

diction of the federal parliament? If we can transfer any why not all and thus completely transpose and reverse the entire scheme and compact of confederation. I submit that we have no duty, nay, we have no right or power to shatter the foundations then laid, or to rewrite the compact into which we then entered.

But it may be said that the second section of the British North America Act, 1871, has the effect of enabling this parliament to alter the terms of the constitution created in 1867. I do not so read it. I have already quoted section 146 of the British North America Act, and attention must be especially called to the words in that section:

Subject to the provision of this Act.

Take in connection with that the words of the third section of the British North America Act, 1886. In the passage which I quoted from Mr. Clement he drew attention to these words, but I desire to emphasize them, and I shall read the third section of the British North America Act, 1886:

This Act may be cited as the British North America Act 1886. This Act and the British North America Act 1867 and the British North America Act 1871, shall be construed together and may be cited together as the British North America Acts 1867 to 1886.

Well, with that light let us go to the British North America Act of 1871 and observe its terms. The British North America Act of 1871 in its preamble recites as follows:

Whereas doubts have been entertained respecting the powers of the parliament of Canada to establish provinces in territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such provinces in the said parliament, and it is expedient to remove such doubts and vest such powers in the said parliament—

And after that preamble we have the words of section 2 of the Act, which are as follows:

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 the time of such 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.

In the first place, you must read into that the words of the Act of 1886, to which I have already referred, which declare that these three Acts must be construed together. In the next place, you must read into the Act of 1871 the words contained in section 146, 'subject to the provisions of this Act.' When you examine section 2 of the British North America Act of 1871 in the light of

these provisions, I venture to submit that the imperial parliament did not intend by the Act of 1871 to authorize the parliament of Canada to alter the distribution of legislative power which is provided in the British North America Act of 1867.

Let us examine then the basis of union with regard to education, because that still remains to be considered, and it is upon that point my hon. friend has rested a considerable portion of his argument. Would it not be well before doing so to observe how this question has been regarded by great constitutional lawyers in days gone by? There was no man in parliament for whose opinion in constitutional matters my right hon. friend had greater regard than the late Hon. David Mills. Speaking in this parliament in 1894, Mr. Mills said:

When you look at the subject of education prior to the union you will find not that any system was expressly imposed upon the province, not that the principle of separate schools was virtually established, but the rule was established that where separate schools were established and had been established before the union, they should remain, and where they were not established, the province should retain control over the subject to introduce them or prevent their introduction as seemed proper to the people. We have a practical illustration of this fact in the position of things in the maritime provinces and the provinces of Ontario and Quebec. So far as the Territories were concerned—I do not at all admit that the introduction of separate schools there stands upon the same footing as the introduction of separate schools in the province of Ontario, or of dissentient schools in the province of Quebec. In these provinces they are protected under the constitution; they cannot be interfered with by the local legislature. But in the Northwest Territories, as the hon. minister has said, it has been a matter not of right, not of guarantee to any particular class of the population, but a matter of policy. They were introduced with the view of preventing conflict in this House upon the subject of separate schools and for the reason that they were introduced there they should be maintained as long as these Territories are under the control of this parliament. When this parliament has discharged its duties and the people of the Territories have received the population to entitle them to enter the union they must assume the responsibility for deciding for themselves under the British North America Act how far they should maintain the principle of separate schools or maintain the non-denominational system. Any attempt on our part, whatever our inclinations or feelings may be, to anticipate what ought to be done in that particular, by the province after its autonomy is established, instead of being a source of security to its institutions would be a source of great danger.

Mr. McCarthy, who was inclined to differ at one time a little from Mr. Mills in that regard, said in the same debate, speaking a little later on:

It may be that the view of the hon. gentleman from Bothwell is right in that respect and that clause two of the Act of 1871 does not give to this parliament the power, in creating a