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HON. SENATOR BERNIER'S

SPEECH IN THE SENATE AUG. 31ST 1896.

(Continued.)

That this school question should be settled strictly in accord with the constitution, as read by the Privy Council, is a matter of the greatest concern to the whole confederation. In deciding that the minority, under the terms of the constitution, had grievances to which a remedy was due and could be afforded by this parliament, the Privy Council adjudged at the same time that on certain points the legislature of Manitoba had gone beyond the limitations placed by the constitution upon its legislative powers; in other words, they declared that the constitution had been violated. The Catholics could not have any right as against the constitution, and could not have a judgment in their favor, on the point raised, unless the constitution had not been complied with by the legislature. In words or in thought or in law, non-compliance with the constitution is necessarily a violation of the same. It is an error then to say that the legislation of 1890 is absolutely constitutional and cannot in any way be supplemented or even interfered with in so far as is required by the circumstances so that the minority may be relieved according to justice. The judgment in the case of Barrett vs. the City of Winnipeg does not support that view. It does not preclude the action of parliament. I wonder how that contention can be persisted in, when any one has only to read the second judgment of the Privy Council to find out that the point has been specifically submitted to their lordships and decided in favor of the freedom of parliament to act if they choose to do so. That jdgment in the case of Barrett vs. the City of Winnipeg is to my mind radically wrong. It is a great misfortne that the case should not save been better understood. Nevertheless, the judgment is there, we have to abide by it. But there is no reason to be bewildered by the same. In that case, like in any other case, the tribunal has pronounced only on the point raised and upon the materials placed before such tribunal. What was the point raised? Their lordships will themselves give the answer to this query. In their second judgment they say:

In Barrett's case the sole question raised was wheather the Public Schools Act of 1890 pre udicially affected any right or privilege which the Roman Catholics by law or practice had in the province at the union.

They answered the quetstion in the negative. And so it was decided that the legislation of 1890 did not contravene the first subsection of section 22 of the Manitoba Act, and that in so far as that point is concerned, the Schools Act is intra vires. But that did not go further and could not go further. It did not decide that the Acts of 1890 did not come in conflict with some other provisions of the constitution. It did not preclude the minority from attacking the constitutionality of the said Acts on some other points. And so they have done. The first question raised by them was in connection with the ante-union law or practice. Their contentions on that point having been adversely decided, they raised a second question in connectin, this second time, with the post-union provincial regislation, grounding their appeal upon subsection 2, of the said section 22, which reads as follows:

(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.

This point has very properly been decided in favor of the minority in the most specific manner. The attention of the Lords of the Judicial Committee of the Privy Council was expressly called to the effect that the judgment in Barrett's case might have upon the last appeal of the Catholics, and to the question so formally put to them they have answered in that way:
they have answeder in this way:

(3) In answer to the third question: —That the decision of the Judicial Committee of the Privy Council in the cases of Barrett vs. the City of Winnipeg, and Logan vs. the City of Winnipeg does not dispose of or conclude, the application for redress based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union under the statutes of the province, have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials.

And in another place, their Lordships say:

For the reasons which have been given, their Lordships are of the opinion that the 2nd subsection of section 22 of the Manitoba Act is the governing enactment, and that the appeal to the Governor General in Council was admissible by virtue of that enactment on the ground set forth in the memorials and petitions, inasmuch as the Act of 1890 affected rights and privileges of the Roman Catholic minority in relation to education within the meaning of that subsection. The further question is submitted whether the Governor General in Council has power to make the declarations or remedial orders asked for in the memorials or petitions, or has any other jurisdiction in the premises. Their Lordships have decided that the Governor General in Council has jurisdiction, and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute. It is not for this tribunal to intimate the precise steps to be taken. Their general character is sufficiently defined by the 3rd subsection of section 22 of the Manitoba Act.

The hon. gentlemen will please observe that their Lordships decide here: 1st, that the Catholics do not preclude in their appeal by the judgment of Barrett vs. City of Winnipeg. 2nd, that there appeal is admissible. 3rd, that said appeal is well founded. 4th, that His Excellency the Governor General in Council has the right to hear the appeal. 5th,that the particular course to be pursued is to be determined by the authorities to whom it has been committed by the statute. 6th, that the steps to be taken are defined by the 3rd subsection of section 22.

