

tely associated with this clause by reason of the words therein contained, 'except in so far as varied by this Act.' According to the opinion of Mr. Clement, which was read by the Minister of Justice in the speech which he delivered upon the second reading of the Bill, it would not appear that any provision of this kind is at all necessary. Mr. Clement's opinion was this:

It follows that section 93 of the British North America Act—the clause defining the legislative jurisdiction of the provincial assembly over education—must, *proprio vigore* and without possibility of amendments by federal legislation, be operative in any new province immediately upon its creation as a province.

Not by virtue of any provision inserted in the Act constituting a new province, but *proprio vigore*. It would seem, therefore, a proper question whether any clause of this character should be introduced. So far as I am able to interpret Mr. Clement's opinion, it would seem unnecessary. It apparently does not strike the Minister of Justice in that way. I cannot understand the language of Mr. Clement in any other way, reading it, as I have done, with a fair amount of consideration. Another suggestion I wish to make is whether or not it has occurred to the Minister of Justice that possibly different words might be required where you are dealing with a territory already forming part of the Dominion from those which would be applicable to a province coming in under the provisions of section 146 without the sanction of legislation such as that contained in the Act of 1871. In respect of all these matters I think we ought to have a little discussion. My hon. friend the Minister of Justice will have observed that a great many theories have been put forward by hon. gentlemen on that side who are learned in the profession of the law, as to the meaning and effect of section 2. I have understood several very eminent gentlemen on that side to argue that section 2, standing alone, would bring into force in the Territories the clerical schools which my hon. friend the member for Brandon (Mr. Sifton) opposed so vigorously with the assistance of the First Minister and I think of the Minister of Justice as well in 1896. These gentlemen, both in construing that section and also in construing the amendment which I had the honour of offering to the House, have taken that position; and I think that the arguments made in that regard, and to which I propose to give a little attention before we get through with clause 2, are worthy of consideration by the Minister of Justice. I can give him reference to them if he proposes to speak to-morrow as I took a little note of them as we went along. We could hardly get through section 2 this evening and the Minister of Justice will possibly to-morrow afternoon be prepared to give his views on this matter.

Mr. FITZPATRICK. I do not think I could do so this evening, but I would like to say immediately that I do not concur in the opinion of Mr. Clements that the British North America Act applies automatically to these new provinces. My object in quoting Mr. Clements' opinion was merely to show that he agreed entirely in what was said by the Hon. George Brown and Mr. Dalton McCarthy to the effect that if the separate schools were continued in any province until such time as it came into confederation, that system would be perpetuated. I gave that as one of the many opinions expressed on the matter, some of which may be worth a great deal and others very little. I think myself perhaps the better plan would be to allow this section to remain over to be discussed with clause 16, as it may be moved in committee. I am quite prepared to deal with it now, but perhaps it may be as well to hold it over until then. A great deal may be said in support of the view that this clause will bring into operation section 93 of the British North America Act. My difficulty was in respect of the words used in that section and the doubts that might arise about these words 'provinces' and 'at the time of the union.' It is for that reason I thought it would be well to make a standing enactment in regard to the separate school clause, but I am perfectly willing to allow the matter to remain over.

Mr. R. L. BORDEN. There is a good deal of force in what my hon. friend the Minister of Justice suggests, but possibly he could give us an outline of the principal matter I mentioned this evening and answer one or two questions with regard to it, so that we might clear the ground a little for the discussion of clause 2 in connection with clause 16. The suggestion he has made is one that might very well be acted upon, and we might leave the matter in that position until to-morrow afternoon and get through the discussion of it probably within a very short time.

On section 3,

The said province shall be represented in the Senate of Canada by four members: provided that such representation may, after the completion of the next decennial census, be from time to time increased to six by the parliament of Canada.

Mr. SAM. HUGHES. Are there to be four senators for each province?

Mr. FITZPATRICK. Yes, and then to be increased to six.

Sir WILFRID LAURIER. I would remark to the committee that at confederation three groups of senators were made, namely, Ontario, Quebec and the maritime provinces. Ontario and Quebec were each given 24 and the maritime provinces 24. It is well known that the principle decided upon then was that followed in the constitution