

MANITOBA SCHOOL CASE.

A Rare Statement of Facts Regarding It.

EDITOR OTTAWA CITIZEN—In your issue of Friday some comments are made on my criticism in parliament of the judgment of the Judicial Committee of the Privy Council on the Manitoba school case. You select the names of a number of distinguished jurists as "members who actively performed the duties of the Court" consisting of Lord Herschell, the Earl of Selborne, Lord Hobhouse, Lord Ashbourne, Lord Halsbury, Lord Field, Lord Shand, Sir Richard Couch, and the Hon. George Denman.

Your editorial conveys the impression that the gentlemen named formed the Court that gave the judgment you refer to. Had the members you have named been present at the argument, and had they taken the trouble to understand the case, I have no doubt the judgment would have been the reverse of the one given. As a matter of fact, however, you are entirely in error in assuming that Lord Herschell, the Earl of Selborne, Lord Hobhouse, Lord Ashbourne, Lord Halsbury, Lord Field or the Hon. George Denman took part in the hearing or consideration of the case. Lord Shand, however, was present. He is a Scotch lawyer and was appointed to the Court to give the benefit of his knowledge of Scotch law. Sir Richard Couch is the only other judge on your list who was present.

I do not propose to question either the ability or the integrity of the law Lords who decided this case. Their judgments on ordinary legal questions that come before them may be sound, but they certainly did not comprehend the true meaning of denominational or Separate schools as understood by those parliamentarians in Canada who have had to deal with those subjects during the last forty years.

Allow me briefly to state the case as it was understood by those who negotiated the terms, and by the Parliament that ratified the agreement.

STATEMENT OF THE CASE.

First, it is admitted that denominational schools existed for nearly half a century preceding the time Manitoba came into the union.

The delegates from Manitoba stipulated with the Canadian Government that the existing denominational schools should be preserved and continued according to the system in Quebec. This was agreed to and supported and strengthened by an assurance from the Queen's representative that by Her Majesty's authority "their civil and religious rights would be respected."

The question was discussed in the House of Commons in all its bearings on 10th May, 1870, when Mr. Oliver moved to strike out the educational clause giving the majority the right to denominational schools. After a full debate Mr. Oliver's motion was defeated, the vote standing 81 to 34, and it is worthy of observation that taking the vote of the Protestant members only, there was a majority of 2 in favor of giving Manitoba Separate schools, so it cannot be said that the system was forced on that Province by Catholic votes.

In the discussion the Hon. Wm. MacDougall pointed out that the effect of the enactment if passed would be "to fix laws which the local legislature could not alter in future."

The fact that Parliament granted to the minority the right to establish Separate schools was commented on in the press, and I am not aware of a single protest. The *Globe* of 23rd May, 1870, ten days after Parliament rose, in commenting on the business of the session, states—"It is especially enacted that "no law shall be passed by the Provincial Legislature injuriously affecting in any way denominational schools, Catholic or Protestant. An appeal against any educational act that infringes upon the proviso will be

referred to the Governor in Council, and if powers are required to enforce his decision, the Parliament of Canada may be invoked to compel due compliance by an act for the purpose."

I could heap up evidence of a similar kind, but think I have said enough to show what Parliament meant, what the members understood and what the majority element in Canada by their representatives agreed to.

THE MANITOBA LEGISLATURE.

In the first session of the Manitoba Legislature, 1871, an Act was passed in terms of the Manitoba charter which had then been confirmed by the imperial authorities, denominational schools were established on the basis on which they existed before the Act of Union, and so continued without question or objection for nineteen years.

Between 1871 and 1880, the subject of the settlement of the Manitoba School Question was often referred to in Parliament as having been settled satisfactorily to all parties.

In drafting the educational clauses in the Manitoba Act special language was used to meet the conditions existing. As denominational schools did not exist there by law but only by practice or custom, the language of the B. N. A. Act was altered to read as follows:—"Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

The Court seems to have been unable to give a definition of the words "by practice," as the following quotation from the judgment will show: "The only important difference is that in the Manitoba Act, in subsection 1, the words 'by law' are followed by the words 'or practice,' which do not occur in the corresponding passage of the British North America Act, 1867."

"These words were no doubt introduced to meet the special case of a country which had not as yet enjoyed the security of laws properly so-called."

"It is not perhaps very easy to define precisely the meaning of such an expression as 'having a right or privilege by practice.' But the object of the enactment is tolerably clear."

"Evidently the word 'practice' is not to be constructed as equivalent to 'custom having the force of law.'"

"Their lordships are convinced that it must have been the intention of the Legislature to preserve every legal right or privilege, and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons enjoyed at the time of the union."

APPARENT INCONSISTENCY.

This extract seems inconsistent with the conclusion they reached to allow the appeal, virtually depriving the minority of the rights and privileges granted under the Act of Union.

The language of the Constitutional Act which protects the rights of the Protestant minority in the Province of Quebec is not any more comprehensive than the language of the Manitoba Act. If by any possibility the School Act in Quebec was altered to "prejudicially affect" the Protestant minority in that Province—and that although the Supreme Court were to declare the act *ultra vires*, and that on appeal the Judicial Committee of the Privy Council were to reverse that decision—let me ask in all fairness and candor would the Protestant majority of the Dominion quietly acquiesce in so unjust a decision?

Moral—"Do unto others as you would have them to do unto you."

I believe there is a sufficient number of honorable men among the majority element of Canada who regret the breach of faith that has been perpetrated in Manitoba, and that they are ready to make amends if a

remedy can be devised, and that they will not shelter themselves under a judgment—even of the Privy Council—if the decision of that Court is not in harmony with the Constitutional Act as understood as well by those who opposed the introduction of the educational classes in the Manitoba Charter, as by those who supported it, and who pledged the good name of Canada to their faithful observance.

