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"AD MAJOREM DEI GLORIAM."

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Hon. Senator Bernier's
GREAT SPEECH

as reported in THE SENATE DEBATES

(Continued.)

I must also question the action of the government for the powers they seem to have arrogated to themselves in this matter. It is said in the speech from the throne that "a settlement was reached between the two governments." Now, this statement is of a most serious character. It proclaims that the government has not acted within the scope of its functions. Let us read the constitution. Subsections 2 and 3 of section 22 of Manitoba Act read as follow :—

(2) An appeal shall lie to the Governor General in Council from any Act or decision of the legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(3) In case such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf then and in every such case and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

In these clauses where is the power of the government to make any settlement without the consent of the minority ? It is nowhere. The functions assigned to the government here are very distinct. They are empowered to hear an appeal, and adjudicate upon the same. They are a special tribunal, but they are not parties to the controversy, and not being parties, they have no qualification to make a settlement. They may use their good offices to bring to a settlement the interested parties namely : the minority and the local authorities. If the government had done that, no one would have grudged their interference. But when they take upon themselves to make a settlement without the consent of the most interested parties, then they go beyond the powers assigned to them by the constitution and beyond also all propriety. In fact one has only to make an appeal to his reason, without refering to the law, to see the error of such an attitude. No settlement can be made except as between the interested parties. This is quite evident. There is a marked difference between the action of the late administration and the administration of the day in this connection. The late government sent a delegation to Manitoba, but with the positive instruction not of making a settlement themselves ; but of bringing together the minority and the local government, in the hope that a settlement might take place between the two interested parties. That was legitimate, but the action of the present government is not. If the settlement were not deficient, however, I would not mind that excess of jurisdiction. We would gladly accept the settlement without quarelling with the administration of the day. But the settlement being deficient, it is not possible not to take notice of the manner in which it has been brought about. Because that action of the government is resulting in wrong conclusions being arrived at by the public at large. The mere fact of that arrangement being given out as a settlement agreed upon by the two governments, is taken as putting an end to the jurisdiction of parliament, as shutting the door to any further action on our part based upon our former appeal, as being practically the death blow to our claims. If I am not mistaken, that is substantially the position taken by my hon. friend from Marquette. I must take the strongest objection against such an interpretation of the effect of the settlement, and to support my views, I was bound to show at the outset the unconstitutionality of the powers which the government has assumed in this respect. For, the moment we come to the conclusion that in reaching that settlement the government has exceeded its jurisdiction, it follows that the power of parliament, the force of the remedial order and our claims remain as alive as ever. An act done in excess of a jurisdiction is null and void, and the nullity of said act prevents the rights and privileges which were intended to be overruled from being affected. Such is the importance of the point that I have just now raised. But apart from that, there are other arguments to be opposed to the theory raised by my hon. colleague from Marquette.

He says that "the appeal ceases and is satisfied when this parliament, which is the judge of the matter, tacitly or otherwise, accepts that settlement as full satisfaction of the grievances of thc minority," and the hon. gentleman adds that the question is settled "in so far as this parliament and the province are concerned." In other words the proposition of the hon. gentleman is that as the matter stands at present, the jurisdiction of parliament has ceased and no further action can be taken on the appeal.

First of all, it must be observed that the negotiations have taken place between the government of Canada and the province of Manitoba and not between the latter and this parliament. So far, this parliament has taken no action and consequently parliament cannot be said now to have impaired its own jurisdiction. And nobody else can.

In the second place, in assuming the right to make such a settlement, this government has exceeded its jurisdiction and capacity, as I have already shown. Then this settlement the issue of an unconstitutional transaction, cannot be a bar to the jurisdiction of parliament. But, moreover, this so-called settlement cannot be a bar to our jurisdiction because it does not comply with the remedial order. That the settlement does not comply with the remedial order is a fact which cannot cannot be disputed. Here is the remedial order:

It is hereby declared that it seems requisite that the system of education embodied in the two Acts of 1890, aforesaid, be shall supplemented by provincial Act or Acts which will restore to the Roman Catholic minority the said rights and privileges of which such minority has been so deprived as aforesaid and which will modify the said Acts of 1890, so far and so far only as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (a), (b), (c) hereinbefore mentioned.

Said paragraphs (a) (b) and(c), are as follows :

(a). The right to build maintain, equip manage, conduct and support Roman Catholic schools, in the manner provided for by the said statutes which were repealed by the two Acts of 1890, aforsaid.

(b) The righr to share proportionately in any grant made out of the public funds for the purposes of education.

(c) The right of exemption of such Roman Catholics as contribute to Roman Catholic schools from all payment or contribution to the support of any other schools.

It is not necessary to recite here the settlement. It is in the mind of every hon. gentleman in this house ; and in contrasting the two documents their opinion cannot be at variance with mine as to the fact of the settlement falling short of the requirements of the remedial order. Now, the remedial order is a judgment to all intents and purposes ; it is final, and cannot be withdrawn or merely altered in any way, shape or manner. That judgment belongs to the minority as well as to the other parties to the controversy, as does any judgment in any contested case. By the constitution, the refusal of the local authorities to comply with that judgment opens the door to the jurisdiction of parliament. And so long as the judgment stands (and it will stand forever) ; so long as the refusal of the local authorities to comply with that judgment stands (and it does stand at the present moment) : so long stands the jurisdiction of this parliament. There is no authority on this side of the Atlantic to alter that situation.

