

Manitoba School Case.

privileges would have been perfectly secured by that Act, and they would have been secured by that Act alone. Suppose they had repealed that Act, it would not have revived the former law. You say they have perfect power to repeal it, so they have, but the question would arise, what was the effect of that repeal.

Mr. COZENS-HARDY.—It would not be competent for them to interfere with a right existing by law prior to the union.

The Lord CHANCELLOR.—Quite so, and when you are saying that there must be an absolute right to repeal, it might be that their repeal would be effectual as to certain provisions, and ineffectual as to others. This right of repeal would not be complete, because there were certain rights which they could not affect, even by a repealing Act.

Lord WATSON.—You seem rather to ignore this fact that whilst it was not competent for them prejudicially to affect or to repeal rights and privileges with respect to denominational schools which were possessed by anybody prior to the union, it was entirely within their legislative competency to do anything to give effect to those rights.

Mr. COZENS-HARDY.—The view I present to your Lordships is this, not that there were no rights and privileges at the date of the union, because I do not understand your Lordships in the Barrett case decided that there were no rights or privileges existing with regard to denominational schools at the date of the union. The only decision was this, that there were no rights or privileges which were affected by the Act of 1890.

The Lord CHANCELLOR.—But those rights and privileges must have been of a very limited character.

Lord SHAND.—Can you suggest any rights or privileges prior to the union?

Mr. COZENS-HARDY.—I can suggest to your Lordships many rights which they had then which could have been interfered with. For instance, if an Act were passed compulsorily requiring every child to attend the public schools, and disabling any child attending denominational schools, that would be an interference with a right or privilege, and I apprehend that would have been an *ultra vires* Act, and that this board would have so decided.

The Lord CHANCELLOR.—Is that quite certain that they enjoyed the right or privilege of not going compulsorily to a public school?

Mr. COZENS-HARDY.—No, but they enjoyed the right or privilege of going to a denominational school, and if they are compelled to go to another school it necessarily follows that they cannot go to a denominational school. My construction, therefore, does not render subsection 2 nugatory, it leaves it perfectly operative, and there are many cases to which it might apply.

The Lord CHANCELLOR.—If you look at the corresponding subsection of section 93 and see what was the nature of the rights of the minority which it was intended to protect, it does not go very near that, I think, because you cannot look at section 93 of the original Act without seeing that the separate class, whether by that was meant the Catholics where the Protestants were in the majority, or whether it was meant specially for Protestants where Catholics were in the majority, it was the rights in respect of that particular class which were intended to be protected. Practically speaking, there is no such protection in Manitoba if you are right.

Mr. COZENS-HARDY.—That may be so, but of course the language of section 22 is very different from that of section 93 on that point.

The Lord CHANCELLOR.—I mean it is very difficult to shut one's eyes to the fact that at the time the Manitoba Act was passed—one is entitled to look at the circumstances—you had a Catholic and Protestant population nearly balanced; you had notoriously (for that you may certainly look at this legislation, and indeed it is common knowledge) the Catholic part of the population set upon separate schools for their denomination. It is with a view to the protection of rights of that sort that this legislation is passed. Practically your contention would place Manitoba in a worse position for the Catholic minority as it might be or the Protestant minority as it might be, in a position of less protection than you get in Ontario.

Mr. COZENS-HARDY.—I accept that. It is undoubtedly so. That is the effect of the legislation according to my submission. They are put in a different position, and