

to appoint a commission to collect evidence from experts on the different questions involved, upon which a practical and permanent scheme of colonization could be based.

ERNEST HEATON.

### The Manitoba School Case.—IV.

(CONCLUDED.)

THIS case is not free from surprises. Not the least of them is the fact that the Lieutenant-Governor of Manitoba repaired to an outsider for advice, and that the advice was given. It was, of course, to have been expected that the matter would be made the subject of debate in the House of Commons; and, perhaps, after all that has transpired, it was to have been expected that the members and supporters of the Government should have condoned the action both of the Lieutenant-Governor and the Clerk of the House. Such situations are unusual, and if so it was that the Government or its members did "not know" any reason why the Lieutenant-Governor should not ask advice or take the opinion of anyone he pleased on a matter of political import, it was quite right to confess their ignorance. There are many reasons, however, why the Sovereign, or her representative, should not ask advice, as to her or his constitutional position or political course of action, of anyone but the constitutional advisers for the time being having the confidence of the Legislature. One good reason is enough, however. And the chief reason is that it is a declaration of want of confidence in the ministry, and if officially brought to their notice would be equivalent to an intimation that they should resign. The same gentlemen who in Parliament expressed the view that the Lieutenant-Governor was at liberty to ask anyone's opinion of a state of affairs in which he was constitutionally bound to follow the advice of his ministers or ask them to resign, would no doubt have been up in arms, if the Governor-General had asked for an opinion of the clerk of the British House of Commons before giving effect to the remedial order. In a more serious case the question actually arose when the Hon. Mr. Blake was Minister of Justice, and fortunately we are not without a precedent. It was claimed on behalf of the Governor-General that, when called upon to disallow a Provincial Act, he might consult the Imperial authorities and act independently of his ministers. The contrary opinion was entertained by Mr. Blake, and vigorously maintained in a correspondence with the Earl of Carnarvon, who was then Secretary of State for the Colonies. Mr. Blake claimed that the Governor-General could act only on the advice of his ministers who were necessarily responsible to Parliament for all his executive acts, or refuse their advice, in which case they would be bound to resign. Lord Carnarvon did not accept this opinion, but thought His Excellency might consult the home authorities; but in the course of the correspondence he shifted his ground and the matter was dropped without an agreement being arrived at. The fact remains, however, that Mr. Blake's opinion has been adopted and acted on without question ever since; and this opinion is endorsed by both Dr. Todd and Dr. Bourinot. In one of his reports Mr. Blake says, "The Governor-General cannot be supposed to be capable of determining such questions upon his own unaided judgment; neither ought he to act upon the counsel of persons who are not his constitutional advisers." Todd, Parl. Gov. Col., 338, where the whole correspondence and the views of this able writer may be found. As to Lieutenant-Governors, the same writer says p. 399, after quoting the B.N.A. Act, "These words unmistakably show that the Imperial Parliament has ratified and enjoined a continuance of the exercise of executive power in the various provinces of the Dominion, in accordance with the usages of responsible government; and that it contemplates that the Lieutenant-Governors therein should occupy, towards their executive council and towards the local legislature, the identical relation occupied by the Governor-General in Canada and of the Queen in the United Kingdom towards their several privy councils and parliaments." That being the law of the constitution, surely it is a breach of the law for a Lieutenant-Governor to ask advice of anyone but those who are by law assigned to him as his advisers. As a question of etiquette simply, I forbear to discuss it, as etiquette is systematically ignored in Canadian politics, and there is a maxim that matters of taste are not the subject of discussion.

It has been said, in defence of this action, that the Lieutenant-Governor was not bound to accept the opinion and would, no doubt, accept that of his ministers as he ought to do. That, of course, does not excuse either the action or the actors, or render the action less dangerous as a precedent. There are caustic things said about people who ask advice without intending to follow it. The very obvious criticism of such action is comprehended in the simple question, Why do you ask it, then? If it is the simple duty of a Lieutenant-Governor to accept the advice of his ministers, or dismiss them, what difference does it make to him what the best constitutional authority in the Empire thinks? If he should now decline to accept the advice of his ministers, and it differed from Dr. Bourinot's opinion, it would be absolutely conclusive to the minds of all reasonable persons that he was influenced to do so by the opinion. If he asserted (and, of course, we should be bound to accept His Honour's assertion) that he was not in any way influenced by the opinion, he would still have the great comfort of knowing that his action was approved by a great constitutional authority; while if he felt bound to accept and did accept the advice of his ministers he would have to regret for a lifetime that he had been obliged, constitutionally, to act contrary to the constitutional authority. This paradoxical position is also an uncomfortable one and no doubt brings its own penalty with it. It would be an extraordinary proposition, and a difficult one to establish, that the Lieutenant-Governor, in obeying the constitution by accepting the advice of his responsible ministers, should infringe upon his constitutional duty as defined by a gentleman who is said to be an expert authority. And it would be equally extraordinary if he took the unusual though legitimate course of declining his ministers' advice because he believed it to be unconstitutional, dismissing them, and having them returned with the confidence of the people, only to have their advice refused again on alleged constitutional grounds. Is our system of government of a responsible form, or is it monarchical and bureaucratic, without limitation or responsibility? Fortunately, the Sovereign and her representatives are not placed in any such dilemma by constitutional usage; for there is no doubt of the law that advice must be received of responsible ministers only.

Perhaps I cannot do better than conclude this branch of the subject by citing Dr. Bourinot himself when writing as an impartial exponent of constitutional law and practice and not as an accidental adviser of the crown. He says, speaking of the Governor-General, "It will, therefore, be evident that power is practically vested in the ministry and that the Governor-General, unless he has to deal with imperial questions, can constitutionally perform no executive function except under the responsibility of that ministry." Fed. Gov. Can., p. 82. Again, "I need, however, hardly add that the representative of the crown must be prepared to see his action in such a grave exercise of the prerogative fully justified by another set of advisers in case he finds himself in irreconcilable conflict with those who give him advice which he cannot bring himself to follow after a thorough consideration of all the facts as they have been presented to him." Ibid. p. 84. And, speaking of the Lieutenant-Governor, he says, "He acts in accordance with the rules and conventions that govern the relations between the Governor-General and his Privy Council. He appoints his Executive Council and is guided by their advice so long as they retain the confidence of the Legislature. . . . But it is quite clear that while the Lieutenant-Governor can dismiss his ministers it is a right only to be exercised for a cause fully justified by the practice of sound constitutional government; and he should not, for personal or political reasons, be induced to withdraw his confidence from a ministry which has an unequivocal majority in the popular branch, unless, indeed, there should arise some grave public emergency which would compel him, to call upon another set of advisers, and ask them to support him, and appeal to the people for their judgment on the question at issue." Ibid., p. 128. Has the "grave public emergency" arisen? And is Dr. Bourinot to be called upon to support the Lieutenant-Governor and appeal to the people of Manitoba on the question at issue, if he follows his advice and declines that of his responsible ministers?

But, to the opinion itself. Let us see whether it is sound. Dr. Bourinot opens his letter by saying that, "For my own part I am of opinion that when the matter is divested of all legal subtleties which lawyers may endeavour to throw around