

The Lord CHANCELLOR.—That is another thing. Is not that the basis of these educational provisions, that it was not proposed to trust entirely, as in other cases, to the power of the majority to determine what the legislation should be.

Mr. HALDANE.—I think it is so. I think it is intended certainly to make some special provision. But now, my Lords, that does not so far affect the point which I am upon, which is, that we start with the assignment of education to the provincial legislative authority, and certain limitations and certain limitations only defined as limiting that right, and when you come to the construction of the limitative provisions, we suggest to your Lordships as the canon of construction, that things must be presumed to be within the competence of the provincial legislature, excepting in so far as they have been taken away by the limitative provisions.

Lord WATSON.—I think you are entitled to make that observation by the terms of the clause itself.

Mr. HALDANE.—Yes.

Lord WATSON.—Then it has on the other side to be shown that this is one of the matters excepted.

Mr. HALDANE.—The burden must be on them to show it is so.

Lord WATSON.—It does not rest on that only.

Mr. HALDANE.—Of course it is always a question of construction and a question of construction merely; but we start with that.

Now, my Lords, that being so, and bearing that in mind, I pass to the construction of the section, and this is the construction which I suggest for your Lordships' consideration: that subsection 2 exhausts the limitations upon the legislative powers of the provincial legislature. Starting with that presumption that the legislature is to have the supervision of educational matters and the power of legislation, and starting with this that you have got these words specifying the provisions according to which the right is limited, you come in subsection 1 to what I suggest is the only limitation upon the power of the legislature to make laws. It is not to 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. If those words had stood alone there would have been no doubt they would have been equivalent to an affirmative statement that in respect of any other legislation the provincial legislature had complete competence. Then we come to subsection 2, and the question is whether subsection 2 cuts down what has already been stated in subsection 1.

The Lord CHANCELLOR.—Cuts down? I do not understand that.

Mr. HALDANE.—Yes.

The Lord CHANCELLOR.—Do you say it cuts down?

Mr. HALDANE.—I say it does not, but in subsection 2 you have merely general provisions to be read consistently with what has gone before.

The Lord CHANCELLOR.—I do not think anybody suggests it cuts down. I thought the suggestion had been that it enlarged.

Mr. HALDANE.—On subsection 1 I have stated what my argument is: that you have got an exhaustive definition of such limitations as there are upon the legislative power of the provincial authority.

Lord SHAND.—You are going on to say that subsection 2 deals merely with rights which persons had at the union?

Mr. HALDANE.—No, my Lord, not necessarily so in the case of non-legislative Acts and decisions.

Lord SHAND.—It is contended on the other side that it deals with rights that persons may have acquired *post* union.

Mr. HALDANE.—That is not quite my argument. In subsection 1 you have negatively a restriction upon the power of the legislature and affirmatively a statement by implication that the legislature has complete power to make any law as to education it pleases provided they do not infringe rights and privileges at the union and as incident to that there is an appeal if a law is so made.

The Lord CHANCELLOR.—You cannot separate it from this, that these powers are all subject to the whole of the following provisions.