

the minority against further encroachments. The principle has been confirmed; it remains for us, it seems to me, to complete the confirmation of that principle by amending that subsection. I will be asked: Did the amendment of my hon. friend from Labelle (Mr. Bourassa) provide that protection? Does the amendment, which I have not examined carefully until this afternoon, presented by my hon. friend from Beauharnois (Mr. Bergeron) provide that protection. Let us take the amendment proposed by my hon. friend from Labelle (Mr. Bourassa). My hon. friend has by his amendment sought to apply purely and simply clause 93 of the British North America Act. It is true that there is the educational provision which exists in all these amendments as to the distribution of public moneys for educational purposes, but he rests his expectation that this important, this grave defect in the present section will be remedied by applying section 93 purely and simply. This is undoubtedly a very complicated matter. I doubt if section 93, applied purely and simply, does assure that protection to the 150 schools that exist at present.

Mr. BOURASSA. I meant the application of section 93 by making it perfectly clear that it would apply as if the Territories to be admitted as a province were already provinces, therefore assimilating the law passed in this parliament in 1875, to a law that would be passed by the province.

Mr. MONK. Yes, I shall come to that in a moment. I presume it is in this first subsection of section 93 of the British North America Act that we must look for the solution of the case to which a moment ago I called the attention of the committee.

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.

Is a school organized by a Catholic majority under the present ordinances in the Territories, consequently, a public school or a denominational school? I say there is a doubt upon that point. I confess—but what is the value of an opinion?—that I would be inclined to think that it is a denominational school, but not a denominational school as we have hitherto understood denominational schools to be, as we understand denominational schools in the province of Quebec. I think it might fairly be argued under all the circumstances that a school organized by Catholics because they are in a majority in a given locality is sufficiently a denominational school to bring it within the purview of this subsection. There is a doubt, but I think it is brought within the section, and if it is to be understood that the particular school, the public school organized by a Catholic majority is a denominational school it seems to me undeniable that under this subsection of section 93

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they cannot be interfered with, therefore that if this school is a denominational school it would be impossible for the legislature to diminish the rights which at present the Catholics who have so organized would have in that school. Under the subsection of the Minister of Justice it is needless for me to argue, it is certain that it is only in the case of separate schools that the protection is provided.

Mr. CAMPBELL. Will the hon. gentleman explain the difference between a denominational school and a public school?

Mr. MONK. It is very difficult to do that because as we understand denominational schools in the past, they are schools frequented by children belonging to a certain denomination, the regulation, teachers and control in every respect of such are exercised by a body belonging to that denomination. That is what we understand by denominational schools in the province of Quebec, and that is what at first blush one would understand by such schools. But inasmuch as in the Northwest Territories, under the special legislation now existing there, they recognize the difference between Catholics and Protestants, I think it might be fairly argued that where Catholics are in the majority in a school district to be organized, the school there organized would be sufficiently denominational to claim the protection given by the very general terms of subsection 1 of section 93 of the British North America Act. My hon. friend the Minister of Justice quoted some words I uttered when I first spoke on this question, when I spoke of the protection afforded the Catholic minority in the Northwest by the draft Bill submitted to the right hon. the First Minister by Mr. Haultain, and the protection which the minority found in the first clause 16 and that given them by clause 16, No. 2. Let me point out what I think is of some importance to this committee and what may explain the great divergencies of opinion existing among lawyers as to what our powers are in creating a province. I argued, when I first spoke on this subject—and I think that opinion was also expressed by many legal gentlemen—that our only power under the British North America Act and its amendments was to create a province. We could create a province and under section 2 of the Imperial Act of 1871 we could provide sufficient machinery to bring the province into existence and subject it to the provisions of the British North America Act. But we could not go beyond that. We could not invade in any way the division of the field of jurisdiction which has been made by the British North America Act. I proceeded upon that assumption at that time, and it did not seem to me to admit of doubt. A very different proposition, however, has been enunciated here by my hon. friend the Minister of Justice, and I think it is the proposition of the government, namely, that we are not restricted