

Manitoba School Case.

Your Lordships perhaps may be taken to have indicated that probably section 22 contains the complete code of the provisions subject to which exclusive power in educational matters is given to the provincial legislature. Whether it be so or not seems to me to matter very little for the purposes of this appeal. I do not think on the one hand it much assists the respondents to say that it does; and on the other other hand it makes very little difference to the appellants.

The Lord CHANCELLOR.—Do you concede or dispute that in the 93rd section “provincial authority” includes the legislature?

Mr. HALDANE.—I think, my Lord, that under subsection 2 it does indicate the legislature for some purposes.

The Lord CHANCELLOR.—One further question. Suppose in accordance with the provisions of subsection 3, or within the terms of the provisions of subsection 3, denominational schools or separate or dissentient schools were established in the province thereafter, would the rights intended to be protected in that case be only those that had existed at the time of the union?

Mr. HALDANE.—Yes, I think so.

The Lord CHANCELLOR.—What is the use or meaning of putting in the words “or is thereafter established” if subsection 3 only applies in either case to retain that which exists at the time of the union? Why should the preservation of those rights be in any way dependent on an appeal, or be dependent on an act of the Dominion Parliament?

Mr. HALDANE.—Because it was not merely to control the provincial legislature; it was meant to control acts of the executive and the judicial authorities, as I read the section.

The Lord CHANCELLOR.—Admitting that, would those words have been inserted, “or is thereafter established by the legislature,” if it had been intended and had already been enacted that you were to protect all those rights existing at the time of the union, which is quite independent of whether separate or dissentient schools had been established or not?

Mr. HALDANE.—As I read these words they are words limiting the right of appeal, and not very apt words, and it seems to me that it is probable that it is for that reason the expression is omitted when you come to subsection 2 of the Manitoba Act.

The Lord CHANCELLOR.—Why should they have meant to have limited the right of appeal in the case of provinces other than Ontario and Quebec to a province which afterwards established separate or dissentient schools? The right of appeal was a right of appeal to secure the protection given by subsection 1 to all of them alike at the outset.

Mr. HALDANE.—I answer that by saying that it appears to me that the draftsmen of these Constitutional Acts changed their minds when they came to Subsection 2 of the Manitoba Act. My explanation of the omission of those words in the Manitoba Act is that it was made when they found they had introduced an inapt limitation to the right of appeal. Why in the world should there be that limitation in subsection 3 of the British North America Act, and yet when you come to look at it they are words of limitation?

The Lord CHANCELLOR.—In one view it is perfectly intelligible if what was intended to be protected by subsection 3 were rights then existing or thereafter created in relation to denominational schools; then it is perfectly intelligible why they put in both limbs of the appeal part in subsection 2.

Mr. HALDANE.—They have not said that in terms of subsection 3 as drawn.

The Lord CHANCELLOR.—Something very much like it. They have said “Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province.”

Mr. HALDANE.—There is to be an appeal.

The Lord CHANCELLOR.—An appeal shall lie from what?

Mr. HALDANE.—From any act or decision of any provincial authority.

The Lord CHANCELLOR.—“Affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen’s subjects in relation to education.” The system of schools which was first referred to was a system of schools for the benefit of the