

of this section and of any decision of the Governor-General in Council under this section."

If the words "or practice" in the first sub-section had the effect which nearly all parties in Parliament at the time the Manitoba Act passed thought they must have, this section would have fully carried out the agreement made with the Manitoba delegates. The Supreme Court of Canada unanimously decided that such was their effect, and that therefore the last Manitoba School Act was invalid. The Judicial Committee reversed this decision, declaring in effect that these words have no value whatever. The section and the first sub-section are almost precisely the same as the 93rd section and first sub-section of the B.N.A. Act, except that the words "or practice" are inserted, and the Judges of the Judicial Committee say:—These words were no doubt introduced to meet the special case of a country which had not as yet enjoyed the security of laws properly so called. It is not, perhaps, very easy to define precisely the meaning of such an expression as "having a right or privilege by practice." But the object of the enactment is tolerably clear. Evidently the word "practice" is not to be construed as equivalent to "custom having the force of law."

This is positively astounding, and upon this their judgment rests. The words "or practice" were undoubtedly inserted in order to place the denominational schools existing in the Province at the time of Union, in precisely the position in which they would have been if they had been established by law. Unless the words have that meaning they are absolutely meaningless and without force. The Judges try indeed to give them a value different from this, but the value they pretend to give is inappreciable.

They admit that it must have been the intention of Parliament "to pre-

serve every benefit in the nature of a right or privilege with respect to denominational schools which any class of persons practically enjoyed at the time of the Union," and they say that if the right of Catholics and of the members of other denominations "to establish schools at their own expense, maintain them by school fees or voluntary contributions, and conduct them according to their own religious tenets, had been defined or recognized by positive enactment it might have had attached to it as a necessary or appropriate incident, the right of exemption from any contribution under any circumstances to schools of a different denomination." To the ordinary reader it appears that it was the manifest intention of the Canadian Parliament to preserve as well the rights which existed without a special legal enactment to establish or define them, as the rights described in this judgment as "legal;" that it was for this purpose the words "or practice" were inserted after the words "by law" in that sub-section, and that if any value, force or effect were given to these words, the right of exemption from payment by members of one denomination to any schools other than those maintained by such denomination would be secure.

The judges quote the statement of Archbishop Tache as to the character of the schools existing when the Act relating to Manitoba was passed. He said, "There existed, in the territory now constituting the province of Manitoba a number of effective schools for children. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic church, and others by various Protestant denominations. The means necessary for the support of Roman Catholic schools were supplied, to some extent, by school fees, paid by some of the parents of the children who attended the schools, and the rest were paid out of the funds