

Manitoba School Case.

not to destroy any privileges or rights existing at the time of the union? Further than that, if you legislate within your powers the minority shall not be without protection; there shall be then an appeal to a superior authority, the Governor General in Council, and if he thinks that within your powers you have been depriving the minority of any right or privilege in relation to education then he may express that decision, and effect shall be given to that decision or may be given to that decision by the Dominion Parliament." I do not see anything extraordinary or inconceivable or revolting to one's notions in such legislation. I don't say that it follows, that that is the legislation; but then you are asking us apparently to abstain from giving to wide words their apparent meaning, because there would be something repugnant to ordinary notions in legislation of that description.

Mr. COZENS-HARDY.—Yes; that is the way I put it.

Lord WATSON.—As far as I can see, and as far as I understand, the Dominion Parliament have no power whatever to originate legislation with regard to education in the province. They have power to interfere, and that for remedial purposes only, when their attention is called to certain grievances by the Governor General, accompanied with the statement that the Governor General is of opinion that these grievances ought to be remedied in a particular way. Whether the Governor General must point out what that way is or leave it to the Parliament, I do not think it is necessary to determine.

Lord MACNAGHTEN.—And that the provincial legislature has declined to set matters right.

Mr. COZENS-HARDY.—With submission, is that last qualification right? The first part of subsection 3 does not seem to require that.

Lord WATSON.—That indicates that the legislation of the provincial parliament is not to be treated as *ultra vires*. They are to have a chance, if the Governor General thinks right, of remedying their defective legislation by putting in a clause for the protection of those rights and privileges referred to in subsection 2. If they decline to give protection in the way suggested, or in any way, then it becomes matter of reference to the Dominion Parliament.

The Lord CHANCELLOR.—Can you say that under the first part of subsection 3 the Governor General is to keep a sort of constant eye upon the legislation of the province? Is not that part of subsection 3 only applicable where there is an appeal under subsection 2, and where it is brought by means of that appeal to the notice of the Governor General? You suggest something much wider?

Mr. COZENS-HARDY.—Yes. The second part deals with cases where the provisions have not been duly executed. The first part is not limited to that.

Lord WATSON.—What is the meaning of these words? This is an exception from the exclusive powers of the province and an exception in favour of the Dominion Parliament. What power have the Dominion Parliament to interfere at all or to legislate upon the subject unless the Governor General has taken the initiative and expressed to the provincial legislature his opinion that certain legislation is necessary and the provincial legislature has declined to pass it?

Mr. COZENS-HARDY.—Your Lordship does not find that limitation in the first part of subsection 3, though you do in the second part.

Lord SHAND.—But suppose you are right in that, does it make any difference? It does not affect the construction of the previous clause. The mischief must occur before there can be any appeal.

Lord WATSON.—Your first contention is that the only appeal given by subsection 2 is an appeal in respect of an interference with a right or privilege referred to in subsection 1.

Mr. COZENS-HARDY.—Yes.

Lord WATSON.—If your interpretation of subsection 2 is right *cadit questio*, no such appeal has been made to the Governor General in this case. On the other hand, if their Lordships should be of opinion that your construction is not right, and that subsection 2 brings in what have been called post-union rights and privileges acquired through legislation by the minority, it does not appear to me to be a very important