Now, which are the authorities to whom has been committed the power to determine the particular course to be pursued? What are the particular steps defined by subsection 3 of section 22? Let us read that subsection 3 and it will give the answer to these queries:

(3.) In case any 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,an 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 provision of this section, and of any decision of the Govennor-General in Council under this section.

Then, His Excellency the Governor-General in Council is authority to determine the course to be followed in any such case; notification to the provincial authorities to do what is right, and in default, remedial legislation by parliament, are the steps indicated. And this opinion is substantiated by their Lordships in the following words, and this quotation will at the same time answer to the assertion of my hon. friend from Marquette, that the power of the province to legislate in matter of education,is exclusive, a heresy which he has been pleased to propound to this house like many other heresies at every session for many years past.

Before leaving this part of the case, it may be well to notice the argument urged by the respondent, that the construction which their Lordships have put upon the 2nd and 3rd subsections of section 22, of the Manitoba Act, is inconsistent with the power conferred upon the legislature of the province to "exclusively make laws in relation to education." The argument is fallacious. The power conferred is not absolute but limited. It is exercisable only "subject and according to the following provisions." The subsections which follow, therefore,whatever be their true construction, define the conditions under which alone the provincial egislature may legislate in relation to education, and indicate the limitations imposed on, and the exceptions from their power of exclusive legislation. Their right to legislate is not indeed, properly speaking, exclusive, for in the case specified in subsection 3 the parliament of Canada is authorized to legislate on the subject. There is, therefore, no such inconsistency as was suggested.

This law is in accord with common sense. Indeed, any well balanced mind can readily conceive that no appeal could reasonably be declared admissible before the tribunal, unless that same tribunal has the full power to hear such an appeal and to adjudicate upon it. And following the same line of argument, one must see at once that if His Excellency the Governor-General in Council has jurisdiction, parliament must also have jurisdiction. It would be useless indeed to give such jurisdiction to His Excellency the Governor General in Council if parliament was not endowed with sufficient powers to give practical sanctions to the decisions arrived at. But in this particular case, we have more than such inferences to rely on. Parliament is expressly empowered to carry on the decisions of His Excellency the Governor General in Council by way of remedial legfslation. And remedial legislation means "legislation" and not relief by way of some money grants to help the minority to carry on their schools and to supplement the subsidies which the local government refuses them. Legislation adopted by parliament such cases can and must be school legislation.

This is also made perfectly clear by the following passage of the second judgment of the Judicial committee of the Privy Council:

Bearing in mind the circumstances which existed in 1870, it does not appear to their Lordships an extravagant notion that in creating a legislature for the province, with limited powers, it should have been thought expedient, in case either Catholics or Protestants became preponderant, and rights which had come into existence under different circumstances were interfered with, to give the Dominion parliament power to legislate upon matters of education so far as was necessary to protect the Protestant or Catholic minority as the case might be.

When their Lordships say that this power of legislation vested in this parliament is not an extravvagant notion, they are perfectly in accord with the spirit of the federal constitution as laid down by the framers of this constitution of ours. Here are the words of Sir A. T. Galt, on the subject:—

It must be clear that a measure would not be favorably entertained by the minority in Lower Canada which would place the education of the children and the provision for their schools wholly in the hands of a majority of a different faith. It was clear, that in confiding the general subject of education to the local legislature, it was absolutely necessary that it should be accompanied by such restrictions as would prevent injustice in any respect from being done. Now this applied to Lower Canada, but it is also applied and with equal force to Upper Canada and the other provinces; for in Lower Canada there was a Protestant minority and in the other provinces a Roman Catholic minority. The same privileges belong to the one of right here as belonged to the other of right elsewhere. There could be no greater injustice to a population than to compel them to have their children educated in a manner contrary to their own religious belief.

Here are also the declarations made by other prominent public men, when the resolutions with regard to confederation were under discussion at Quebec, in 1864: Sir E. P. Tache, then Prime Minister, said:

If the lower branch of the legislature were insensate enough and wicked enough to commit some flagrant act of injustice against the English Protestant portion of the community, they would be checked by the general government. But the hon. gentleman argues that that would raise an issue between the local and general governments. We must not, however, forget that the general government is composed of representatives from all portions of the country—that they would not be likely to commit an unjust act.—(Com. Debates pp. 236-7.)

