

court of appeal, or as acting in a judicial capacity, they have no jurisdiction, either as members of the Cabinet or of the Privy Council in Canada.

On the other hand, it was argued by the Minister of Justice, on behalf of himself and his colleagues, that, while not denying or evading their political responsibility, the case with which they were called upon to deal was of a judicial nature, and to be treated as such, and that, in the action they took, there was no undue assumption of or misuse of judicial authority, and no evasion of ministerial responsibility.

Even as stated by the Minister of Justice the case of the government was, so far as we understand the matter, open to serious objection; but the actual course pursued by the government, the statements made by individual ministers, and, still more, the ground taken on their behalf by Dr. Weldon, who has a high reputation as a constitutional lawyer, carried it a great deal further, as we now propose to show.

The "appeals" under the Manitoba Act and the 93rd section of the B.N.A. Act are to the "Governor in Council." It is necessary then, in the first place, to enquire what are the powers and functions of the "council." Has the council any function or powers of its own apart from that which certain of its members exercise as members of the Cabinet; that is to say, as ministers responsible for their actions to the Crown and to Parliament? If so, what are those functions, and are they, or any of them, of a judicial character? As members of the Cabinet, ministers have not, nor can they have, judicial powers. For whatever they do, or for whatever advice they give to the head of the executive, they are responsible to Parliament. Clearly, they could not be so held responsible if their capacity was a judicial one, for the action of a judge must be entirely free, not only from political bias, but also from political responsibility.

The question, then, clearly seems to render itself into this: Have we in this country what we may term a Court of Privy Council, composed of members of the Cabinet, competent to determine "appeals" such as that sent up by the petitioners in the Manitoba case, and justified in declaring, as did certain members of the present Cabinet, that, in regard to this Manitoba question, their lips were sealed, as they were judges before whom the case was still *sub judice*?