

The letter of the constitution was departed from as to the subject of language in the province of Quebec, and was made suitable to the local conditions, needs and interests of that province. Yet if the letter of the law is to be regarded, you have no justification for this departure from the constitution which is to be found in the British North America Act. Take the subject of education. At the time of confederation it was found that the minority in the province of Quebec had separate schools, the British North America Act preserved separate schools to them; it was found that there were separate schools in Ontario, and the British North America Act retained separate schools in Ontario; there were no separate schools in Nova Scotia, and the status quo was recognized there; there were no separate schools in New Brunswick, the status quo was recognized there. But although the British North America Act in its general scheme declared that the subject of education should be under the exclusive jurisdiction of the provinces, it made two exceptions in the case of Ontario and Quebec, as my hon. friend admits to-day, and that exception extends to other provinces as well. Yet, if you were to adopt the strict letter of the law, you have no right in a constitution resting on the bed rock of the British North America Act to make these exceptions in the constitution of any province. Take the subject of finance. Although this is not strictly a constitutional subject, you will find that whilst the general scheme is to treat all the provinces alike financially, in the case of Prince Edward Island there was a material departure made from the general scheme of finance. In fact, you do not find the same corresponding financial arrangements made in any two provinces. In fact, there are just two ways of looking at the British North America Act; you may look at it from the standpoint of a lawyer, or you may look at it from the standpoint of a statesman. If you look at it from the standpoint of a lawyer—and I submit that is the standpoint of the leader of the opposition—you take the letter of the constitution without regard to its bearings and its application to the time being, and apply it literally, whether the application fits the time and occasion or not. But taking the spirit of the Act on each occasion of creating a new province, you adopt the constitution, as far as possible, to the new province, having due regard to the conditions then prevailing.

Take the case of Manitoba to which my hon. friend has referred. The province of Manitoba was established in 1870, prior to that it had been under the jurisdiction of the Hudson Bay Company. There were no laws there except the old common law of England. There were no schools established by law, but it was thought that there were some schools established by practice,

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and, therefore, when it came to creating the province of Manitoba the educational question arose. What was done? They did not even adhere on that occasion to the language and to the provisions of section 93 of the British North America Act dealing with the subject of legislation. The language of the British North America Act dealing with education reads as follows:

In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

Nothing in any such law should 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.

'Have by law.' The British North America Act only protected the rights of minorities which they have by law. When it came to creating a province out of Rupert's Land, the words 'by law' would have afforded no protection to the minority, and accordingly those who were engaged in framing this legislation sought in some other way to secure to the minority in Manitoba their right to whatever schools they might then have; and so the words 'by practice' were introduced, and the province of Manitoba was secured in its separate schools in these words:

Nothing in any such law should prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or by practice.

Now, the words 'by practice' are a radical departure from the letter of the British North America Act. Why was that departure? How do we account for that departure? Simply because the strict letter of the British North America Act would not have met the case of Manitoba, and it was necessary to apply it in spirit, and in that way the legislators of those days felt justified, within the constitution, in so modifying section 93. Now, what happened after that? Manitoba was carved out of Rupert's Land, the Territories we are about to raise into provinces are part of the remainder of Rupert's Land. The Manitoba Act was confirmed by imperial legislation, and that same imperial legislation which confirmed the Act creating the province of Manitoba proceeded to confer upon the Dominion parliament power to grant a constitution to new provinces. Section 2 of the amendment to the British North America Act, 1871, is 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