

quer Court. That is my humble opinion and I do not think there is anything in the language of Sir John Thompson which in any way is inconsistent with that. If I am right in that opinion, which I venture with all deference to submit, then, the argument which has been made by my right hon. friend and by the hon. Minister of Inland Revenue would entirely disappear. I think we created courts in the Territories under the power which was given to us by the British North America Act, 1871.

Mr. FITZPATRICK. I think there is a very distinct line of cleavage between the educational privilege in the British North America Act and the question of language; in fact, with all due deference to my hon. friend, I cannot find any comparison between the two. The British North America Act provides in special sections for the distribution of legislative power. Section 93 of the British North America Act makes special provision for a code in respect to education applicable to all the provinces of the Dominion without any exception whatever. The effect of our legislation is to apply that code to the new provinces. There is also a provision in respect to language. Section 91 provides for the question of language. Section 91 provides that the provinces shall deal exclusively with property and civil rights which never include language and for the organization of the courts. So much is that the case, that it was found necessary to have a special provision to create an exception as far as the province of Quebec is concerned. That exception is created for one province, and that is the only province which enjoys this privilege with respect to language. That is the situation under the British North America Act. I state it briefly and imperfectly, simply because I intend, on the third reading, of this I now give notice, to discuss this question at that time, which I think is the proper time to discuss a matter of this importance.

Mr. R. L. BORDEN. Just one word, so that when my hon. friend does discuss it he may understand what my position is. If the attitude of the government is based absolutely on section 93, without any changes on account of the supposed compact of 1875, I am with them. I have said that before; but that does not seem to be the attitude of the government. We may perhaps be at cross purposes about that; I do not know; but that does not seem to be the position of the government, because they have introduced changes in section 93 depending, as I understand it, upon the supposed legislative compact contained in the Act of 1875. If there is a legislative compact in the Act of 1875, it does seem to me that there is also a legislative compact in the Act of 1877. Have we the power to implement that?

Mr. FITZPATRICK. Undoubtedly we have the power to deal with the British

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North America Act in so far as these provinces are concerned.

Mr. R. L. BORDEN. That is what I understand to be the attitude of the government.

Mr. FITZPATRICK. Always bearing in mind the character of the provinces.

Mr. R. L. BORDEN. We have the power, as I understand the position of the government, with which I do not agree, to take away from the new provinces any of the legislative jurisdiction which was conferred upon the original provinces by section 92, and therefore as members of the government we can deprive the provinces of their power to legislate respecting property and civil rights. Therefore, there seems to be no constitutional difficulty in the way from the standpoint of the government. But it is too late to enter into any further discussion. If the hon. Minister of Justice proposes to speak on the third reading of the Bill, it will be better to deal with it then.

Mr. FITZPATRICK. The position the government take is a perfectly logical one. We argue that we can depart from the provisions of the British North America Act but without constitutionally destroying the province in so far as it should have those attributes which are essential to its provincial existence, but we depart in several instances from the provisions of the British North America Act, if we do depart in respect to education we also depart in respect to the tenure of land, in respect to provincial and municipal taxation in so far as the Canadian Pacific Railway are concerned and also in respect to the Hudson Bay privilege. My hon. friend will agree with us that if we can depart for the Canadian Pacific Railway, and we can depart for the Hudson Bay Company, we can with respect to education.

Mr. R. L. BORDEN. I do not.

Mr. FITZPATRICK. That is the logical result.

Mr. R. L. BORDEN. Not at all. So far as lands are concerned my position is simple. Section 109 simply provides that all lands, mines, minerals and royalties belonging to the several provinces shall continue to belong to them.

Mr. FITZPATRICK. That is not the interpretation.

Mr. R. L. BORDEN. If the Minister of Justice considers that section, he will see it does not deal with legislative jurisdiction, but with proprietary rights. Section 92 gives to the provinces power to deal with their lands, but whether they own the lands or not depends not upon the question of legislative jurisdiction but upon the terms and conditions mentioned in section 146 of the British North America Act. The terms and