On the other side of the house, Sir A. A. Dorion, the leader of the Liberal party in Lower Canada, spoke in the same strain:

I think it but just that the Protestant minority should be protected in its rights in every thing that is dear to it as a distinct nationality, and should not lie at the discretion of the majority in this respect—(Conf.Debates, p. 250.)

Sir Narcisse Belleau also said in answer to an objection, and in speaking of the minorities:

Their religion is guaranteed by treaties; they will be protected by the vigilance of the Federal government, which will never permit the minority of one portion of the confederation to be oppressed by the majority.—(Conf. Debates, p. 184.)

A few minutes before the same gentleman had said:

Even granting that the Protestants were wronged by the local legislature of Lower Canada, could they not avail themselves of the protection of the Federal legislature? And would not the Federal government exercise strict surveillance over the action of the local legislatures in these matters? Why should it be sought to give existance to imaginary fear?—Conf. Debates, p. 183.

No clearer words could disclose the true spirit of our constitution.

With all that before me, I wonder how these judgments of the Privy Council can be misconstrued so as to prompt some hon. gentlemen to say this parliament is powerless. The situation is plain. The first judgment, as I have already said, is wrong. But granted it is right, for the sake of argument; give that judgment its whole bearing; you will find that it decides only the question whether the rights that minority is alleged to possess before or at the union by law or practice were affected. That is one point. The appeal raised a second point totally different. In that appeal the minority contended that by virtue of the provincial legislation after the union (not before as in Barrett's case), they had vested rights which had been affected by school legislation in 1890. This question has received an affirmative answer from their Lordships. There is no inconsistency between the two judgments, because they bear absolutely on two different points. By virtue of this second judgment, this parliament is as free to pass remedial legislation as if the first judgment had never seen the light. That power is not restricted except that it must not go beyond the requirements of the case. The enactment of the constitution in this connection is so general and complete that remedial legislation can interfere with all local legislation which would come in conflict with the necessary requirements of the remedy. This parliament is the higher power, the other is the inferior power, and in case of concurrence or of conflict, the higher power is the supreme power. It is an error, then, to say, that parliament is powerless on account of the first judgment; it is an error to say that the constitution is a dead letter. There might be some difficulties of application on account of the case being new and without precedent. But under the circumstances, true statesmanship is to go forwards and not backwards, not to yield to passions and resistance of whatever nature it might be, but to march up straight to those difficulties, to check resistance by all legitimate ways, to stand up for the constitution and give the same a practical interpretation. Resistance indeed there may be; there may be other difficulties, but what is now that prospective resistance and these prospective difficulties, if not mere shawods? It is not the part of statesmen to be terrified by shadows. It may be, after all, that no resistance would be offered; it may be that no difficulties would be met with. We cannot be mixed on all these suppositions unless there is a law passed. After that law is passed, then we will know where we stand. That will be the time to meet the new contingencies that may arise. The hon. gentlemen opposite will allow me to tell them in all sincerity that the embarrassments which came from their ranks have been a powerful encouragement to resistance. If parliament had from the first and at all times stood up with a united front in favor of what is right, in favor of the constitution and of what everybody knows to be justice, that patriotic and firm attitude would have favorably impressed the people of Manitoba and their government; the question would now be a thing of the past. It would not have perhaps served as well the party advantages they had in view, but it would have better served justice and the country. The hon. secretary of state has said that the people of Manitoba would not tolerate remedial legislation, would not submit to it. I am of a different *opinion*. The result of the late general election bears me out in that contention. The province has returned to parliament a majority in favor of the policy of the late government. The promoter of the obnoxious school legislation has himself been rejected by the large and influential City of Winnipeg. This shows to almost a certainty that if the hon. gentlemen opposite, instead of encouraging the resistance by their obstruction, had risen superior to their party feelings and given to the late government the support that the Conservatives are now ready to give them for the vindication of the constitution, peace and harmony would reign now where agitation, discontent and distrust are still in full sway. The maintenance of the constitution is a point which cannot be too much emphasised. This is in fact the turning point of the whole controversy. The question before parliament is not whether the minority will have their schools or whether separate schools are good or not, but whether the constitution shall be maintained throughout the land. The violation of the constitution is a matter of the gravest moment for the future of confederation. If a province is allowed to forfeit some of the conditions of its entry into consideration, there is no reason why they should stop there, and not go to the extent of forfeiting the whole compact. There is no reason why each and all of the provinces shold not go through the same process. If once such a principle is allowed to obtain in the government of the country, we may be sure that sooner or later the seed thus sown in the land will bear fruits of distrust in our political institutions, and disruption would ultimately result. It must be affirmed that the constitution cannot be altered at the whim of the provinces, or of this parliament even. We are not a sovereign power as Great Britain is. In the mother country, where an unwritten constitution obtains, any legislation passed by parliament becomes a part, as it were, of the constitution. Parliament is supreme and what they do is the constitutional law of the land. And it is in that way that Great Britain has gone through such a remarkable evolution in its political institutions. But here such cannot be the case, because such is not our power. We are not supreme; our powers are delegated powers, and limted by the written constitution given us by the imperial parliament. Moreover confederation is the result of a compact between several provinces. All these provinces must keep faith not only with their own population, but with each other and with the parliament of Canada and this parliament also must keep faith with the several provinces and with each section of the population in any of the provinces.