My contention is that the settlement does not comply with the remedial order in any particular. But for the sake of ragument, let us suppose that it does comply in some way ; it is at the ntmost but partial compliance. In law, in equity, as well as in common sense, a partial compliance is equivalent to no compliance at all, when it has to be taken into consideration as to whether a legal or parliamentary jurisdiction has been affected. So, the jurisdiction of parliament remains the same.

We are told that parliament accepts the settlement as a solution of the question. Supposing that this assertion be true. it is merely a fact which has no bearing on the right or on the law. Parliament, I know, has the physical power of refusing to act in the matter, and practically the immediate result of that inaction is to leave us in the same position as we would be placed in had the jurisdiction of parliament really ceased. But, I repeat, the exercise of that physical power does not affect the legal and moral aspect of the question. A highway man may rob or kill a passer-by ; that shows that he has physical power enough to rob or to kill ; it does not prove that he had the right to do so. A man owing a sum of money may refuse to pay ; he may be imprisoned, and still refuse to pay ; there is no possibility of getting the cash from his pocket ; but that stubborn refusal is a physical fact which does not take away from that man his obligation to pay, and does not affect the right of his creditor of being paid. And so with the parliament of Canada in this instance. Parliament has the physical power to refuse to vote for an equitable remedial law, but that refusal is not a repeal of the remedial order, does not change the nature of the refusal of the provincial authorities to act in compliance with the requisition served upon them, and is not a repeal of the jurisdiction of parliament, which remains, along with the rights of the minority, standing in all its entirety.

The constituton has assigned certain powers to the Govarnor General in Council and to parliament ; it has conferred on them the power of protecting minorities in matters of education. There is for them a corresponding duty to use their legal powers when appealed to. It cannot be optional for them to fulfil or not fulfil that dnty ; otherwise, there would be no guarantee for the minorities and the constitution would be mere waste paper ; in other words, it would be a fraud perpetrated upon the people. This supposition would be an insult to the fathers of confederation and to the various parliaments which went into that parliamentary compact.

True, the word " may " is used in reference the exercise of such powers. But in this instance the word " may " is not merely an enabling word, but is imperative. I beg to be permitted to quote here some arguments and quotations which I find in the speech of onr distinguished colleague from Bothwell, on the consideration of the Remedial Bill. The hon. gentleman then said :—

Words of compulsion are never applied to the Sovereign, or to a Sovereign body.....our constitution, like that of England, imputes the intention both to the Sovereign and to parliament, to keep faith and to perform all the duties falling within their respective jurisdictions .....It has again and again been decided that mere enabling words do impose a duty in certain cases.

And the hon. gentleman quotes Chief Justice Jarvis who says :

The general rule derived from the cases is that where the statute confers the authority to do a judical act in a certain case, it is imperative upon those so authorized to exercise the authority when the case arises, and when its exercise is dnly applied for by the party interested and having the right to make the application.

That the minority has a right of appeal is clear from these words of the constitution : "An appeal shall lie."

Here a right is given, says Mr. Miils, to a dissatisfied party, and there is an implied duty imposed upon the executive authority to make that bearing affective.

A question arises here : which is the judge, which is the executive ? The judge is not parliament, but the Governor General in Council. An "appeal shall lie" not to parliament, but to the Governor General in Council, says the Constitution. And again, the constitution says that the Governor General in Council shall adjudicate upon the appeal and determine what is requisite. There is not a word in the constitution ascribing to parliament similar or concurrent powers. But when that appeal has been finally adjudicated upon by the Governor General in Council, then the constitution goes on to provide, that on the refusal of the province to comply with the requisitions of the Governor General in Council, parliament shall take the matter into its hands as an executive, and make remedial laws to redress the grievances in so far as circumstances require. If, however, it is still contended that parliament is the judge, then I say this judge must adjudicate according to law, as anyother tribunal is bound to do; and the law in this instance is the remedial order, expounding the constitution as construed by the highest tribunal of the empire.

I am perfectly aware that all these arguments can be traversed by the proposition that after all the majority must rule in a parliamentary country. But I say that the majorities themselves are bound to rule according to the constitution. The constitution is the supreme authority, not the majorities. If it was not so, we would have arbitrary government and not constitutional goverument.

It can be said also that parliament is supreme, and that under our political institutions we can not help it. Yes, I say, parliament is supreme within its jurisdiction. If they choose to commit a denial of justice, they have the physical power to do so, and no mandamus can be taken against them. Parents also can deprive their children of the necessaries of life, because they are the supreme authorite within the family circly. But both parliament and the parents in doing so are ignoring their most sacred duties, in law and in equity, and in doing so they trespass upon the law of nature which must obtain amongst the nations as well as amongst individuals. Some others assert that the result of the elections is a decided blow against the claims of the minority. On several grounds I take the strongest exception against that theory.

The majority of the present government came mostly from the province of Quebec. Now, you have heard what the hon. senator from Rougemont has said about that. He certifies that the elections there went in favour of Mr. Laurier because he and his candidates had pledged themselves to a larger measure of justice to the minority than the Remedial Bill afforded. I am myself a witness to the same pledge. I was in the province of Quebec at the time of the election and I know that the electorate in voting the way they did intended to vote for the restoration of our schools. In view of the pledges referred to, there is no doubt that the verdict of the people in Quebec is in favour of the settlement of our claims according to our wishes and not in favour of a settlement such as the present one.

(To be continued.)

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