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The Northwest Berien

OUR ARCHBISHOP'S LETTER.

ST. BONIFACE, Dec. 12th, 1892. Messrs. E. J. Dermody, & Co.

GENTLEMEN—I see by the last issue of the NORTHWEST REVIEW that you have been instructed by the directors of the journal with the management of the same, "the company for the present retaining charge of the editorial columns"

NOTICE.

NOTICE.

The editor will always gladly receive (1) ARTICLES on Catholic matters, matters of general or local importance, even political ff not of a Party character. (2.) Letters on similar subjects, whether conveying or asking information or controversial. (3.) News NOTES, especially such as are of a catholic character, from every district in North Western Ontario, Manitoba, the Territories and British Columbia. (4.) Notes of the proceedings of every Catholic Society throughout the city or country. Such notes will prove of much benefit to the society themselves by making their work known to the public.

WEDNESDAY, JANUARY 25.

MORE, ANENT THE BISHOP'S CHARGE

His Lordship, the bishop of Rupert's Land, in his recent address to e Synod of the church of England, said: "No one can desire to return to a state of things common enough not long ago, when there was little instruction of any when there was little instruction of any kind, even of a religious character.' Again, as in our article of last week, we have to complain of the indefinite language of the bishop What does he mean by "a state of things common the enough not long ago? Does he refer to the educational system in force prior to the school act of 1890? If not, where is the sense of making such a remark? But he must mean the old system, But he must mean the old system, otherwise his words are senseless. Well, then, can his Lordship realize the the Confederation ac, perfectly clear. The third entered in which his longuage in the Confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in terms applies to a case in the confederation in the confedera predicament in which his language which there was no separate school system prior places him. The Bishop is targely so she unton, but applies only so cases where such a system was subsequently erected. The responsible for "the state of things riphes and privileges therefore to which it common enough not long ago!" And if refere must include those created after the under that system "there was little union.

Such is the Couf deration set and such was instruction of any kind, even of a religious character," how can he escape from on and the interaction of the system of the syst a large share of the responsibility for its absence? Under the system of "not long ago" there were established two sections of public schools, Catholic and Protestant. We showed in our last article "that the Catholic schools were giving, feeted by local and evanegens passion, would according to the jealous complaint of his exercise a custolling, power over local legis Lordship, not only a primary, but lalso such a good and cheap higher education that Protestants were drawn to them. Therefore, if his Lordship meant what he then said regarding those Catholic schools, his remarks now about a certain system of schools "when there was given little instruction of any kind even of a religious, character", cannot in any way apply to Catholic selools. Phen, to what schools do his Lordship's remarks apply? There were none others in the province except the Protestant schools ever which, from start to finish, the bishop was the head and, we had almost said, the tail. Does the bishop see where his careless remarks land him? But we can and will give him stronger proof, if necessary, of his inconsistency. When Mr. Martin proposed making the change, from which his Lordship now says; "No one can that there are not two limitations here, but the limitation and a remedy for desire to return," we think we are correct the hereob—that the limitation problems violain stating that he was among those who to in criebts at the union and that the appear in stating that he was among those who is in one of the violation of such rights. opposed the change. Even after the any that Lam well agare of this because last change was made and his Lordship and July I heard it argued at great length before the Rev. Dr. King succeeded in preserving the religious instruction, the same accounting the religious instruction. as it was in the Protestant schools, the same account of the matter. They argued that the proceedings in the action were for the new public schools, he wrongly taken; that the courts had no jurisget remained opposed to the change from detion; that if the set was ultra vires there

. . . "In one year after his Lordship went heartily into Mr. Martin's new system, and six months after that system was organized, he le, an to find fault with it from a Protestant standpoint." This was our statement, made on the 11th November, 1891. In our issue of the 25th of the same month we published a letter from view and the view which I presented to your lord-view and the view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and the view which I presented to your lord-view and view In our issue of the 25th of the the Listop, in which he specifically and emphatically denied what we had stated. He said "It is very far from the case that I have ever expressed hearty approval or any approval of Mr. Martin's School Bill."

"I think if you read over carefully the quotation you make from my aldress to Club Rates—six copies of the Northwest.

