

Manitoba School Case.

or two Houses, without the assent of the Lieutenant Governor, still that leaves me scope for the section, and abundant scope. If am right in saying that the Governor General was not to be bound by the decision of the Manitoba tribunal in the conclusions he came to as to what I have called constitutionality, perhaps I had better call it *ultra vires* to avoid confusion, it might well be that an Act was passed by the Manitoba legislature which contravened the provision of the subsection 1 and was therefore void, and yet had been pronounced by the Manitoba tribunal, taking too friendly a view of the rights of the province, to be *intra vires*. My Lords, then you would leave upon the statute-book administered by the courts an Act of the Manitoba legislature which it would be extremely expedient to get rid of. It is obvious it would be desirable to have something more than a bare abstract decision, and that there should be legislation following upon that which should declare the true position of matters upon the question of *ultra vires* or *intra vires* by way of enforcing the decision of the Governor General, and what I am suggesting to your Lordships is that subsection 2 has been drawn in wide and general terms, wide and general enough to cover acts or decisions of the legislature, not really "laws," because void, for the word "decision" applies to the legislature too, of that nature. It was also primarily intended to cover executive and administrative acts of the authorities in the province.

Now, my lords, if that construction is the right one it harmonises both. It makes subsection 1 a complete code of the limitation of the power of the legislature; it makes subsection 2 deal with those other matters which the Governor General had to be cognizant of, and which might be concerned with rights or privileges for the time being existing, and the infringement of those by the executive.

The Lord CHANCELLOR.—Why? How for the time being existing? All that subsection 1 deals with is those which existed at the union.

Mr. HALDANE.—I am talking of subsection 2.

The Lord CHANCELLOR.—If subsection 2 deals with others than those existing at the union you must concede that it deals with rights that have arisen after the union came into existence.

Mr. HALDANE.—But subject to the power of the legislature to repeal or alter.

The Lord CHANCELLOR.—If you concede that rights of the minority in relation to education include rights acquired by post union legislation, then an appeal against an Act depriving them of any of those rights would come within the language of subsection 2.

Mr. HALDANE.—An appeal from the administrative or executive authority, but not an appeal from the legislative authority.

The Lord CHANCELLOR.—The Act of the legislature, and the Act of the judicial authority are put on the same footing exactly.

Mr. HALDANE.—There is no difficulty in reading the section as I put it, because I am merely asking your lordships to read it so as to leave intact what I have called for short, the code contained in subsection 1 as to rights and privileges at any time, but rights and privileges only so long as they exist. It does not take away the right of a paramount and exclusive authority to alter those rights and privileges.

The Lord CHANCELLOR.—That is a very feeble protection. As long as the legislature has left them you can appeal against an administration which contravenes the intention of the legislature, but the legislature may sweep them altogether away, and against that you have no protection at all. That is a very imperfect protection.

Mr. HALDANE.—My answer to that is that when responsible government and when representative government were given, as they were by these Acts, to the province of Manitoba, it was intended to enable the majority to prevail, subject to such limitation as in this Act is introduced. If you were going to introduce such restrictions as would confer the whole jurisdiction over its educational laws on another authority, surely it would have been natural to say so. It is a very substantial if not a very strong protection on the one hand. I do not think it is very strong, and I doubt whether it was meant to be, and anything else would certainly be a most unusual and extraordinary way of dealing with the matter.