

## Manitoba School Case.

Lord SHAND.—Do you mean the two judges in minority would not have come to the same conclusion without subsection 3 of the British North America Act?

Mr. COZENS-HARDY.—I do not know that I can quite say that; I am not putting my case so high as that.

Lord SHAND.—I think it could not be put so high as that.

Lord WATSON.—There are some strong statements to the effect that it ought to be assumed; that the intention was to assume it.

Lord SHAND.—I rather read the two judg-s, as putting it alternatively, that with the act of 1870 alone they would come to the same result, but with the light of the Act of 1867, it was made clearer.

Mr. COZENS-HARDY.—I venture to think they were influenced undoubtedly by the conviction which they formed that subsection 3 of section 93 so far as it differed from section 22 assisted their view and enabled them to arrive at the decision which they did arrive at.

Now, my Lords, dealing with section 22, and with section 22 alone for the present, what is its object? I venture to submit to your Lordships that its object is to define and to limit the exclusive powers of legislation which were given to the provincial legislature of Manitoba in and for Manitoba. It shows an intention to preserve the rights and privileges with respect to denominational schools which existed at the union and those only. It enabled the legislature to pass a law affecting and prejudicially affecting any right or privilege with reference to denominational schools which was created only by post union legislation and which was not in existence at the date of the union. And further that the only effect of subsection 2 is to give a special means of testing whether the legislature has or has not gone outside of the limits imposed upon it by subsection 1. Now, my learned friends have argued that cannot be. They say that cannot be because if the Act is *ultra vires* that is a point which may be raised, and properly raised, in proceedings in the ordinary courts of law.

Lord WATSON.—Then it really and truly comes round to this contention that in construing subsection 2 you must read the words "affecting any right or privilege of the Protestant or Roman Catholic minority" just in the same way as though they ran "affecting the aforesaid right or privilege."

Mr. COZENS-HARDY.—Yes.

The Lord CHANCELLOR.—Aforesaid does not say anything about majority or minority—"affecting the rights aforesaid" you substitute for "affecting any right or privilege of the Protestant or Roman Catholic minority relating to education." Is not there rather an objection at the outset to such a construction from the altered language of subsection 2? The words at the end are very much wider than the words of subsection 1. Would it be according to ordinary rules of construction to limit them in that way?

Mr. COZENS-HARDY.—I suggest to your Lordships there was a special reason for giving this means of testing.

The Lord CHANCELLOR.—I am not on the "means of testing." Suppose you are right in saying you can shew reasons which would justify them, what I am calling your attention to is your argument that this second subsection relates only to matters referred to in the first. What I am pointing out is that where you have such a change of language as you have here for the words "any right or privilege which any class have by law or practice in the province at the union," and when you find instead of those the words "affecting any right or privilege of the Protestant or Roman Catholic minority in reference to education," the ordinary rules of construction suggest that the second *primâ facie* means something different from the first.

Lord WATSON.—If the legislature had chosen so to limit the right of appeal expressly to the aforesaid right without saying anything more, I should not have been prepared to challenge the propriety or reasonableness of what they had done, but it does not in the least follow that I am to be guided by that circumstance.

Mr. COZENS-HARDY.—In considering subsection 2 and subsection 3 also, it may be necessary, and probably is necessary, to consider what are the functions of the Governor General. Has he any judicial character?