

lative autonomy, even if it did not enter confederation as an independent province, it falls ipso facto under the provision of section 93, and whatever rights in school matters the minority in that province may possess at the moment of its creation are preserved by virtue of that section. That is the way I read section 93 and I think the terms are extremely general. Subsection 1 of section 93—which is a section of very great importance in the determination of this question says:

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 time of the union.

Doubt might exist if instead of those very general words, the words used were 'which any class of persons possess by virtue of a provincial law or a law passed by the legislature of the province' or other such words clearly indicating that the legislators had in view exclusively the case of the entry into confederation of a province having full possession, previous to such entry, of its entire autonomy. But the words are extremely general. They speak of the rights with respect to denominational schools which any persons have by law within the limits of the province at the union. I therefore arrive at the conclusion that the moment a province is erected in the Northwest and that within the territorial limits of that province there exists a law passed by competent authority securing certain rights to any class of persons with regard to denominational schools, those rights are preserved by the mere fact of that territory coming as a province within the limits of the Dominion. That is the opinion I have, and much of the conclusions at which I have arrived in respect of this question is the result of that opinion. My hon. friend from East Grey (Mr. Sproule) asks me if I consider the words 'establish, constitute, coming in,' to be all synonymous. My interpretation of section 2 of the Imperial Act of 1871 is that that Act clearly gives us the creative power. It enables us to decree the establishment of a province, to constitute it by defining its limits and entering into other details which are absolutely necessary for the purpose of such creation, but the moment that act has been performed our power is exhausted and the new province comes under the control of the different clauses of the Act of 1867, and these clauses apply in their entirety to it. Will the House permit me to give an example in another field. Take the question of the lands. It seems to me that in the new Bill now submitted for second reading, we have gone entirely beyond our power as regards the lands. Why? Because under section 109 of the Confederation Act all lands, minerals, and royalties of every kind in every province are absolutely the property of the province and not of the Dom-

Mr. MONK.

inion. And in legislating as we have done with regard to these lands, in withholding from these new provinces the whole of their lands, for a consideration it is true, but keeping the lands entirely in our possession we are legislating ultra vires, we are decreeing what we have no right to do; and not only as an act of policy, as a political act, but as a constitutional act, those Bills are absolutely in violation of the constitution.

Mr. BELCOURT. Are we to assume then that the Manitoba Act, which was in terms practically the same as this Act, which declared the ungranted lands of that province to remain subject to the control of the Dominion government, was ultra vires?

Mr. MONK. As I stated a moment ago, the Manitoba Act itself was ultra vires—was so considered by the legal advisers of the Crown in England—and in order to make it valid it was necessary to pass the Imperial Act of 1871.

Mr. LEMIEUX. To remove doubts.

Mr. MONK. That is the preamble that my hon. friend (Mr. Lemieux) is citing. But, if he will go to the sources, he will find that there was a very strong opinion in England and also here—I believe it was shared by Mr. Blake—that we had no right. It validated the section to which my hon. friend from Ottawa (Mr. Belcourt) has referred.

Mr. BELCOURT. My hon. friend (Mr. Monk) will not contend that any one questioned at that time or since that the Act was ultra vires in respect of the lands. The necessity of the Imperial Act, as I understand, was in reference to other matters, to remove doubts in reference to other matters than the lands.

Mr. MONK. It did not arise in that case. There was, as I stated, an agreement between Manitoba that was to be and the Dominion, and the lands clause to which my hon. friend has just referred was the outcome of that agreement. At any rate, it was never questioned before the courts. As my hon. friend, no doubt, is aware, this question has come before the courts in many instances and the interpretation given by the Judicial Committee of the Privy Council upon section 109, to which I have referred, has always been favourable to the provinces, and has gone very far in the direction of maintaining that all public lands, whatever may be the source of the ownership of the public lands, once the province is created, fall under provincial control. A case arose in the province of Quebec, the case of Fraser who died without leaving a will, and without heirs. My hon. friend (Mr. Belcourt) is familiar with that case.