REVEW for \$10. In ordering for clubs, the full number of subscriptions, with the cash full number of subscriptions, with the cash must be sent at one time.

The Northwest Review is the official it, you will recognize that the national it, you will recognize that the national the Synod of Enpert's Land, even as system I there speak of is the system of state supported schools, established on the formation of the province—NOT THE PRE-SENT SYSTEM.

. "I have only further to add as to my position on the question, which has never in the least changed, that while not satisfied with the former arrangement for separate schools, I have always advocated separate schools being allowed, under what I should consider proper arrangement for the state, and that I regarded Mr. Martin's school legislation with apprehension from the the management of the same, "the company for the present retaining charge of the editorial columns."

I need not t-il you that I take a deep interest in the Northwest Review which is the only English Catholic paper published within the limits of Manitoba and the Northwest Territories. I hope that you will obtain a remunerative success. It is enough that the editors do their work gratuitously, it cannot be expected that the material part of the publication should remain without remuneration. I therefore strongly recommend to all Catholics under my jurisdiction to give a liberal support to the Northwest Review. Lordship surely pays himself a doubtful cannot be responsible for every word contained in it. The editors write as they think proper, they are at full liberty to say what they wish and in the way they like best they wish and in the way they like best they express and I have no hesitation in stating that the principles announced by them are sound and ought to be endorsed by every sound Catholic in this country.

I therefore consider that you enter a good work and I pray to God that He will bless you in its accomplishment.

Yours all devoted in Christ, †ALEX. ARCHBISHOP OF ST. BONIFACE, O. M. I.

MANITOBA MINORITY.

MANITOBA MINORITY.

so essential that without it confederation oculd never have taken place, (w Sir Oliver Mawat tells us) and the compromise was this: shan the provinces should have jurisdiction over education, but should in the exercise of that justicitation be subject to cortain restrictions and limitations for the protection of migorinies These restrictions and I mitations were of two kinds, first, the provinces were to have no power to prejudically affect any right or plivilege with seep or to denominational ach of which any class of persons had by inw at the date of the union, and, second, an appear should lie to the Governor General in-U-uncil whenever any right or privilege of the religious minority was affected in an province in which separate achoels bad one was affected in any been established, whether before or after the union, and the Governor General could call upon the legislatures to pass laws for the pur

pose of carrying out his award.

That was the compromise agreed upon. The provinces in the matter of education shall not As to other matters their power shall be subject to appeal, and their work subject to revision, by the Governor General in-Compell.

Now let me point out that the Confederation

sos speaks of swo classes of rights and priviand by the federal parliament.

guard the interest of the minorities in all the provinces wheeher Protestant or Catholic, system under which the provinces were not left to comend with one another with reci procesy of intelerance, but under which the central power backer ins authority ros upor local asjurities but upon all the majorities and herefore being more certain to be unal

Manitoha cuttered the union in 1870. At that sime Protestants and Ruman Catholics were there is about equal numbers. The question of education was certain to be one of the first things dealt with by the legistature which the uld there be erected, and it became the duty of the Diminion parliament to seek such a constitution as would heat subserve the torerests of the future inhabi ans. Again with reference to education? The people are aith reference to education? The people are at present about equally divided, but it is inevisable that one side or the other will in years to come he in the majority. Shall we leave them to fight to on or shall we provide for the future minority? Following the precedent of the Confederation act, and the distance of all experience, the latter course was advented. Power was given to the leaded ture adopted. Power was given to the legislature to make laws with reference to educaton, bu no plenary power was accorded. There are sgain two limitations, first, that the legisly the should have no power prejudically theory ights which existed as the union; an second, that there should be an appeal so th Governor-General-in Council whenever any fight or p ivilege should be affected.