All Parliamentarians in Canada know that in granting the minority the right to establish Separate or denominational schools, the concession carries with it exemption from the Public school taxes, and a share of the monies granted for Public school purposes so long as the minority support their own schools.

Unfortunately the Privy Council did not understand the full effect of granting minority educational rights and privileges under our system as existing in Quebec and Ontario, and have thus committed a grave error of judgment, depriving the minority element in Manitoba of their vested rights—offending the sensibilities of two millions of Her Majesty's loyal subjects in Canada, who, until this wrong has been righted, will never again have that respect or regard for the Judicial Committee of the Privy Council that they formerly entertained.

R. W. SCOTT.

Ottawa, April 17, 1894.

Anglican Confusion.

Members of the Anglican Church in all parts of the world are a prey to the unfortunate difference of opinion and confusion of doctrine by which their brethren in these islands are beset. An Anglican Congress was recently held at Hobart, in Tasmania, and a number of proposals were made for promoting the interests of that denomination, but they were well-nigh all defeated through the absence of unity amongst those present. Some insisted that the Church should receive a name "appropriate to the Anglican body in the colonies." None could be decided on. Others call for a new Hierarchical constitution, with patriarchs at its head, but this scheme fell flat on the question being asked, "Who is to make them?" Plans for the creation of greater harmony of doctrine were advocated by various speakers, but they were put aside on the ground that "the more they pursued them the nearer would they approach to the Church of Rome." That is to say that the Anglicans are in a predicament which is to them extremely awkward. They cannot secure unity except by approaching the Church of Rome, and they cannot approach the Church of Rome without incurring the danger of being attracted into it.

It is sometimes difficult to determine whether the princely prodigality or the Yankee thrift of British noblemen is the more to be admired. A Tory lord, who has an immense fortune, has sold in public market all the game killed on his hunting preserves this year, and as the "bag" for the season comprises 20,000 pheasants, 7000 partridges, 5,000 hares and many rabbits, the income therefrom must have been very considerable.

The West Indian migratory crab is the only creature that is born in the sea, matures in fresh waters, and passes its adult life on land. Once a year these creatures migrate in thousands from the uplands of Jamaica, deposit their ova in the sea, then migrate to the rivers and streams, pass through a fresh water stage, after which they follow their parents to land until the time comes for them to return to the sea to lay their eggs in turn.

THE HORSE.—noblest of the brute creation—when suffering from a cut, abrasion or sore, derives as much benefit as its master in a like predicament, from the healing, soothing action of DR. THOMAS' ELECTRIC OIL. Lameness, swelling of the neck, stiffness of the joints, throat and lungs, are relieved by it.

Curing a Dead Man.

"I was employed to cure a dead man," said Dr. C. R. Gregg of St. Paul. "I was awakened during one night and found a lady awaiting me. She told me that her husband was very ill and for me to bring my medicine cases and some surgical instruments, as I might have to perform an operation to assist him to breathe. It was but two blocks from my office to the house of my patient, and as we entered the room where the man lay no one else was visible. At a glance I saw that he was dead. I told the wife that her husband was beyond the reach of mortal aid. He is not dead, and you must cure him," she said and locked the door. Then going to a dressing case she procured a revolver. I saw that she had become crazed and was at the time a dangerous lunatic.

"Making the best of the situation, I began a surgical operation on the windpipe, the woman watching me closely. I worked with the corpse and prepared medicines for three or four hours, assuring the woman that I would save him if possible. Succeeding in disarming her fears, she began to have entire confidence in me, and when I fixed a potion and gave it to the corpse, seemingly taking a similar one myself, I induced her to take one in order to quiet her nerves, as it might be some time before any change took place in the condition of the patient. I soon had the satisfaction of seeing the woman fall upon the floor in an insensible condition, and I made my escape from the house, calling sufficient assistance to attend to the wants of the wife and prepare the husband for burial. But I don't want any more calls to resurrect the dead under the superintendence of a dangerous lunatic."—*St. Louis Globe-Democrat*.

The Camel Has Virtues.

The camel has virtues—so much at least must be admitted—but they do not lie on the surface. For instance, he carries a water cistern in his stomach, which is meritorious. But the cistern ameliorates neither his gait nor his temper. Irreproachable as a beast of burden, he is open to many objections as a steed. It is not pleasant to ride a beast, which not only objects to being ridden, but which cherishes a strong personal antipathy to the rider.

You know he hates you from the moment you walk around him, hesitating where and how to begin the ascent of his hump. He snarls if you move in the saddle, and stares angrily around at you if you attempt to move him in any direction save that in which he intended to go. If you persist he tries to bite your feet. If biting you, doesn't answer, he lies down.

Now, the lying down and getting up of a camel are performances designed expressly to inflict grievous bodily harm upon the rider. Thrown twice forward and twice backward punched in "wind" and damaged in spine, the luckless novice receives four distinct shocks, each more sudden and unexpected than the last. He has a superfluous joint somewhere in his legs, and uses it to revenge himself upon mankind.

His paces, however, are more complicated than his joints and more trying than his temper. He has a short walk, like the rolling of a small boat in a chopping sea; a long walk, which dislocates every joint in your body; a trot that reduces you to imbecility; and a gallop that threatens sudden death to the daring experimenter.

"A wolf in sheep's clothing"—the substitute offered by the "cat er" as being just as good as Ayer's Sarsaparilla. If you don't want to be bitten, insist upon having Ayer's Sarsaparilla, even if it is a little dearer. Depend on it, it will be cheaper for you in the end.

There is little need of becoming a slavish follower of petty customs. The sensible and sincere are above them.