House of Commons dec 7

Northwest Review.

"AD MAJOREM DEI GLORIAM."

THE ONLY CATHOLIC PAPER PUBLISHED IN ENGLISH IN NORTH-WESTERN CANADA.

VOL. XII, No. 41. ST. BONIFACE, MANITOBA, TUESDAY, APRIL 27, 1897. $2.00 per year. Single Copies, 5 cents.

Hon. Senator Bernier's

GREAT SPEECH

as reported in THE SENATE DEBATES

(Continued.)

But this patriotic aim cannot be attained so long as a section of the population is ill-used in the way the Catholic minority has been ill-used in Manitoba. In matters where uniformity of views cannot be expected on account of what is most sacred in man, on account of his religious belief, we must agree to disagree. In antiquity Solon gave a lesson to all subsequent legislators. One day he was asked whether he had given the Athenians the best laws that he could conceive. His answer was that he had given to his people the best laws that could be applied to them. Here in Canada, in a mixed community such as ours, there are certain matters upon which we do not agree, upon which we can never agree, because they affect our religious belief and conscientious views. It may be that your views are better than mine; it may be that mine are better than yours. But that must remain outside of our political parliamentary discussions. Since the stream which divides us cannot be bridged in any other way than by mutual regard, let us have that regard for each other. A common law might be the better law, but since that common law is impossible of application to all alike, let us do as Solon did, let us make the best law that can be applied to our Canadian people The people is not made after all for the legislators, but the legislators do exist for every section of the people, whose wants, whose feelings and whose honest and conscientious views must be considered. This is, it seems to me, not only justice but pure common sense, and, moreover, the expression of an honest belief, that unless those principles are acted upon by those whose duty it is to legislate iu that school matter, peace and harmony will never be restored. The fathers of confederation acted upon those principles. It is a fundamental principle in the constitution that the minorities should be protected in matters of education. It was understood that in a community like ours, honest religious belief had to be recognized. Sir Alexander Mackenzie, a strong supporter of what are called public schools, had at last to admit the utter impossibility of the working in our communities of the system. One of the essential reasons of such views was given by Sir A. T. Galt, in the words which I have already quoted but which cannot be quoted too often. He said:

There could be no greater injustice to a population than to compel them to have their children educated contrary to their own religious belief.

Sir A. T. Galt was then concerned about his co-religionists in Quebec. At the risk of being an extremist, I cannot see by what sort of reasoning we can arrive at the conclusiou that what would be an injustice to the Protestants of Quebec could be the right thing for the Catholics of Manitoba. But, perhaps, Sir A. T. Galt was himself an extremist. Before proceeding further, it may be well to state, for the information of the new members of this House, what I have had occasion to state before, that the Catholic minority do uot ask for church or parochial schools. Whether church schools are better than state schools I am uot discussing at present; the question does not arise here; I am only stating the important fact that church or parochial schools have not been in existence in Manitoba since it became a province. I am merely stating also this other fact, that we have never asked for, and do not ask now, for church or parochial schools. What we had were parental schools aided by the state, and we are now simply asking for the restoration of those parental schools. By the law of nature, it is the duty and consequently, the right of parents to control the education of their children. On account of the very great interest the state has in the diffusion of knowledge amongst all classes, it may consider it a duty to help the parents in their work and in the fulfilment of their duties and obligations in that respect, but it must not take their place While the state extends to the parents its protection and its financial aid it has a right to see that the school grants are not misapplied, it has a right to exact full compensation in the form of knowledge for the money they hand over to the parents.

The Catholic parents do not object to that, but what they object to is that any disability be placed upon them on account of their religious belief. To use the words of the Lords of the Jndicial Committee of the Privy Council :—

The objection of the Roman Catholics to schools such as alone receive state aid under the Act of 1890, is conscientionsly and deeply rooted.