Now I am well aware that it will be urged yet remained opposed to the change from which he now says "no one can desire to return," And here is our proof: In our issue of the 11th of November 1891, we stated, editorially: "Nor can it be said that his Lordship (the Bishop of Rupert's Land") was in any way prejudiced against the new system, (Mr. Martin's School Act), for he favored it from the school and the said that the point was the complete overthrow of the idea and the argument upon the merits proceeded. In order that the point

debated may clearly appear perhaps I may be allowed to quote from the remarks of jodges and counsel made during the arguments:

The attorney-general—I [contend that sub-sections 2 and 3 do not depend on ultra virus at all. Sub-sections 2 and 3 depend upon the Protestant or Catholic minority being able to make a case before the governor-general on petitin that other legislation is required. It does not suggest that the act which the governor is going to consider is an ultra vires act. It might be perfectly legitimate and lawful, passed by the provincial legislature within its narrows at powers.

view and the view which I presented to your lordships appears to me to turn upon the construction and effect which he pu is upon the sub-sections 2 and 3. Now, there at once I mu to the sub-section 2 and 1 do not agree that sub-section 2 does not relate to anything but what is ultravires. I cannot for my-set frame the proposition which would lead to the infere ce that suc-section 2 was it to ded to deal with cases which were untravires.

Mr. McCarthy—Now the ordinary rule is the when in a matter of this rund a particular remedy is pointed out in the statute which confers the right, of course thas special remedy must be followed.

Lord Watson—assucing that they had done what they had power to do u der the constitution of Manittobs, I mean if they were establishings sparate a digention schools then their acts with regard to these schools might come under section 3 Schools might come under section 3

Mr. Mc Jarthy—That is what I was venturing to contend could not be dons.

Mr. Mc Arthy Hist is what I was tending to centend could not be don.

Lord Wats n - The right to determine whether the province has exceeded its powers or not in one thing but u doubtedly hat; contemplated here is teases of excess of power by the provin ial logical sture; but cases were acting within their power they have now done what the minority thou, he justice. Subsection 2 would suggest this: That the Dominion Legislature were under the impression that there might be provisions within the power of the Provincial Legislature which would affect the rights of these persons without affecting the minority prejudicially in the sense of subsection one so as to make them ultra aires.

I refer to the proceedings of the jadicial committee for two purposes: (1) To show that the committee decided that these two and-seeming did not stand in the relation of limitation at dremedy; and (2) to show that, according to Lord Watson, "undoubtedly what is consemplated" in the second embedded in the se the provincial legislature, but cases where acting within their power they have not done what the majority shought justice."

And indeed the matter seems to me, with all deference to those who argued otherwise, to be not open to question. Of what possible utility is a power to appeal from an ultra vires statute, and what remedial legislation would be necessivated by an ultra vires act. An ultra vires at tate ex vi termini is nothing at all. How can we appeal from nothing at all? How can we appear from doining at all?
How can we ask for remedial legislation if
there is nothing to remedy? Surely the first
requisite of a remedial action is a living subject Y u don't supply remedies to dead Y u don't supply remedies so dead e. Ou the contrary you bury them, being as they are actually defunct and no-properly amenable to medical skill. Suppose that the Manitoba Schools act had been held to be ulara vires and therefore dead still form, never any vitality in it, would we be here to day appealing from it? And if we were day appealing from it. And it we were would we not be told that we were taking altogether too much trouble over a mere corpse? And yet it is said that we cannot appeal because the act is alive, because it is not mere dead jumber, in which case also we would not appeal. If i were ultra vires it is admitted that we could appeal, but only to be laughed at. As it is not we cannot appeal at all. In order to found an appeal there must be a good act, and a good act cannot be appealed from. Suca are are finding some aur rency- even in the newspapers.

Again we can only appeal from a statu: which affects rights or privileges. We mus: be able to shew that we are burs. But how can an ultra vires act affect rights, privileges or anything else? How could we possibly say statute gives an appeal in some case or au-other. Clearly is must be from a statute—a real vertable statute and not from a form, figure or simulation of a statute.

Allow me to answer this argument, in another way. Lat us suppose that the drafts man of the Manitoba act desired to prohibit the legislature from passing certain laws and to privide a remedy in case the prohibition were disregarded how would be have proceed d? The first subsection would no doubt bave been drawn as it appears, but the second would clearly have been in this fashior: — An been drawn as it appears, but the second would clearly have been in this fashfor:—An appeal shall lie to the Governor General in council from any act of the Legislature prejudicially affecting such rights or privileges. But instead, as I shall proceed to show, that subsection provides for a socally different set

