

but in spite of all that, they all agreed that it was a matter of purely local concern, with which we had nothing to do.

It being Six o'clock, the Speaker left the Chair.

### After Recess.

**Mr. RYKERT.** When the House rose at six o'clock, I was endeavoring to show that in the question of the New Brunswick School Law, the Catholic minority in that Province, had made complaint, in reference to the legislation of that Province, that their rights had been seriously infringed upon. I endeavored to show that the Minister of Justice of that day, the right hon. the Premier of this country, had expressed his opinion upon that law, and had stated distinctly that while he sympathised with the Roman Catholics in that Province, yet that the action of the New Brunswick Legislature was entirely within its jurisdiction. I quoted also the authority of several gentlemen, among them the hon. member for West Durham (Mr. Blake). I showed that he moved in amendment to have the matter referred to the law officers of the Crown and also expressed his opinion of the Act. I find that opinion reported in the *Globe* of May 19th, 1872:

"Mr. BLAKE said he had from time to time considered the constitution with reference to the state of the law in New Brunswick on the subject of schools, and he was free to confess that his opinion had fluctuated, and any expression he might now give was given with great doubt and hesitation. He was free to admit that there was much to support the view that had been put forward in the report of the Minister of Justice on the subject, and that the conclusion of that gentleman might have been fairly reached and might very possibly be correct; but he desired to point out to the House those circumstances with reference to the Act which led his mind very strongly—he would not say conclusively—to a different conclusion."

He moved in amendment that the question be referred to the law officers of the Crown, and they expressed their opinion that the legislation of New Brunswick was entirely within the jurisdiction of that Legislature. Then we have Mr. McDougall, who poses sometimes as a constitutional lawyer, who, upon that occasion, gave expression to his opinion as follows:—

"I agree that any interference with the powers that are given to the Local Legislature in the framing of laws unnecessarily through political or national, religious or other motive, except on the broadest public grounds, would be injudicious and improper."

In 1875, the question of the New Brunswick school law was again brought to the notice of this House. A resolution was moved by Mr. Cauchon, seconded by the hon. member for West Durham (Mr. Blake), in which they recited the resolution of the previous year, and asked the intervention of the opinion of the law officers of the Crown. The resolution was as follows:—

"The House regrets that the School Act passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that Province, and hopes that it may be so modified during the next session of the Legislature of New Brunswick as to remove any just grounds of dissatisfaction that now exist. That the House regrets that the hope expressed in the said resolution has not been realised and that an humble address be presented to Her Majesty embodying the resolution and praying that Her Majesty will be graciously pleased to use her influence with the Legislature of New Brunswick to procure such a modification of the said Act as shall remove such grounds of discontent."

That matter was referred to the law officers of the Crown, and upon the 18th October, 1875, there was a despatch from Lord Carnarvon, in which he stated:

"That he laid it at the foot of the Throne, but that he could not advise Her Majesty to take any action in respect of it; that he could not advise the Queen to advise the Legislature of New Brunswick to legislate in any particular direction as that would be undue interference"

Further on he says:

"Holding, as I have already explained, that the constitution of Canada does not contemplate any interference with the provincial legislation, on a subject within the competence of the Local Legislature by the Dominion Parliament, or as a consequence by the Dominion Ministers."

So even the law officers of the Crown were of the opinion that, though sympathising with the minority in New Brunswick, they could not advise interference with that law or advise the Crown to disallow the Bill. On that occasion, the hon. member for East York (Mr. Mackenzie), who sympathised very strongly with the minority in the Province of New Brunswick and felt that they had been unfairly dealt with, said:

"But there is a higher principle still which we have to adhere to, and that is to preserve in their integrity the principles of the constitution under which we live. If any personal act of mine, if anything I could do would assist to relieve those who believe they are living under a grievance in the Province of New Brunswick, that act would be gladly undertaken and zealously performed; but I have no right, and the House has no right to interfere with the legislation of a Province when that legislation is secured by an Imperial compact to which all the parties submitted in the Act of Confederation. \* \* \* I have merely to say this, whatever may be our religious proclivities or feelings, whatever may be the feelings that actuate us in relation to local grievances, it is not well that we should endanger the safety of any one of the Provinces in relation to matters provided for in the British North America Act, which is our written Constitution. \* \* \* It is not desirable that we should make the way open or that anything should be done which would excite religious discussions and permeate religious animosities."

That was good advice, and that advice was followed by the House. Now, I come to consider a question which seems to have exercised the mind of the *Globe* newspaper, and that is the articles in the *Law Journal* and the *Law Times*. I have shown, I think, by constitutional authority, that the Act, if it be unconstitutional or *ultra vires*, should be allowed by the Government to take its course, and those who are injured by its operation or aggrieved by it should at once apply to the law courts for redress. The *Law Journal* has declared beyond all question that the Act is *ultra vires*, and, if that be so, according to the practice we have always adopted, the parties should apply to the courts for redress. The *Law Journal* says:

"It will, we think, be conceded, apart from any provisions in Imperial statutes, that it is *ultra vires* the constitutional power of a Colonial Legislature to confer on or delegate to any foreign sovereign, potentate, or tribunal, lawful jurisdiction or authority to determine, or ratify, the distribution of the moneys or properties of the Crown, or how money grants to the subjects of the Crown, within its colonial jurisdiction, are to be distributed. The Imperial Crown may in any proper case agree with another crown or nation to refer to a sovereign, or to arbitrators mutually agreed upon questions affecting its belligerent or territorial rights or claims; but this regality of the Imperial Crown is not possessed, nor can it be exercised, by a Colonial Government or Legislature. If it would be *ultra vires* of the Legislature of Ontario to delegate authority to a foreign power—say to the President of the United States—to distribute, or to ratify the distribution of, public moneys legally voted (the Clergy Reserve moneys, for instance), it follows that this delegation of authority to the Pope by the Legislature of Quebec must also be *ultra vires*. What would be unconstitutional in Ontario must be equally unconstitutional in Quebec."

The *Law Journal* lays down the proposition that the Act is *ultra vires*. If that be so, the authorities show clearly that they must go for redress to the courts; but what evidence have we in this instance that the Pope is, as they say, a foreign potentate? The *Law Journal* does not pretend to say how it is, except that, under the Statute of Elizabeth, there were certain documents, or mandates, or judgments issued or sent forth by the Pope, and that those should not be recognised by the authorities in England. But the Statute of Elizabeth was passed under different circumstances from those which exist now, and the position of the Pope to-day, bereft of his temporal power, is entirely different from what it was years ago. Instead of being a foreign power, he is in this case simply an arbiter between two parties in the Province of Quebec. At the time to which my hon. friend from Muskoka alludes, no doubt the Pope did exercise a controlling influence in Europe and over many nations, but now he is bereft of that power and is in a totally different position. The *Law Journal* says this matter is not yet settled, and should be relegated to the courts. That is the position which this Government and all preceding Governments have taken in regard to such a question. Then, as to the *Law Times*. In my judgment,