

Lord WATSON.—In the Winnipeg case it was said, “Their Lordships are satisfied that the provisions of subsections 2 and 3,” that is the Manitoba Act, “do not operate to withdraw such a question as that involved in the present case from the jurisdiction of the ordinary tribunals of the country.”

Lord MACNAGHTEN.—Mr. Haldane says it does not withdraw it, but it makes the Governor a supreme court of appeal from the decisions, and if the court below will not make the order of the Governor General an order of that particular court, then he has to apply to the legislature—a most extraordinary position to put judges in—there being also a right of appeal, I suppose, to Her Majesty in Council.

Mr. HALDANE.—A right of appeal, no doubt, if the prerogative is exercised.

Lord MACNAGHTEN.—That would get them in a very nice mess.

Mr. HALDANE.—Your Lordships put that difficulty, but I put another difficulty.

Lord WATSON.—Supposing the legislature were to say, “We will abide by the decision of the court. The court have held this wrong. We will take it off the statute-book.” And then you appeal, and the Governor General says, “This must be amended and made an Act.”

Mr. HALDANE.—Lord Watson suggests it to me as if it were a difficulty that arose out of my argument, but it must arise out of the terms of the statute whenever an appeal is brought on the allegation that a right or privilege has been infringed. What is that in nine cases out of ten but a question of law? Supposing there has been a decision of a magistrate at Manitoba on the subject, is the Governor General bound, or his action fettered? Can the Dominion Parliament be excluded from legislating?

Lord WATSON.—The statute may be made consistent in that view by reading it in this way, that subsection 1 gives an absolute remedy for every interference that falls within it, every interference with a right or privilege existing at the date of the union, and a separate provision was made for rights and privileges springing up afterwards which are not dealt with in subsection 1.

Mr. HALDANE.—That is a possible construction, but there is another construction equally possible, and that I venture to submit. It is the one I am suggesting to your Lordships. It may involve in the functions of the Governor General that he might decide constitutional questions and questions of law. It may involve in it that he may not be obeyed.

Lord WATSON.—It had ceased to be a constitutional question, and resolved itself into a mere question of fact. The decision is such that in one way it necessitated the application of the Act which made the Act of the provincial legislature void. When that provision was made in subsection 1 that question appears to me to have ceased to be a constitutional question, and to have resolved itself into a simple question of fact.

Mr. HALDANE.—Take it upon the construction which has been expressed by some of your Lordships, and which I am endeavouring to combat.

Lord WATSON.—What constitutional question has the court to consider when it is merely determining whether such privilege existed—

Mr. HALDANE.—Perhaps I used the word “constitutional” inaccurately there; it is a question of law—

Lord WATSON.—Whether a state of things existed that brought into operation a condition of nullity imposed by Act of Parliament.

The Lord CHANCELLOR.—If you were once to concede that subsection 2 applied to rights and privileges acquired by post-union legislation, or including them at all events, the question whether a right or privilege had been affected really would be a question of fact in a sense. You may say it is a question of law possibly in a sense, but not in the ordinary sense, because there would be no difficulty in any person of common sense determining whether what had been given, which was for his benefit, was taken away. It would not be a question of law.

Mr. HALDANE.—It would be a question whether this was a right or privilege of the minority always. That is a question of law.

The Lord CHANCELLOR.—It may be in that sense a question of law.

Mr. HALDANE.—So much so that it is submitted, and the sixth question on which the Governor General has asked your Lordships’ assistance and advice is whether this