In my address before a commissee of your honorable council on the 26th November last I entered into a more minute comparison of the language of the two sub-ercitions purpose of showing their disimilarity—of showing how impossible it is to contend that they award in the relation of probibition and remedy, than I intend to undertake to day My remarks upon that conston were very fully reported, and have been, thanks to the enterprise of the press, widely circulated. Au official report also, I am informed, is in the possession of the council. I shall, therefore, abstain from a reposition of the argument to be derived from such a comparison, contenting myseif by pointing out in a general manner that there is nothing in common between the

sub sections. Under sub-section one an Episcopalian or Presbyterian as such could complain; while under sub section two they could only com-plain, it at all, as belonging to the body of

2. Under sub-section one any Protestant could complair, while under sub-section two an a were in a minority in the province. As a concrete example, Mr. Logan as an Episco-patian had a sufficient loous standi before the judicial commisses of the privy connoil, but he never could appeal under sup-section two because the Roman Casholics, and not the Protestants, are in the minority in Mani-

Under sub-section one an act is ultra virus and where can be no appeal from it, there being nothing to appeal from, while under sub-section two an appeal is given from lesis lative acts which must, in order to be legisla-

tive sote, be intra vires. Uader sun-section one the rights pre-lare those "with respect to denominarerved are shose "with respect to denomina-tional schools;" while under sub-section two those referred to are "in relation to educa tion." The distinction between these expres sions is the very ground work of the decision of the judicial committee of the privy council.

5. Under sub-section one there must be a prejudicial affecting of a right: while under sub-section two there need be no direct preju dies. Piainly the two sub-sec nothing in common between them. Piainly the two sub-sections have

But it is argued that if my view of the tatute be correct then the act is wholly un recedented and that there is nothing any recences and sum success and which I which I was the local legislature. Was there assign to the local legislature. Was there ever any such thing heard of as an appeal from a legislative assembly? In the first place I would not be disconcerted sould I discover no proceedent or analogy. Show me a pre-cedent for the British North America act. It redicts that the intention is to remedel Con-federation upon the Constitution of the federation upon the Constitution of the United Kingdom. Prof. Bryos (now a mem ber of the Imperial Cabinet) terms this piece of official nendacity and books have been written to prove what it really is model-led upon. The trush of the matter is that it is an original production and we might as well search for the prototype of the American, as for that of the Canadian, constitution. In an original production we necessarily find some original things, but we never on that account refuse to give language its true meaning and insist that this original production is in reality old and stale arriving at this conclusion by eliminating all that is new because there is no precedent

But for those who insist upon precedent and analogy let me say this. What have we here? An act of a local legislature with an appeal to a governor general in council? Yes, but that is not all; the governor general in council can do nothing without the Can-

adian parliament. So that in reality it is an general rule that "when an act of parliament i final indements of provincial course." ace of the local legislature with an appeal to the federal parliament. Some years ago parilament in one shore paragraph transferred landa from the provinces to the Dominion. vi es Rail ways shap had been built largery by pool the vinois i ubeidies were sweps beyond provincial juraction How was that doe? The that provide n limited to judgments increases residence, Perhapson rate always for endered, or to judgments rendered a der power to transfer leaf acoke to too own as tunes which then existed? Often y not be jurisdiction. What is obtay an appeal? Yes, wild apply to all judgments affecting the and more than an appeal, but said the cousti dirallowance? A local legislatura desires to enso.a. The governor general blinks other-wise and obshiows the high-solution. Is not this an appeal? Yes, and an appeal in this case son to runifament, but to the governor general in council merely.

Other examples our essity he given in which provincial jurisdiction is embordizated to Dominion note of partiament Tan assembles may essent certain legislation for example with returned to m. colvency and other mosters which will be vilid in the absence of Dominion registation but the Dominion may array time supercede the proportion at u to This, atthough well known a lawyere may not be sait; accepted by laymen and for those I offer a reference There surely is something starting for those who decisim about provincial stable at thing as Federa rights, as shough the highest provincial pat-riotism confisted in the repudiation of those parts of our constitution which assless to the Federal authorities those powers which seem for the mement to stand in their way. 'In each province see legisla is the section: "In each province sue legisla-ture may make laws in relation to agricul use in the province, and to immigration into the province: and it is hereby declared that the parliament of Cacada may from time to time make laws in relation to agriculture in all and any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province relative to agricul-ture or to immigration shall have affect to and for the province as long and as far only as it is not repugnant to any act of the parlia ment of Canada.

