The Government and the Judgment.

IT will, I think, be conceded that it is now the opinion of the great majority of the people of six of the seven Provinces of the Canadian Confederation, that in issuing the order to the Province of Manitoba to restore Separate Schools, the Dominion Government adopted a course which could not be justified either on the ground of sound political doctrine, of sound morality, or even of astute partisan strategy. The Government, or rather those of its members who have been most active and prominent in connection with the issue of the Remedial Order, and with the threat of Remedial Legislation, assert that they have been actuated in their course solely by a desire to do justice to the "minority," and to defend the Constitution. They have not supplied any argument nor facts to show that the "minority" is suffering any injustice. Nor do they point out in what way the "Constitution" needs any defence at their hands. It is very clear to a great many people that the Constitution is in some danger of violation, but these people think that this danger is to be apprehended principally from the action of those very men who fancy or affect that they are its defenders. It might also be pointed out that the expression, "minority" is a very misleading one. There is no "minority" in Manitoba in the sense of a section of the community which are treated with unfavourable discrimination because of the smallness of numbers or for any other reason. Every sect and every individual in the community enjoy equal rights under the present educational laws. The portion of the community which, with insidious appeal to the sympathy of the unthinking, is referred to as the "minority," is a section which claims for itself special and peculiar privileges. It virtually claims the position of a sort of denominational aristocracy, and it actually enjoyed such a position till the legislation of 1890 placed it on a level with all other classes of the people.

As I have already stated, the Government has not made any effort, on its own part, to ascertain and demonstrate the nature of the injustice under which the "minority" is labouring. Neither has it bothered itself about the character to the danger of the Constitution. It falls back on the judgment of the Privy Council, which it interprets as a declaration that the minority has a grievance, and as a command to it to remove that grievance. Now it will be interesting to closely scrutinize the judgment in question and also to ascertain whether the Government of Canada is bound to accept or is justified in accepting without criticism or examination, any deliverance of the Imperial Privy Council in this matter.

It should be carefully remembered that the legislation which has been the subject of so much controversy, was contested in the courts as to its constitutionality, and was declared by the court of last resort, this same Imperial Privy Council, to be strictly constitutional, and clearly within the power and the right of the Manitoba Legislature to enact. The peculiar fact cannot be too firmly impressed on the memory that it is legislation which is entirely lawful and constitutional which the "minority" are moving heaven and earth to annul, and in which effort they are having the powerful assistance ef the Dominion Government.

Repulsed in their attack on the constitutionality of the legislation, the "minority" appealed to the Governor-General in Council, under sub-section 2 of section 22 of the Manitoba Act, which is a most remarkable legislative provision, and is as follows:

(2) An appeal shall lie to the Governor-General in Council from any act or decision *of the legislature of the Province*, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

In view of the fact that the Imperial Privy Council had already pronounced the Manitoba School legislation to be constitutional, Sir John Thompson, who was then Minister of Justice, was not clear as to whether the Governor-General in Council, which is in effect the Dominion Government, could hear the appeal. The question as to whether the appeal would lie was, therefore, referred to the Supreme Court of Canada, which decided that it would not lie. The reference was then carried to the Privy Council, which reversed the decision of the Canadian tribunal, thus deciding that the Governor-General in Council should hear the appeal.

In their first judgment their Lordships not only affirmed the constitutionality of the Manitoba legislation, but they expressly pointed out that it inflicted injustice on no one, and was, therefore, morally as well as legally sound. They pointed out that if any section of the people felt themselves at a disadvantage "it is not the law that is in fault: it is owing to religious convictions which everybody must respect, and to the teaching of the Church that Roman Catholics and the members of the Church of England find themselves unable to partake of the *advantages which the law offers to all alike.*" They further say, "But what right or privilege is violated or principally affected by the law?" They also, in that judgment, show their appreciation of the necessities arising from the conditions existing in the Province which the laws in question were well calculated to meet. Here is a passage from their judgment which the Dominion statesmen should have carefully considered before they issued the Remedial Order.

"With the policy of the Act of 1890 their Lordships are not concerned. But they cannot help observing that, if the views of the respondents (the Roman Catholics) were to prevail, it would be extremly difficult for the Provincial Legislature, which has been entrusted with the exclusive power of making laws, relating to education, to provide for the educational wants of the more sparsely inhabited districts of a country as large as Great Britain, and that the powers of the legislature, which on the face of the Act appear so large, would be limited to the useful but somewhat humble office of making regulations for the sanitary conditions of school houses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort."

There is a delicate sarcasm in this, and a scarcely veiled amusement at the notion of a statutory clause which commences with the pompous declaration that the legislature "shall exclusively make laws" and finishes (if the Catholic claims are sound) by reducing its powers to those of a municipal council or even less.

It will, I think, be clearly seen that the question at issue in the second appeal was not the constitutionality, nor the justice, nor the moral soundness of the Manitoba legislation. All these points were pretty effectually settled by the first judgment. The duty of the Privy Council in the second appeal was to interpret sub-section 2, which, as I have observed, is a very remarkable item of legislation. In fact, it is unique. This is what their Lordships thought of it:

"It may be said to be anomalous that such a restriction as that in question should be imposed on the free action of a legislature, but is it more anomalous than to grant to a minority who are aggrieved by legislation, an appeal from the legislative to the executive authority? And yet this right is expressly and beyond all doubt conferred."

Now I will venture to assert that nowhere in the records of parliamentary government, can there be found another instance in which a legislature is prohibited from constitutionally altering or repealing its own legislation. Such a provision is, I further venture to say, repugnant to all the principles and the practice of government of the people by themselves. Yet if the "minority" contentions are sound, that is precisely the effect of sub-section 2.

All that the Privy Council had to decide then, was whether, in view of the constitutionality of the 1890 legislation, there was any appeal at all under this sub-section. That is all they had to decide. The scope of their jurisdiction in the matter may be ascertained by extracts from the proceedings when the case was being argued before them. I take the following from amongst several passages of like import:

The Lord Chancellor—The question seems to me to be this: If you are right in saying that the abolition of a system of denominational education which was created by post union legislation, is within the 2nd section of the Manitoba Act, and the 3rd section of the other, if it applies, then you say there is a case for the jurisdiction of the Governor-General, and that is all we have to decide.

Mr. Blake—That is all your Lordships have to decide. What remedy he shall propose to apply, is quite a different thing.

Mr. Blake was senior counsel for the Roman Catholics. The junior counsel, Mr. Ewart, said:

"We are not asking for any declaration as to the extent of the relief to be given by the Governor-General. We merely ask that it should be held that he has jurisdiction to hear our prayer, *and to grant us some relief, if he thinks proper to do so.*"

And again:

"The power given of appeal to the Government, and upon request of the Governor, to the Legislature of Canada, seems to be wholly discretionary in both."

From these extracts it would seem reasonably clear