

Lord WATSON.—I do not think it is at all surprising in the circumstances that such should be the outcome of the union.

Lord SHAND.—The point you are making now, as I understand, is that it is a remarkable thing they should not be able to repeal a statute that they themselves had passed.

The Lord CHANCELLOR.—That if they had passed this statute at once before they passed any denominational education at all it would not have affected any right.

Lord WATSON.—May not it be suggested—I know nothing about it—if it is open to speculate about it that you could not have passed any statute going this length? If the non-sectarian portion of the community were of that strength in 1871, why did they pass an Act the very reverse of the Act they wished to have? Why did they pass a denominational statute when they were all for non-sectarianism—assuming they were so at that time? If they were not all for non-sectarianism I do not see how they could have passed it.

Mr. HALDANE.—This Act gave non-denominational education to all.

Lord WATSON.—I think a change has come over the spirit.

The Lord CHANCELLOR.—What you are entitled to look at is the condition of the population, this being a parliamentary bargain, and the condition of the parties at the time, when you are dealing with an Act which speaks of majorities and minorities. I do not know which had the superiority, but at all events they were pretty evenly balanced.

Mr. HALDANE.—All I am saying is that if it had been intended to impose the restriction on the power of the Manitoba legislature which has now been contended for by the appellants, that restriction ought to have been put in some different language to what it is here. It might well be said that any right and privilege once constituted by legislation was not to be taken away or repealed without the consent of the Governor General. It is such an unusual thing to put in, that I do submit that if it was intended to insert it there, it would have been put in some language that was plain, and not in language which, to say the least of it, is ambiguous.

[Adjourned for a short time.]

Mr. HALDANE.—My Lords, I have said all that I feel justified in saying on the first point. I will simply sum up my propositions—that subsection 1 exhaustively defines the powers and the limitations of the provincial legislature—that subsection 2 is a subsection in general language which ought to be construed, as all subsections in general language in Acts of a similar kind would be construed, consistently with subsection 1—that the position of the Governor General is that of a person having a power of determining on appeal questions of law, and not a person vested with an administrative discretion—that to hold otherwise would be to put him at the mercy of any judgment of any tribunal which might or might not be appealed from to this board before the Supreme Court of Canada was constituted—that he must be put in a position to deliberate and decide upon questions of *ultra vires*—and that being so, he is not a person vested with a discretion, he is a person who has to exercise a judicial authority which is the condition precedent of the Dominion Parliament coming in and giving effect to his decision whatever it may be. That is my submission to your Lordship as to the proper construction of section 22 of the Manitoba Act.

But now, assuming against myself for the sake of argument, that on the proper construction of this section, the rights and privileges so far as they are legislative, are not rights and privileges for the time being, as I contend they are, but are rights and privileges which have once been established by the Manitoba legislature, and which cannot on the hypothesis in question be abolished by the legislature; I still contend before your Lordships that the conditions which alone enable an appeal to the Governor General have not arisen, and that that is a question which your Lordships in the exercise of the duty which you have taken upon yourselves of advising the Governor General are bound to answer. My Lords, as formulated by the Governor General the question which he addresses to your Lordships is, whether the Act of 1890 constitute