This seems to me something very like at appeal. Manisobs, say, declares that the matter of custing thistles shall be attended to by each individual owner of land wish a penalty merely for neglect. The Dominion penalty merely for neglect. cho see to ord in thatsome public official is to tadt baa tuo era seltside tadt ees shall pay for the work. Even in the matter of outsing shietles the local legislature must how to the Dominion parliament; and are we carprised that with reference to education. perhaps the most important subject in the whole field of legislative action, an appeal should, under well defined or cums ancer, be ested in the Federal parliam n ? Let one therefore say that the present appeal is with us precedent or angles. that it is as idle to talk of interference provincial rights should that appeal in this se be allowed, as it would be to complain of the inserterence of the Supreme cours with s decision of the Mantoba court of Queen's bench. We have our own court, why canuor we make its decisions final and conclusive? Shall not a province be permitted to regulate its own affairs? No, under our constitution is cannot do so. The province cannot evade the appeal which the Dominion parliament has provided shall lie from all final judgments of the Manitcha court, nor should the prov-tuce complain it any other kind of appeal provided for by the constitution be prose

Another question must be answered. As suming that an appeal lies from some ultra vires acts does an appeal lie from this particu-The answer to this question depends upon whether or not the act affects any right upon whether or not the act off-cts any right or privilege of the Roman Uatholic in relation to education. Two points are usually urged against the present appeal. (1) That the Privy Council having held the act to be invra vires there can be no appeal; and, (2) that the Privy Council having held that no right or privilege has been affected, therefore there can be no appeal. The former of these arguments I have already answered. Let me reply to I have alreapy answered. Let me reply to

How can Roman Catholics or any body descapire rights in relation to education There is only one way so far as subset two is concerned, and that is by statute. or privilege which has been acquired under any statute has been af feeted an appeal shall lie. The act means this or nothing, for no right or privilege could otherwise be acquired. No appeal is given in respect of rights acquired by practice. If this be conceded, as is probably will, the only point for debate is whether the statute giving point for debate is whether the statute giving the rights and privileges must have been passed prior to the union, or is there are passed prior to the union, or is there are called to a statute passed after the union. Clearly I say the laster, and for erveral RECREST

First. There was no statute relating to education in Manitoba prior to the union, and to confine the appeal to the violation of such statutes is again to argue that we must appeal from nothing at all, and even worse this time, that we must not have a word to say for ourelves when we do appeal.

Secondly. There is nothing in the statute which limits the appeal to the case of rights acquired before the union. The difference in the larguage in the subsections cannot fail to be ob-erved. One speaks of rights extaining at the time of the union violation of these is ultre vires; the other speaks of rights and privinges in relation to aducation, without any lunt as to date. Violation of these gives a ilmit as to date.

Buseven had we not this difference in the language of the subsections to aid us in their nterpretation yet under the general rules for the construction of statutes there could be no difficulty in sesigning she meaning for which contend. Sappose a statute provided that if one destroyed another man's property he should be imprisoned, would anyone argue that the act only referred to property which was owned at the time of the passing of the act? Suppose a statute provided that if one man inverfered with another man's right to any of his property that he should be fined would any judge limit the set to rights which existed when the statute was passed. And suppose that a statute provides that if a Legis lature (instead of an individual) inteferes with the rights of certain people, there shall be an appeal, is there, in the change from individual to legislature, to be found any good reason for changing the soops of the word

Thirdly. As I have already shown there n be no doubt that under the third section of the British North America act there may be an appeal when rights acquired after the union have been affected. Whatever else may e put forward it can never be pretended that the minority in Mantecha is in worse plight than are the minorities in the other provinces. Is would be a strange interpretation that would except Manitoba from the principle which applies to the other provinces, viz, that whenever there are separate schools there is a ight of appeal in respect of rights acquired

after the union. It really seems to be wasting breath to argue against such possible pretensions, but let me, to addition to the reasons which I have given refer no one or two authorities, illustrative of the rule which I have invoked. (1) The sta-tute 8 Anne, c. 7 provided that "If any probiblied goods whatsover shall be imported into any part of Great Britain then the goods shall be forfeited. A sub-quent statute prohibited the importation of foreign leather provided the importation of foreign leather gloves Chief Baron Thompson said: "Then the question arises whather that statute (of Anne) applies to goods subsequently prohibited by other acts, and we are of opinion that that statute is not so confined in its operation, but statute is not so confined in its operation, but that whenever a subsequent act prohibits the importation of goods the provisions of the 8 h Anne immediately attach, as much as if they had been prohibited at the time of making the statute." (Astorney General v. Saggert, 1, Price, 182). (2) Lord Holt lays it down as a

