

tion, then I am right and he is wrong. But if his legislation shall create a feeling of safety and promote a spirit of toleration and moderation, then the right hon. gentleman and his supporters are right and I am entirely wrong.

Now, as to whether or not we have a right to legislate—an absolute, plenary right—or not, let me ask one question. And now I regret especially that the hon. leader of the opposition (Mr. R. L. Borden) is not here. But I would ask my hon. friend from South Simcoe (Mr. Lennox), who is a lawyer to give me an answer to this question when he replies. If we have not plenary power under the British North America Act of 1871, why were these words put in clause six of that Act?

It shall not be competent for the parliament of Canada to alter the provisions of any Act hereinafter establishing new provinces in the Dominion.

That tells you that if you create a province you shall not alter that legislation afterwards, you shall not repeal it, you shall not do anything with it. If the British North America Act applies, ipso facto, automatically, or however you choose to phrase it, then the only thing you can do is simply to let it apply, for everybody knows that you cannot repeal or alter the British North America Act. Then, what in the name of common sense could the Imperial House mean by legislating that you should not amend the law after you have once created a province, if the amending of that law is clearly and admittedly beyond our power? Does that appeal to the legal minds of hon. gentlemen? It seems to me absolutely conclusive. If this is not the conclusion, then it seems to me you can give no affect to the words. But if you were going simply to apply the British North America Act, that would be absolutely worthless and of no avail.

Now, Sir, upon this legal proposition I do ask some consideration at the hands of my hon. friends. If I am right, as I think I am, I cannot endorse the view of the leader of the government, nor can I endorse the view of the leader of the opposition, because I think that in the event of there being litigation over this Bill, it will be found that if you leave clause 2 in there as it stands—and they are certainly entitled to something like that—if you do not vary it, you will have a system of separate schools imposed upon these provinces, a more effective system, in the interest of the supporters of separate schools, than the present clause 16. In that respect I agree with the hon. member for Beauharnois (Mr. Bergeron), who made the suggestion last night that such would be the result. Now, if that is so, I ask again for protection in that regard for those who think as I do upon this question. It is necessary to vary this Act if you want to get rid of the effect of clause

93 of the British North America Act, and to do that you will have to insert in this Bill some such clause as that the provinces shall have unconditionally the exclusive right to legislate on educational matters. If you do not do that, then I say that the constitution will take its course, and the courts will decide that clause 93 shall apply, and the difference will be what is in clause 16 now and what clause 93 would give them.

Mr. BARKER. Has the hon. gentleman read the amendment of the leader of the opposition?

Mr. L. G. McCARTHY. Yes.

Mr. BARKER. It is simply a declaration that we should leave them what you say you want to give them.

Mr. L. G. McCARTHY. Now, Sir, I am very much relieved, because the closest lieutenant of the leader of the opposition has spoken, he says that the policy of the leader of the opposition is right along the line I am now speaking, upon, that is, we must pass legislation.

Mr. BARKER. No.

Mr. L. G. McCARTHY. Then the hon. gentleman is quibbling, the leader of the opposition is quibbling, they say: Let the constitution take its course. As I read the amendment it is simply an attempt to get a shelter behind which to shoot. Remember, the leader of the opposition says, I do not argue against separate schools; I do not argue for separate schools. Let the constitution take its course. I have discussed this with men who are high constitutional authorities who have told me that if this matter is to be fought out in the courts the conclusion will in their opinion be as I have submitted. Now, let us consider what the leader of the opposition said. He does not want this Bill to be read the second time, but he wants this:

Upon the establishment of a province in the Northwest Territories of Canada as proposed by Bill No. 69, the legislature of such province, subject to and in accordance with the provisions of the British North America Acts 1867 to 1886 is entitled to—

Now, that is one-half. I say that under that half, if you do nothing more than simply to declare this in that way, you are riveting separate schools upon these provinces.

Mr. BARKER. No.

Mr. L. G. McCARTHY. I am going to be fair. I think the hon. gentleman had a little to do with the preparation of this amendment. It seems to be his child, and he is inconsistent, as other hon. gentlemen are, on this question. I say if you go that far you rivet on these provinces, by the constitution, a system of separate schools. Then I read it again: