work on 'The Canadian Constitution,' page 352, where he says:

Can a new province be established with a smaller sphere of authority than that occupied by the provinces named in the British North America Act, 1867? By the British North America Act, 1886, the three Acts are to be read together and may be cited as the British North America Acts 1867 to 1886. And by section 6 of the British North America Act 1871, a Dominion Act establishing a province becomes, in effect, an Imperial Act—at all events an Act which cannot be altered by anything short of imperial legislation. It is submitted, therefore, that any new province created under this section must be given full provincial autonomy and powers as defined in the original British North America Act, 1867.

Analyze the British North America Act so far as analysis is necessary for the purpose of considering this question and what do you find? In the first place you find the establishment of a federal parliament and a federal executive; in the next place you find the establishment of provincial legislatures and provincial executives; in the next place you find the distribution of executive power between the federal executive, and the provincial executive, and lastly you find the distribution of legislative power between the Dominion parliament and the provincial legislatures. This analysis is not exhaustive, but it covers all that is necessary for the present purpose. I submit, Sir, that the basis established by this distribution of legislative and executive power cannot be altered either under section 146 of the British North America Act or under section 2 of the British North America Act, 1871. In establishing a new province can this parliament wholly or partially alter the basis of confederation; can it change the distribution of legislative power? That, I submit can only be done by the imperial parliament. Surely it cannot be contended that in giving to a new province the constitutional rights conferred by the British North America Act we can reverse the scheme framed by the fathers of confederation and embodied in an imperial statute. Yet, that is what the right hon. gentleman seeks to do to-day by the provisions contained both in the original and amended section 16 of the Bill. In creating a new province under the British North America Act can this parliament so amend section 92 as to transfer to federal jurisdiction nine-tenths of the powers which by the express terms of that section are to be exercised exclusively by the provinces? Can this parliament transfer to such a province any of the powers which under the provisions of section 91 come within the exclusive juris-