It was for the protection of such conscientious and deeply rooted belief that clause 22 of the Manitoba Act was inserted therein. In the judgment just referred to, their lordships declared that this clause is "a parliamentary compact" which cannot be overlooked, either by the provincial legislature, or by this parliament. They have declared that the appeal of the Catholics under subsection 2 of tnat clause " is admissible on the grounds set forth in their memorials and petitions." Further on the same judgment says that the appeal on such grounds " is well founded." Even if we had only these words to rely upon for the snpport of our claims, they would be conclusive. It would be only necessary to ascertain what these claims are, and what sort of remedy should pe given us to remove all " legitimate grounds of complaint," and to get at that information it would only be necessary to refer to the petitions of the minority. There we would find the whole thing. These petitions and memorials state the grounds of complaint of the minority and the redress to whidh they contend they are entitled. They are as follows :—

(3) That it may be declared that the said last mentioned Acts do affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in relation to education.

(4) That it may be declared that to Your Excellency the Governor General in Council, it seems requisite that the provisions of the statutes in force in the province of Monitoba prior to the passage of the Acts, should be re-enacted in so far at least as may be necessary to secure to the Roman Catholics in the said province the right to build, maintain, equip, manage, conduct and support these schools in the manner provided for by the said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of educatiou, and to relieve such members of the Roman Catholic church as contribute to such Roman Catholic schools from all payment or contribution to the support of any other schools. or that the said Acts of 1890 shonld be so modified or amended as to effect such purposes.

These are the grounds of complaint and the remedy prayed for. When the Privy Council decided that the appeal of the minority, on the grounds set forth in their memorials, is well founded, they decided at the same time that the rights and privileges enumerated in those petitions were rights and privileges which should be restored, according to their demands, as stated in such memorials. This is as clear as day light. Any one is at liberty to designate those privileges and those rights by whatever name he may choose, but these very rights and privileges must be restored, if any respect is to be paid to the findings of the highest tribunal of the empire. However, their lordships have thought proper to say more, or rather, to say the same thing in a different way, and to expressly mention that the denominational school system must be restored. Their lordships say in their judgment that "subsection 2 of section 22 of the Mantioba Act is the governing enactmeut." In another place they say that this second subsection " is a substantive enactment and not designed merely as a means of enforcing the provision which precedes it." And they go on to say :—

The qnestion then arises, does the subsection extend to rights and prlvileges acquired by legislation snbsequent to the union. It extends in terms to "any" right or privileges of the minority affected by an Act passed by the legislature, and would therefore seem to embrace all rights and privileges existing at the time when such Act was passed. Their lordships see no justification for putting a limitation on language thus unlimited. There is nothing in the snrrounding circumstances, or in the apparent intention of the legislature, to warrant any such limitation. Qnite the contrary.

According to this, then, not only some of the rights and privileges existing at the time the laws of 90 were passed have been affected, but every one of them; and it is useless to say that all affected rights must be restored. It is a simple matter of common sense, a matter of course. Then their lordships proceed to enumerate those rights. They do so when contrasting the position of the Roman Catholics prior and subsequent to the Acts from which there is an appeal. Their words are as follows : —

The sole question to be determined is whether a right ar privilege which the Roman Catholic minority previously enjoyed has been affected by the legislation of 1890. Their lordships are unable to see how this question can receive any but an affirmative answer. Contrast the position of the Roman Catholics prior and subsequent to the Acts from which they appeal. Befora these passed into law there existed denominational schools, of which the control and management were in the hands of Roman Catholics, who could select the books to be used and determine the character of the religious teaching. These schools received their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for these purposes by legal assessment was, so far as it fell upon Catholics applied only towards the support the Catholic schools. What is the position of the Roman Catholic minority under the Acts of 1890? Schools of their own denomination conducted according to their views, will receive no aid from the state. They must depend entirely for their support upon the contributions of the Roman Catholic community, while the taxes out of which state aid is granted to the schools provided for by the statute fall alike on Catholics and Protestants.

Moreover, while the Catholic inhabitants remain liable to local assessment for school purposes, the proceeds of that assessment are no longer destined to any extent for the support of Catholic schools, but afford the means of maintaining schools which they regard as no more suitable for the education of Catholic children than if they were distinctively Protestant in their character.

In view of this comparison, it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education, which existed prior to 1890, have not been affected.

