

Mr. COZENS-HARDY.—Let me now proceed with section 2. I stopped at those words “now composing the Dominion.” Then we come to this: “and except so far as the same may be varied by this Act.” Then when you come to section 22, I suggest to your Lordships that it is varied by this Act, because there is an express assertion that the exclusive power to make laws relating to education is subject and according to the following provisions.

Lord SHAND.—To what extent do you concede that you look at subsection 3 in the construction of subsection 2 of the Act of 1870?

Mr. COZENS-HARDY.—I say you must not look at it at all, except so far as it may be, and I suppose is, legitimate in a Constitutional Act of the province of Manitoba to look at the general legislation of the whole Canadian Dominion.

The Lord CHANCELLOR.—Beyond that you must surely look at it for this purpose. The only thing that makes it inapplicable is that it is varied by this Act of 1870. In order to see whether it is varied or not you must see what it says, and therefore you must see what the variation is, otherwise you cannot come to the conclusion that it is varied and inapplicable. It is something more than looking to a piece of general legislation.

Mr. COZENS-HARDY.—Your Lordships will bear in mind the point I was endeavouring to make was that on the face of section 22 it is exhaustive and complete, because it says they may make laws subject and according to the following provisions.

The Lord CHANCELLOR.—Is that conclusive? On the other hand, if 93 is applicable, it is conceivable that it might import a further condition. Supposing there were some condition entirely different from those with which we are dealing, those found in 93 and in 22, and that that separate and independent condition were found in 93, I am not at all sure that it would be clear that that would be inapplicable. You see, *primâ facie*, it is incorporated. *Primâ facie*, all the conditions of 93 apply to Manitoba. You have got to see whether they do or do not, by seeing whether they have been varied “except so far as the same,” that is, except so far as the provisions to be found here and the conditions to be found have been varied. It is quite conceivable that there might be certain conditions added in the case of Manitoba, and yet that some of the conditions of the British North America Act might still be applicable.

Lord WATSON.—What I think was the intention of the Dominion Parliament in enacting that statute of 1870 was this, they meant to re-enact section 93 with alterations which would make it suitable to the circumstances of Manitoba at the time.

Mr. COZENS-HARDY.—Yes, and to make it a complete code of legislation with respect to education for Manitoba.

Lord WATSON.—I think that is so. If they had left out a substantive provision that would have otherwise applied to Manitoba. I think that omission would probably show that they did not intend that particular provision to apply in the case of Manitoba.

Mr. COZENS-HARDY.—That of course is my submission.

Lord WATSON.—They have left out that which obviously does not apply.

Mr. COZENS-HARDY.—But, my Lord, even if that be not so, on the mere face of section 22 I submit it is.

Lord WATSON.—Your contention is, and I feel very much inclined to agree with it, and I do not think it was seriously disputed on the other side, and I do not think it very materially affects the question we have to decide—I think it was intended that that clause 22 should comprehend the whole code of legislation with respect to education in Manitoba.

Mr. COZENS-HARDY.—No doubt.

The Lord CHANCELLOR.—That there should be, in short, a variation of section 93. If it is not a variation of section 93, then section 93 would be applicable.

Lord WATSON.—They have repeated these provisions in 93 which they have intended to apply, and have left out those provisions in 93 which they intended not to apply, and have inserted provisions which, whether differing or not, in substance are certainly differently expressed.

Mr. COZENS-HARDY.—That is the first point which I desire to make, and that is the point on which I think three judges took the view I am addressing to your Lordships, and two took the other view.