

Manitoba School Case.

reference to the observation of my Lord Watson as to the subjects interlacing, your Lordships have laid down more than once that they do not theoretically interlace, but that subjects that are within Dominion cognizance in one aspect (I am endeavouring to quote the words of one of the decisions of your Lordships' Board) are within provincial cognizance in another aspect.

Lord WATSON.—So long as the Dominion do not legislate.

Mr. HALDANE.—The Dominion, of course, having regard to the provisions of section 92 cannot legislate in anything properly provincial. You have only to look at section 92 to see it has no such power. What there is is this. All matters which are of a provincial nature or of a nature exclusively under section 92, are within the competence of the provincial legislature, and your Lordships have ruled time after time at this board that attempted legislation by the Dominion is absolutely *ultra vires* if once you get that condition established. Therefore it cannot be said that there is any indication in the Act of any intention on the part of the Imperial Parliament that the Dominion Parliament should have an overhauling power. That is not the scheme. It is only when you get what is outside section 92—it may be it is another aspect of the same subject, but still it is an aspect that is outside—that you find it in section 91; and I was reminding your Lordships of your decision last year in the insolvency case in which you held that notwithstanding bankruptcy and insolvency belong to the Dominion it still was competent so long as there was no Dominion legislation for the province under “property and civil rights” to deal with some things, which in one aspect would belong to bankruptcy and insolvency. But that is not an interference with the absolute co-ordinate power of the provincial legislature. It is simply this, that your Lordships held that on the true construction a certain matter came within section 91.

Now, my Lords, that being the scheme of sections 91 and 92, and all other cases such as that of agriculture being specially dealt with, what your Lordships would expect to find, if it had been intended or even contemplated that the Dominion Parliament should in the present case have authority in respect of the legislation of the provinces, would be that that should be given in clear language. It may be that it has been given in clear language. That is the question to be determined.

The Lord CHANCELLOR.—Education has a code to itself. I am not sure that what you have been saying really tells in favour of your argument particularly, because that is dealt with exactly. Educational questions would come within “property and civil rights” in the provinces. I suppose legislation as to education would come within legislation as to civil rights.

Mr. HALDANE.—It might be so, or “local matters” at the end.

The Lord CHANCELLOR.—But you have it taken out of the general provisions dealing with either the power of the Dominion Parliament or the exclusive power of the provincial legislature as a thing which cannot be dealt with under either of them. It must be dealt with by itself.

Lord WATSON.—I have no doubt the province would have power under the 16th head “Generally all matters of a merely local or private nature in the provinces.”

Mr. HALDANE.—I think it is possible it might have been held to come under that.

Lord WATSON.—It is a matter purely local.

Mr. HALDANE.—It is treated separately, but the point of my argument is not quite that. It is this, that the scheme being that of co-ordinate distribution when you come to the Code of Education in the 22nd section of the Manitoba Act, which I will take as the section on which I shall argue, you have the matter assigned in the first instance to the provincial legislature, I quite admit “subject and according to the following provisions,” but you begin by having education assigned as a matter with which the provincial authorities deal.

The Lord CHANCELLOR.—Would you dispute that the whole of the educational code of this Act suggests a distrust in this issue of the provincial legislature; that there is a fear that they may not deal fairly with the rights of the minority?

Mr. HALDANE.—With the rights of the minority as particularly specified. How are they specified, is the question.