for the information of the Ministers, were immediately withdrawn when Counsel for Manitoba proposed to put in affidavits in answer. Matters of actual fact were completely ignored. Matters of assumed and alleged fact were made the basis of the argument and decision.

However, the petition of appeal was laid before the Governor-General in Council, that is, the Ministers of the Crown. Upon the presentation of the petition, the late Premier, when the Council assembled, announced that the Ministers sat in a judicial capacity to discharge judicial functions, and deprecated public discussion of their action on the ground that the question had ceased to be a political one and had become a judicial one. And before proceeding to a hearing of the petition, he announced that there was a doubt whether there was power to hear the appeal—whether it was a case in which an appeal could be taken—and in order to resolve this doubt he proposed to submit certain questions to the Supreme Court of Canada with the right of appeal to the Judicial Committee of the Privy Council. If the answers to these questions indicated that there was a right of appeal, the appeal would be heard ; if not, there the matter ended.

It became very apparent, at this stage, that the Government had determined to act on the petition. It may be said that their course was perfectly logical—first ascertain that an appeal would lie, and then hear it. And it would be discreditable to the memory of the great man who then presided if it could be said that he took an illogical position. But it is too logical for daily practice. It is perfectly consistent with the assumption that the Government, having considered the matter for several years, having (or the members of it having) promised that the expenses of the appeal to England would be paid, having through the Premier promised that if the first appeal was unsuccessful he would entertain favourably their appeal to the Governor-General, had made up their minds to grant the relief, and lest their action should be subsequently challenged had determined to ascertain beforehand how far they might go. When we take into consideration also that not long ago, but before the hearing of the appeal, one or more of the Ministers publicly declared that he or they would resign if the relief were not granted, it may be taken as certain that the assumption is correct. It is hardly possible that these Ministers held different views a few months previously. The question, whether an appeal would lie or not, would have been a purely academic one and the ultimate decision of no practical value, unless the intention had been to grant the appeal. The suggestion is valuable only when we consider that the Government professed to approach and deal with the matter, not as a question of policy, but as one of judicial cognizance ; and the value of a judicial utterance is vastly reduced if there is the slightest ground for belief that the judges had, before hearing the appeal, made up their minds to pursue a given course in any event, if only they had the power to do so.

Be that as it may, however, the questions were asked. They are set out in full at page 6 of a report of the case before the Judicial Committee printed for the Government of Canada. In a condensed form they are as follows :—

1. Is the appeal such an appeal as is admissible by the B. N. A. Act or the Manitoba Act?

2. Are the grounds set out in the petitions of appeal such as may be the subject of appeal under those Acts?

3. Does the decision in *Barrett* vs. *Winnipeg* conclude the appeal for redress?

4. Does the British North America Act apply?

5. Has His Excellency power to make the declarations or remedial orders asked for, assuming the facts to be as stated in the petitions of appeal, or has His Excellency any jurisdiction?

6. Did the Acts of Manitoba, prior to the Act of 1890, confer on or continue to the minority a "right or privilege in relation to education" within the meaning of section 22, sub-section 2, of the Manitoba Act; if so, did the Act of 1890 affect any right or privilege of the minority in such a manner that an appeal will lie to the Governor-General in Council?

I have omitted reference to the British North America Act in the last question, because it was held not to apply.

Now at this point I must again call attention to the already determined fact that no right or privilege existed at the time of the entrance of Manitoba into the Dominion which was saved from the powers of the Manitoba Legislature ; and therefore any right or privilege which was affected by the Act of 1890, was a right or privilege given by the Manitoba Legislature itself ; and was therefore one which remained a right or privilege only until the Legislature, having power to repeal or vary its own acts, might lawfully take it away. Inasmuch as they might lawfully take it away (and they had the right to do so, as we have seen), the question placed before the Dominion Government clearly and unmistakably was this—Although the people of Manitoba almost unanimously agreed that a Public School System was better than a Separate School System, is the Dominion Government of the opinion that a Separate School System is so much better for the inhabitants of Manitoba than a Public School System (although the same inhabitants are not aware of it) that, having the power to do so, it should order the restoration of the Separate School System? That was the sole question to be determined by the Government, and before determining it, they asked advice as to whether they had the power to effect this vital change of policy and impose it upon a Province against its will.

It is proper to observe here also that although the Government asked this advice they were not bound by the result, although the contrary has been vigorously maintained. The Act under which the case was submitted to the courts declares that the judges shall certify their opinions to the Governor-General in Council, and shall be advisory only. There is no judgment of the court entered, and no judgment could be entered or could be compulsory upon either the Governor-General in Council or Parliament. Mr. Blake, who could not be accused of bungling his clients' case before the Judicial Committee, upon Lord Watson's remarking that the Governor-General had not asked for a political decision which would fetter him in any way, answered that "the law which created the tribunal for the purpose of giving advice expressly states that in their political capacity they are not bound by that advice:" case, p. 39. It is ludicrous to suggest that Parliament could abdicate its own independent position, or surrender the executive or political authority of the Sovereign to a court. It would be a flagrant act of disobedience to the B. N. A. Act ; an abnegation of the sovereignity of the British Parliament which passed it. Again, on the reason of the thing, how could the Governor-General, by simply asking the questions, "Will an appeal lie in this case assuming the facts I have stated to be correct? Have I any power to act in this case," be bound by an affimative answer to act? The answer to this question is, "Yes, you have the power, use your own discretion as to whether you will exercise it." If he had asked, "Have I the power to disallow an act of the Province of Manitoba?" and had been answered in the affirmative, would any one seriously contend that he would be bound to disallow it? If the decision of the court on this was compulsory, why interpose another hearing between it and executive action? If the decision had been compulsory, why not let the Governor-General act at once in the purely formal manner in which alone he could act, and why enact the farce of hearing argument where he had only one course to follow? A more stultifying course could not be adopted than for the whole Cabinet to sit in array and hear solemn argument, and at the same time assert that they had power to pursue one course only. The habits of thought, the intellectual calibre of any person who could adopt such a proposition must be, to say the least, peculiar. But party training is severe, and perhaps habits of thought are not acquired in that sphere. I have seen it asserted that party politicians give out their thinking as they give out their washing, but do not get it back as clean. The practice of submitting such questions is analogous to that of the House of Lords in its appellate capacity, which enables that august body in important cases to take the opinions of all the judges of England on questions of law for its information. But, the opinions being received, the House is not bound to adopt them, but may still act upon its own judgment. A similar practice obtained in the Court of Chancery, and, upon the consent of the parties, that court could send a stated case to a court of law for their opinion ; but the opinion did not bind the Court of Chancery when received. Lawyers will readily recall this practice, but lest my assertion should be challenged I refer to authority: *Prebble* vs. *Boghurst*, Swanston at p. 320.

I now refer to the judgment of the Privy Council upon the questions asked, premising (as can be seen from the