

Manitoba School Case.

tion of the veto of the crown. Why was it necessary, if these matters were legislative as distinguished from judicial, to deal with them at all upon this view if it had been intended to bring in the larger legislative authority and the power of the Dominion Parliament? But for the mere purpose of annulling an Act, if it was intended to give a discretionary power to the Governor General, the answer is he had got it; because at any time within two years after assent given by the Lieutenant Governor to the Act he might under section 90 disallow it.

The Lord CHANCELLOR.—He disallows it as a whole, and could not disallow a section.

Mr. HALDANE.—That is so.

The Lord CHANCELLOR.—It might be a very subordinate point, and yet it might be very objectionable to defer the beneficial legislation.

Lord WATSON.—And it might be very desirable in the public interest that the Act should be retained, but yet certain provisions ought to come out and clauses be introduced for the protection of the minority. He could not effect that legislatively but for the enactment of this statute.

Mr. HALDANE.—But it would be a powerful instrument in his hand for the purpose of putting pressure to attain the object.

The Lord CHANCELLOR.—Still you would not dispute this—if these provisions are stipulated for the protection of those who have particular views with regard to education, they might well have stipulated for such an appeal to the Governor, even though he had the power of disallowing the Act.

Mr. HALDANE.—It might have been so.

Lord WATSON.—He would not otherwise have the power to decide what ought to be done and to have it legislatively enacted, though the provincial legislature refused to be a party to the Act.

Mr. HALDANE.—All I say is if it is so it is a circumstance to be taken into account in construing this section that the matter was not one which, having regard to the limitations of subsection 1, was wholly within the power of the province.

Now, my Lords, if the other construction is taken there is rather a curious state of things, because in 1871, immediately after this Act got Imperial validity, it was unquestionably possible for the provincial legislature to have passed the Act of 1890, and no question could have been raised about it. Then comes the consequence, if the construction contended for by my learned friends is right, that what the legislature had power to do, and what in ordinary circumstances they would have the power to undo, or alter, or vary at their pleasure, as the necessities of the changing condition of the persons entrusted to their jurisdiction demanded, they are deprived of having power to do by their own Act. I do not say it is not a possible conclusion to come to, but it is not a very usual one.

Lord MACNAGHTEN.—I suppose you must bear in mind the situation of the parties and the population at the time. I suppose an Act like that of 1890 could not have been passed, and I suppose it was necessary to pass some Acts with reference to education at that time.

Mr. HALDANE.—There might have been Acts of a different kind in New Brunswick and Nova Scotia. The Acts passed have been purely undenominational.

The Lord CHANCELLOR.—In the very next year after the admission of Manitoba to the union, there was a law passed. They began at the outset by passing a law relating to denominational education, and one knows that it was an arrangement between Protestants and Roman Catholics. Each of these classes must have been consulted before you could arrive at an agreement in favour of the union, if they were coming into the union. Is it an unfair inference that at that time both parties understood one another, and that denominational education with protection to the other party would be provided in Manitoba? We find they did so legislate the next year; and if that be the case, may not that explain their not having made any demand which would have prevented such an Act being passed, because it was a matter they had reason to know was not within their contemplation at all? Is it not shown that that is not a mere speculation, but probably well grounded, by the fact that they did in the next year pass this denominational system?