Creaces a new inderest it shall be governed by the same law than like juterests have been governed before. (Lane v. Comon. 12 Mod., we supreme U ure so pro and or decision of the legislature outer from all first Supreme C. net did in the standard of the protings?" Who the word we say of the Supreme C. net did in the standard of the protings. 486.) (3) Oar own Supreme Cure accepto enpreme judgments of the highest provincial ocurs or sherights, existed as the time of placing, one Saurenie Cours sor, or wheeter they ares tifeeen years after warde.

And the broad good sense of the matter is abundansky apparent. The legislature is connv. d. and worked, in the enjoyment of these that and providege, the rights become as it sees your graphs which may not be effected eh uld the Governor General in Council think the proceedings inequirable or unfair.

My strument is not a mplete without show ing constroine rights or privileges conferred by Manitons legislation have been afficied and ves the fac a mecessary to prove your are

Prior to the union Roman Ustholics had established and were supporting echools for the children of their own faith. The Episco-palisms and Presbyterians were similarly in gaped. During the first season of the Manisoba legislature a neboul act was passed. It schools; could seach what they iked and how they liked. Each proceeded in the way we should have auticipated : the Protestants made their schools secular, or nearly so; and the Roman Cathelies pursued their accustomed policy. With some alterations this law contitued for twenty pears. Under it the Roman Casholics built and equipped a very large num berutschoo's and there never was any well found ed complaint as to the methods they emply ed-save only abas the schools were soo Catholio Ton sor of 1890 professed to abolish both the Processant and Roman Catholic schools and to error public schools. In effect, it abolished the Roman Outho ic repols, left the Protestant ones standing and handed over all the Roman Catholic schools and property to

was changed so public. The name Processant In other respects: he schools to day are the same as when they were called Protestant and were shaped and fashioned by Protestants—many of them Prorestant divines.
Is is one of the errors which (with all due repect to them, the judicial council of the privy council fell into, so suppose that the statue did not work any conficacion of Roman Catholic property. Spealst provision is made by the statute for the reli f of Roman Oatholics in districts where there were schools of both kinds, but of there districts there were very few. No similar provision is is made for their protection in the great majority of cases. In over seventy districts the Roman Catholics school are by the statute to become public schools which means that Roman Catholics are to walk out of mem, and that education is to be carried on there upon an almost purely secular footing. That the Roman Catholics have not so far been com pelled to hand over their apparatus and materials in those districts is simply this that there are no Protestants in these districts to

And trie leads me to point out not only the

is jury inflicted by the statute, but the utterly wancon character of the injury. At the time of the passing of the school act of 1890 there were eighty R man Catholic school districts in the province. In sixty eight of these it may be eadd that there was hardly a single Protestant. The residents were entirely Roman Cabholic. In eight of the remainder those principally within the limits of cities or towns-there were buth Propestant and Roman Catholic schools and population enough for each. While in only four districts could it be said that the population was not only mixed tut so sparse as to create the slightest difficulty in the maintenance of Roman Catholic schools o glose the echools in the sixty eight district The people shere are horiogeneous, all desire one sors of school and are acxious to hax shere seives to support that kind of school. What kind of seatesmanship is it that would deny that sime ple right to so large a section of the people? And what more can be said for interference with the schools in the cities and towns. In Nova Scotia and New Brunswick where there ts no separate school system by law the people having modified the act, the Honor so tolerant, and I shall add so sensible, in the matter before parliament. He them precicable purposes Roman Catholics are in cities really in the enjoyment of almost all federation Act in order that, in that way, the they can desire. Their schools are called public schools and are supported as the others but a judicious eye is tightly closed as to, the religious part of the education there imparts ed. In Manitoba it its different. Ruman Catiolius have to pay their taxes to support the Protestant robools, and have to support their own out of their owners. their cwn aut of their private pures. Were there any disposition on the part of the Manl toba Government to act fairly with the Roman Catholica I say that their schools in the sixty-eight districts and in the eight would flever in any way have been inverfered with : and a other four the resources of civilization ed not be largely drawn upon in order to find some easy solution of the circumstance