This paragraph of the last judgment in appeal states in effect : —

1. That there existed, by law, prior to 1890, Catholic denominational shools.

2. That these denominational shools were under the control and management of the Roman Catholics (this includes the formation, the examination and the certification of teachers, and also the inspection of schools by inspectors regularly appointed according to the law inforce for the time being.)

3. That the Roman Catholics had the right to select the books to be used in shools.

4. That the Roman Catholics had the right to determine the character of the religious teaching in the same schools.

5. That the Roman Catholics had the right to levy and collect taxes for the support of their denominational shools.

6. That they were exempt from paying taxes for the support of non-Catholic schools.

7. That they had the right to have their proportionate share of the money contribnted for school purposes out of the general funds of the province.

Now, say their lordships, those denominational schools have been deprived of their legal status by the Acts of 1890 and have ceased to share in the financial advantages which are accorded to the other schools, "In view of this comparison," these are the words of the Privy Council :

In view of this comparison, it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education, which existed prior to 1890, have not been affected.

Now, hon. gentlemen, since such were the rights of the Roman Catholics in 1890 ; since those rights and privileges, and every one of them, have been affected by the legislation of 1890; since subsection 2 of section 22 of the Manitoba Act assures to the Roman Catholics the existence of all those rights and privileges; since no limitation can be put upon that subsection of the law; since appeal, claiming the restoration of such rights and privileges is well founded, then it follows from that judgment, that the very same rights and privileges which have been affected, must be restored, or else the legitimate grounds of complaint are not removed. And since those rights and privileges are known as the denominational school system, and in fact, constitute the denominational school system, it is that system which must be restored and not any other one. There is no suggestion of a compromise in that dicision of the Privy Council. Let us put that in a different way. We cannot insist too much on that point. We are here face to face with a very simple and conclusive agreement. Since the rights of the Catholic minority have been affected by the denominational schools having been deprived of the advantages which they enjoyed before 1890, as enumerated in their lordships' remarks, it is that fact which constitutes their grievance. Then, such grievance cannot be removed, except by the restoration of the same denominational schools to their former legal status with all the privileges which were attached to them. In other words, the judgment plainly orders that the Catholic denominational schools must be restored, with such privileges as are detailed in the above quotation. So long as they are not, so long will the "legitimate gounds of complaint" remain, so long will the grievances remain, and so long will that judgment stand unsatisfied, against the command of Her Majesty, as embodied in the following paragraph, page 14 :

Her Majesty having taken the said report into consideration, was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the recommendations and directions therein contained be punctually observed, obeyed, and carried into effect in each and every particular. Whereof the Governor General of the Dominion of Canada for the time being, and all other persons whom it may concern are to take notice and govern themselves accordingly.

No man, whatever may be his standing at the bar, will be able to convince the minority that the restoration of its denominational sohools is not ordered by this judgment. Any other view would have the effect indeed of placing their lordships in a very unenviable position, a position of contradiction with themselves.

In one breath, they would have said : the Roman Catholics were enjoying at a certain period certain advantages, which we define to be so and so ; these advantages have been taken away from them; thereby their rights, as protected by subsection 2 of clause 22 of the Manitoba Act, which is "a parliamentary compact," have been affected so as to constitute a well founded grievance ; the constitution provides machinery for the redress of that grievance, and, in conformity with the provisions of that machinery you must remove all legitimate grounds of complaint. And yet in the next breath, they would have said: do not remove that grievance, do not make use of the machinery to which we have referred, let the Roman Catholics strive under the disabilities which the legislstion of 1890 has inflicted upon them; you are the majority, you may do what you like notwithstanding our judgment. In other words, they would take back with one hand what they would have given with the other. I say that this position is not a reasonable one. It is a misconstruction of a very clear law, and almost an insult to the highest tribunal in the empire. But some one may object—have not their lordships said that it is not essential to re-enact the old statutes? Certainly they have said so and they were right in saying so. Any one reading closely and accuratly that part of the judgment, will not find one single hint in contradiction of the position I take. Let us read that paragraph—I beg my hon. colleagues to pay attention to the wording of that paragraph.

It is certainly not essential that the statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these statutes should again be made law. The system of education

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