

not really invade, or infringe upon, privileges or rights of the English-speaking people in Quebec as laid down in the British North America Act.

It is argued also by Professor Frank Scott and six of his colleagues in the McGill Faculty of Law that indirectly the legislation will take away rights guaranteed to the Protestant schools of Quebec by section 93 in the British North America Act. On the face of it this argument looks pretty thin, because as we all know, or ought to know, I suppose all of us do know, what section 93 deals with is the educational rights of the "Protestant and Roman Catholic minorities of the Queen's subjects." There is not a word about French or English. Perhaps there should have been; according to some people the Fathers of Confederation, not being very bright in these people's estimation, when they said Protestant and Roman Catholic meant English and French. I should be interested to be able to call the spirit of D'Arcy McGee from the vasty deep, and ask him whether when he said "Catholic" he meant "French". I have my strong doubts. Anyway, what is guaranteed on the face of it is denominational rights, the rights of the Protestant and Roman Catholic minorities of the Queen's subjects. If there were any doubt about this, any doubt that it did not deal with language, one has been inclined to think, most jurists, I think—and I am here simply parroting, as it were, the words of constitutional lawyers of my acquaintance; I am not attempting to offer my own opinions—but most jurists have concluded that it was definitively settled by the judgment of the judicial committee of the Privy Council in the MacKell case, which quite clearly laid it down as far as Ontario was concerned that linguistic rights were not guaranteed.

However, Professor Scott and his colleagues, some of whom made a very thorough study of this over a period of some years, are convinced that the MacKell decision does not really apply to Quebec. They claim that there were one or more pre-Confederation statutes of the old Province of Canada dealing with education in what was then Canada East, which gave the Protestant school commissions of the time the power to determine the language of instruction. They therefore claim that section 93, paragraph 1 of the British North America Act indirectly guarantees this protection for the language of instruction in Protestant schools of Quebec, because it says nothing in any provincial law on education "shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union".

Now, I have been meaning to go and look up those statutes. I have not done so; I should have. I don't know that I should have been very much further ahead if I had done so, because had I arrived at a conclusion different from that of Professor Scott and his colleagues I hope I should have had enough humility not to proffer my contrary lay opinion against their distinguished professional opinion, though I must add, of course, that very often you find constitutional lawyers of equal distinction arguing on opposite sides and I don't think this case is an exception. However, that is one point they make about this Bill 22. They think it might be held by the courts to be invalid in its education clauses because of this particular feature. I don't know.

[Senator Forsey.]

● (2120)

They also say that any Protestant child in Quebec has an indefeasible right to go to a Protestant school, and if he arrives—suppose he is un petit chinois, and hasn't any English or French, and he and his parents, through a Chinese interpreter, say he is a Protestant, he is a Presbyterian, he is a United Churchman, or whatever it might be—the claim of Professor Scott and his colleagues is that no government official can come along and say, "No, you can't go there because you can't speak English." They say a Protestant child has an indefeasible legal right, regardless of his linguistic abilities, or lack of them, to go to a Protestant school in Quebec.

I think they may be on stronger ground there. I proffer that lay opinion with, I hope, suitable humility.

These distinguished lawyers also argue that there are three or four provisions of Bill 22 that are beyond the powers of the province. For what my opinion is worth, I agree with them, that the legislation cannot validly be applied to public utilities falling within the jurisdiction of the Parliament of Canada. I don't think this makes very much difference, because if the railways, for example, are asked to print their tickets in French—I think they are probably doing it already—it would be a sensible thing to do. So I don't think any question will arise. But technically I think you could make an argument that if all interprovincial railways, or interprovincial airlines, under the jurisdiction of this Parliament said, "No, we are not going to obey this feature of the law. We are going to print our tickets only in English," they couldn't very well be got at. But, as I say, I think it is an academic question.

I am a little uneasy, because of some things which have been said in the last few days, about the position of public servants of the Dominion of Canada in the city of Hull. There has been some suggestion there that they would be obliged to conduct their business in French because of the provisions of Bill 22. I venture to doubt whether, in fact, the provisions of Bill 22 would apply to functionaries of the Government of Canada working in the province of Quebec. I should defer to legal opinion on the subject, certainly, but this would be my offhand lay opinion, that if anybody tried to say to somebody in one of the Dominion government offices in Hull, "You have got to conduct your business in French," he could answer, "No, I don't have to."

Now, on a lot of constitutional questions raised by these distinguished jurists I confess I have doubts. I am not by any means as thoroughly convinced of the invalidity of certain features of the legislation as they are.

I noticed the other day in another place a certain person said roundly that I had declared the whole bill was unconstitutional. I never said anything of the sort. I wouldn't have dared to say anything of the sort. I would not be so foolish.

**Senator Walker:** May I ask the honourable senator a question?

**Senator Forsey:** Yes.

**Senator Walker:** Is there anybody of any prominence in authority who does say that Bill 22 is unconstitutional?

**Senator Forsey:** Does anybody say that? I don't think anybody of any consequence has said that the whole thing