might afford ground for the destruction of the *bels population, but surely the presence of four had ones would not be shought to supply easts and cory reason for the same compre tensive action. So far. I have been endeavoring to prove that power to deal with the pre-ent appeal exists; and, before closing I desire, with all deference and respect, to chand that not only has His Excellency in-Council this power, but that is fe unden duty to hear the appeal, and to djudicate thereon as its merits may require that the constitution has given to the Catha-lic minority of the Queen's subjects in Manttoba as a right an appeal from acts of the legislative arisembly; that His Excellency in-Council cannot decline to hear an appeal and cannot refuse out of regard for legislature or for any other reason to deliver a judgment upon the merits of the case, when brought before him. Is is wellknown rule for the construction of statute that where functions of a public nature are bespowed upon individuals such persons have no right to refuse to exercise their powers.
The rule includes cases in which jurisdiction fajudicial character is given trajunction character is given even if the sungrage of a statute is permissive. The judge may do so and so, yet that is always still to mean that if a proper case is made out he should do so and rom Maxwell on Statutes (pages 295 6). It is

there existing,

The absence of four good men from a city

a legal or rasher a constitutional principle that powers given to public functionaries or others for public purposes or the public henefit are always to be exercised when the occaion arises; but as regards the imperative King's Bench (re Hastings, 1 D, and R. 48), that words of permission in an act of parita ment, when tending to promote the general benefit, are always held to be compulsory as regards courts and judicial functionaries who act only when applied to. The same rule was in substance restated by the Common Pleas in laying down that whenever a statute confers an authority to do a judicial act the word "judicial" being used evidently in its widess sense) in a certain case it is imperitive on those so authorized to exercise the authority. When a one arises and its exercises of duty applied for by a party interested and having

that His Exc Beney in C duett cannon decline to exercise the important powers by the Manitoba seconferred upon him for the profession of the minuter to the provinces; olaim as a right that the peri in thail be beard and adjudicated upon. The recom-order-in orunnial beyond doubt corner, if I abundantly appared. The lagislature is done such that is done some of it is such that it is a special to the some region of the some rights whom taked prior to its own recent of the some rights if is seed in or do; and the people having acc ped, and the people having acc ped, and the people having acc ped, and worked, in the enjoyment of these such that it is power to enterthin the appeal, it is then I have shown appears so b inidubiable tear there is a contive local cuty to caterials in, and to dispose of 10 as justice and the right of the minerity may require. In the of our urged against us should the president of the Jesuis Estate act should be adopted, and that the Manicobs legislation should be I for alone. Safar as there is any similarity between the cases, the pare dens of that case has been followed in this. In both cases His Excellency in-Couroff had power to destine the acce. In both he refused to do so. In the Jennics' Esca es may nor there was no such appear as we have here, for the stoppe reason that there was not in that case any status ry right to appeal. That case, there are, forms no precedent for on the latter of the Reman Catholics. Each body had complete control over their own upon too slight ground, let me urge this fur ther reason why such a hearing should be accorded us. In that report the minister said: "Although His Excellence it Council can nake a remedial order, than order cas no buding effect upon any one; into the parliament of Choods, and thus body alone, that used the right to interfere with the legislation of the provinces." It is, therefore, a necessary pre-requeste of parlimentary jurisdiction that the initiative should come from His Excel ency-to-Couront. This body is, as it were, a grand jury, having power to matter in train for trial, but baving no final a judicative functions. The question which a grand jury has to answer is not "Is the prisoner guity," but "its there a fair prospect that a pett jury will find hom so;" and in much the same way, at hough I freely admits that the cases are far from being vigorous y parallet, I contend that if His Excellency in C unoil shall find that there is a fair case for the exercise of parliamentary jurisdiction, then the initiatory creder ought to be mid, so that parliament may debate and dispose of he matter. And in considering whether there is a ressonable prospect of parliament granting relief to the Roman Catholic min-ority in Manitoby, we must not forget, for it is an extremely important consideration, the action of parliament in former years. Passing over other instances of its action, with the mere assertion that during the last thirty years there has been no break in the steadfast consistency with which both political parties have adhered to the principle of separate schools, allow me for a moment to recall in the cutline some of the salient features of the