Sir John Rose. speaking in Quebec, and defining the spirit which should preside over the government of confederation and the relations of the different sections of the country with each other, expressed himself in these words:

We trusted each other when we entered this union; we felt that our rights would be saved with you, and our honor and good faith and integrity are involved in and pledged to the maintenance of them.

Let that good faith and those pledges be kept all over the land and the happy day longed for by the late hon. leader of this hon. house, and by every member of this hon. house, I hope, when we will hear no more of creed or race in our deliberations, will dawn upon this fair Canada of ours, if not at once, at least as soon as every section of the population is assured, that its feelings, its conscientious views, its constitutional rights and liberties are safe and an object of high and mutual regard.

In the controversies raised by the Manitoba school legislation, the minority has been constantly misrepresented. Lately, they have been represented as wishing to exact their pound of flesh. This is unfair to them. In the classical work from which this remembrance is selected, an unmerciful creditor wanted his pound of flesh from a weak, poor wretch, his debtor. Here such is not the case. We are the weak parties, we do not want anything that belongs to others. We have been spoliated and we are only asking for a restitution. We do not want We did go to them when it was unfort of others, nor with the views of anybody else. If the laws in existence at present are wanted by others let those laws stand in so far as they apply to those who want them. But, in this matter, it is our own flesh, our bones and our blood that have been exacted from us, and all that, but only that, we want back.

There is more than that: it is the soul of our own children which has been interfered with, because education, properly understood, is not only a matter of cyphers, or anything of that kind, but it is the formation of man, intellectually and morally, body and soul. Holding these views, the minority is bound by the most sacred duty to maintain in all their entirety their constitutional rights. An appeal has been made to conciliation. The minority of Manitoba has never refused to conciliate in matters in which conciliation can work. In fact, the Catholics have never been approached by the local government of Manitoba. We, on the other hand, did go to that government. We did go to them before the obnoxious law was introduced. We did go to them when it was under discussion. We did go to them after it was sanctioned. We did go to them once in a most solemn way. In the fall of 1894, the delegates of the minority, numbering over 500, went up to the government buildings, and prayed for relief in the most dignified and respectful way. The answer was that we had no rights, no grievances, and that it was useless for us to pray any more. The hon. secretary of state asked the other day, whether the government of Manitoba had been approached in a friendly way by the government of Canada previous to the judgment of the privy council on the appeal. I answered that they had done it. And now, without going into all the circumstances in which the good-will of the Dominion government manifested itself, I will cite a particular instance in which the Manitoba government was approached in the most cordial and friendly way. During the session of 1894, a memorial from His Eminence Cardinal Taschereau and from all the other archbishops and bishops of Canada, regarding education in Manitoba and the Northwest Territories, was presented to parliament. Thereupon the government of Canada passed an order in council recommending that this memorial be transmitted to the authorities in Manitoba. The report of the committee upon which the order in council was passed and which received the approval of His Excellency, contained the following paragraph:

The committee beg to observe to your Excellency that the statements which are contained in this memorial are matter of deep concern and solicitude in the interests of the Do-

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