

further light to be thrown on this constitutional question—that we should have had an opportunity, as early as possible, of hearing a pronouncement from the Minister of Justice. I say, Sir, that there is no power contained in the British North America Act to carve out new provinces, but, there was a power given in that Act to admit these new Territories which were not then part of the union. They were therefore, not covered by section 93 of the British North America Act at that time, because they were not in the Dominion of Canada at all, they being under the Hudson Bay Company under the imperial parliament. It takes some further enactment to bring them under that section. Having got those Territories into the Dominion under the Act of 1870, the province of Manitoba, in advance of legislation by the imperial parliament, was carved out of these Territories by the parliament of Canada, but, it does not at all follow that if this parliament assumed jurisdiction to carve out the provinces, therefore the legislation was *intra vires*. The parliament of Canada evidently thought they had not the right to do so, and shortly afterwards there was legislation in this regard, passed by the imperial parliament, and the same imperial legislation which validated the Manitoba Act, for the first time gave the parliament of Canada the power to carve provinces out of these new Territories. I call the attention of the House to section 2 of the Act of 1871, which gives this power, because if this power is not in the British North America Act, there is no inherent power in the parliament of Canada to create these provinces; and for this reason, that any power the parliament of Canada has in respect to this legislation must of necessity come from the imperial parliament, and until the Act of 1871 was passed, the imperial parliament alone had the power to carve out these new provinces. So, Sir, if my argument is correct, the parliament of Canada as representing the imperial parliament, has just that power to carve out provinces, which the imperial parliament gave her. Let us look at what the power was that the imperial parliament gave to the parliament of Canada. Section 2 says :

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.

I call special attention to the clause:

The parliament of Canada may from time to time establish new provinces, and may at the time of such establishment make provision for the constitution of each province.

It does not say any constitution which the parliament of Canada may think proper to establish; but it says that it may make provision for the constitution; and in 1886 was passed the Act which provided that this Act of 1871 and the Act of 1867 should be read together. Now, Sir, what happened? Simply this, that if the Act of 1871 is to be construed as part of the Act of 1867, then assuredly the parliament of Canada, in exercising the power to give a constitution, has only the right to give such a constitution as the earlier sections of the empowering Act permitted it to give. In other words, if the imperial parliament in the later section of the Act says, you may carve out a province and give it a constitution, in the earlier sections it says the constitution must be thus and so. Where, then, does the parliament of Canada get the power to vary that constitution? The imperial parliament, in section 92 of the British North America Act, provides what shall be the exclusive powers of provincial legislatures, and in section 93, dealing with education, it says :

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

Then the subsections follow. What I desire to submit to the consideration of this House is that the power having been given by the imperial parliament to this parliament to make the constitution, the section which gives that power being part of the Act which provides the special constitution and powers of the province, the only power which this parliament has in this matter is to give these new provinces the constitution which the British North America Act has provided, and no other. Mr. Clement, in his work on the Canadian Constitution, confirms this opinion. The late Hon. David Mills expressed similar views. If this, then, is a correct interpretation of that Act, then I consider it a most unfortunate thing that we have had this unhappy discussion in this House and throughout the newspapers of the Dominion; and, Sir, if I may be permitted to offer a criticism of the right hon. the Prime Minister, I must confess that I felt that it was most unfortunate, if he stood on the rock of the constitution, that he should have thought proper to have introduced this measure with a speech containing a eulogy of separate schools as against national schools, which he above any other man knew must stir up the strongest feelings and prejudices of every Protestant in this country. If there was one method of proceeding with the consideration of this matter which could have caused anything but calmness and moderation, the speech of the right hon. the Prime Minister was that method.

Now, assuming for the moment that parliament has the power to pass legislation