

into confederation. These provinces, Sir, are to be created under a section of that Act of 1871, passed mainly in order to validate our own Manitoba legislation, and to the second section of which Act I wish to call your attention particularly. The second section of the Imperial Statutes of 1871 amending the Confederation Act says:

The parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may, at time of establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order and good government of such province, and for its representation in the said parliament.

Now, that section is of some length. It is the only section under which we are empowered to act. It is in virtue of the powers conferred upon us by the imperial parliament by this section that we are creating this province. It is known, Mr. Speaker, to many members of this House that a popular impression exists to the effect that this parliament has the power of creating provinces and that at the time of the creation of provinces it can give those provinces such a constitution as it thinks fit. That is the popular impression and that impression is created no doubt in the minds of many by the reading of this section. But is that proposition well founded? I think not; I do not think there is anything in this section which authorizes us, in creating a province, to give any constitutional aspect to that province. We are not called upon to give it a constitution, we simply perform, if I may use that expression, a creative Act; we create the province, the constitutional Act of 1867 provides the rest. That is how I read this section. It is true that in this section the words 'establish' and then 'constitute,' and then 'administer' are used. But what do these words mean? There is one thing it seems to me that they do not mean. It is this, that in creating a province we can in any way vary the terms relating to the powers of that province that have been laid down in a uniform and definite manner by our Constitutional Act of 1867, and that is the reason which no doubt has led many and has induced probably the leader of the opposition (Mr. R. L. Borden) to arrive at the conclusion that we have no power in creating a province to make any disposition in regard to that province as far as educational matters are concerned, because if when creating a province we can give to that province a particular educational system we can equally confer upon this province other powers, for instance, those which are mentioned in section 92 of the Constitutional Act. We could deprive the province of a part of these powers. We can confer upon the province powers which it has not under

the Confederation Act, which are enumerated under section 91 as belonging to the Dominion parliament alone, and that is, no doubt, the reason which has led many to conclude that we have no power under section 2 which I have just read to the House but that of creating a province, automatically come into force and are applied the dispositions of the Confederation Act limiting strictly the powers of the province and on the other side defining the extent of the powers of the Dominion parliament.

What is the sense which one must attribute to the words 'establish, constitute and administer.' To my mind it is clear that these words were used by the draughtsman for the purpose of giving to the Dominion parliament, when carving provinces out of the Northwest Territories, the powers necessary to perform fully all the functions of the creative act. We decree for instance that a province will be established. The word 'constitute' means that we define the limits of the province, that we declare what it will comprise, when it will come into existence and other details which are all comprised in the word 'constitute,' and we further have the power to administer that province until these automatic provisions of the Confederation Act come into operation, by which a power superior to our own has provided what will be the political constitution of the province. Otherwise if you once pretend that the words of the statute confer upon this parliament the power to modify in any way, what will be the political constitution and the attribution of the new provinces, where will you end? Suppose to-morrow we should carve a province out of the Yukon, could we, in creating that province, declare that the minerals shall remain the property of the Dominion power? Could we declare that the lands would remain in our possession? I hold we could not, and that the only power we have is to create the province? That however is my own individual opinion. It is the opinion of a lawyer, and we all know that lawyers differ very considerably, particularly on constitutional points. For instance my hon. friend the leader of the opposition, in defining the constitutional position he takes with regard to this Bill, gave it as his opinion, if I mistake not, that section 93 of the Confederation Act does not apply to the new provinces coming into the Dominion without any previous provincial organization, and consequently did not apply to provinces created by ourselves under the Imperial Act of 1871 and carved out of the Northwest Territories. I cannot, after a careful examination of section 93, agree in that conclusion, although I believe it is shared by gentlemen eminent in the legal profession. I believe that at the moment a province is created, even if it did not possess beforehand full legis-