appeai

G vernor General-lu Cou cit

linds

Supreme Court did it refu e to new ma appeal or to deal with 19 ms justice required merely

because the case involved some political or

otherwise proublesome question? With all proper respect and for identical reasons, I say

to the

from

separate chools in that province. There was, therefore, no right of appeal to His Excellency in Council, and Parliament had no more jurisdiction in the matter than to had with home rule in Ireland. It could, if it wished, express aympathy one way or the other, but it had no legislative power In 1872, Hon, Mr. Costigan moved an address to His Excellency in Council praying that the act abould he in Council praying that the act should be disallowed. The following amendent was moved on behalf of the Governmen: "That this house regrets that the school act recently passed in New Brunswick is unsatisfactory so a portion of the inhabitants of that province; and hopes it may be so modified at the next session of the legislature of New Brunswick as to remove any just grounds of discontent that may arrive?

This amendment was carried by the large

New Brunswick school case. In 1871 the

Legislature of New Brunswick passed a school Act. There had not been, prior to that

time, and there never has been, a system of separate schools in that province. There was,

majority of 117 to 52, which figures, however, to not adequately represent the full significance of the vote, because in the minority was a large number who desired to vote for the main mosion, which was a very much atropper declaration in favor of the Catholic minority. The legislature of New Brunswick not Roman Catholic minority in New Brunswick might obtain relief. An amendment was moved as follows: "That, on the 29th May, 1872, the House of Commons ad pted the tollowing resolution—(Copied accepted the the house regrets that the hope expressed the said resolution has not been realized, and that an humble address be presented to Her Most Gracious Majesty embodying this resolution and praying that Her Majesty will be a considered and the said that her influence with graciously pleased to use her influence with the legislature of New Brunswick to procure such modification of said act as shall remove such grounds of discontent." This amendment the minerity, for the same reason as before, was a large number who were opposed to the amendment only because it did fer enough in favor of the Roman Catholics. Here, then, is a case in which, although par-liament had no jurisdiction whatever, yet by overwhelming votes and in unmistateable lenguage is indicated to adherence to the principle of the compact of eration Can there be a si a shadow o doubt as to the action of parliament is be present case in which, by the action of this council. I grass it will have inrisdiction If anyone has a doubt I refer him to the vot of last session with reference to the separate schools in the Northwest Perritories. I humbly submir sherefore for this reason, in order that parliament may have power to deal with the master, that the remedial order should be

made. Various questions are proposed in the recen order-in c uncil. I have thought it best to answer sh m alsogether by the arumant which have now completed. I trust that in what I have said I have made it clear that the

1. This to an appeal contemplated by subction 3 of rection 93 of the American act, and sub-section 2 of section 22

f the Manicoba acs. The grounds set forth in the petitions are such as may be subject to an appeal. are such as may be subject to an appeal.

3 The decision of the judicial commissed of the privy council has no bearing on the appeal for redress so far as it is based upon rights acquired after the union, further that these decision finally disposes of the contention that the second sub-section of the Mani-

ha act furnishes a remedy merely against ultra vires ataquies. Sub-section three of section 98 of the British North America act applies to Manite a unless it is varied by the Manitoba as If it is not varied it applies, and if it is,

variation has widened and no narrowed in variation has without and not harrowed scope. It is immaterial to the petitioness which alternative is adopted.

5. His Excellency the Governor General in connoil has power to grant the orders as keepen to be added to the control of the control o

for by the petitioners.

6. The acts of Manisoba passed prior the session of 1890 conferred on the minority a right or privilege with respect to education within the meaning of sub-section two of twenty-two of the Manisoba act; and es lished a system of separate or distention acts and established a system of separate or distention schools wishin the meaning of sub-sectification of section ninety-three of the British North America act; and the two acts of 18 affected beyond question such rights and the sub-sights and the sub-sig vileges in such a manner as to warrant present appeal.