

## Manitoba School Case.

Mr. COZENS-HARDY.—All it could do would be to make “remedial laws for the due execution of the provisions of this section” in order to see that nothing goes beyond the provisions of this section, but they could not pass a new Educational Act.

Lord MACNAGHTEN.—It might be necessary, surely?

The Lord CHANCELLOR.—It might be necessary to determine that certain officials should only have certain limited powers, or it might be necessary to vest rights in trustees. There are a hundred cases where it might be necessary to give effect to the intention of this section and to protect the rights acquired. I am not dealing with the question whether there are any denominational schools.

Lord SHAND.—Supposing the legislature passed an Act which admittedly did affect these privileges prejudicially, your argument is that that is not a matter intended to be within their province at all.

Mr. COZENS-HARDY.—Does your Lordship refer to the question of dealing with an ante-union privilege?

Lord SHAND.—I understand that the contemplation of these sections is that in and for the province of Manitoba the provincial legislature is to have exclusive power?

Mr. COZENS-HARDY.—Certainly.

Lord SHAND.—But if they were to proceed to pass an Act of Parliament which admittedly and avowedly was intended to prejudice the rights of certain persons with regard to education, your argument is that it would be beyond their power?

Mr. COZENS-HARDY.—Yes.

Lord WATSON.—You start this part of your argument by saying that the legislature of Manitoba is to have exclusive legislative powers in the matter. But that is not in the Act. They are to have exclusive power except in so far as it is qualified by the provisions of the Act, and that leaves it open. We cannot assume that the legislature meant to give them the entire exclusive power without the qualification of these provisions, and the only question really is to what extent is their exclusive right qualified by the provisions of the section. You cannot take any benefit from the assumption that the legislature did give or meant to give them the whole power. They did not mean to give them the exclusive power.

Lord MACNAGHTEN.—They had the exclusive power till they overstepped the limits of the section. When they did that I do not see any limit to the remedy which the Dominion Parliament might apply, except the mischief which had to be remedied.

Lord WATSON.—I think they have gone rather beyond that. Unless your construction of subsection 2 is right, in other words if “any right or privilege” include the other rights, they have a legislative power and can affect those rights, but their legislation affecting those rights may be set aside by the Governor General, and if they will not give effect to the Governor General’s ruling then effect can be given to it by the Dominion Parliament.

Lord SHAND.—At the same time the expression used in giving power to the Dominion Parliament is “then and in every such case and as far only as the circumstances of each case require the Parliament of Canada may make remedial laws.”

Mr. COZENS-HARDY.—That is my point. I am now using this, of course, to meet the Lord Chancellor’s observation.

Lord SHAND.—That would mean putting things back as far as they could by remedial laws, not initiating a new law that might be mischievous in itself.

Lord WATSON.—I do not think it necessarily means that. I think “remedial laws” here means to do what the provincial legislature ought to have done in the execution of the Act.

Mr. COZENS-HARDY.—There is a limit imposed upon the exclusive power of the Manitoba legislature to correct laws.

Lord WATSON.—If it is anything it is a qualification of their exclusive power. It is simply to correct something that has been wrongly done, not to legislate themselves upon the subject of education one hair’s-breadth further than to set right what has been wrongly done.

Mr. COZENS-HARDY.—Exactly. Nothing is wrongly done which is *intra vires*.

The Lord CHANCELLOR.—That of course is the whole question.