

Roman Catholics at the date of the Union had then a right or privilege '*by practice*' to support their own schools and be exempt from contributing towards the support of other schools.

"This would be a plain conclusion—so plain that any layman, however unskilled in questions of statutory construction, would have to reach it."

He then makes some by no means deferential remarks on the judgment, and, after saying that His Lordship simply begs the whole question, continues as follows :

"It is very noteworthy that although the facts admitted in the case disclosed that prior to the Union Catholics enjoyed the *privilege* of exemption from contributing to other schools, the judgment of the learned lord is remarkably reticent upon this point. This question of ante-Union exemption is scarcely dealt with at all ; yet this is the very privilege that was the substantial privilege at stake upon this appeal.

"In one passage he does indeed refer to it in this way ; speaking of the right of Catholics to denominational schools, he says :

"Possibly this right, if it had been defined or recognized by positive enactment, might have had attached to it, as a necessary and appropriate incident, the right of exemption from any contribution under any circumstances to schools of a different denomination."

Now this last cited paragraph of the judgment explains the principle on which the decision rests. There was no positive enactment on the subject, and therefore there could be no legal privilege of exemption in favour of Catholics ; the arrangement for payments in support of the schools was purely voluntary and had no effect as law, and therefore there was no excess of jurisdiction in the omission of such exemption by the Manitoba Legislature.

It is certainly very probable that if there had been a positive enactment on the subject it would have contained the exemption, which would have been fair and reasonable, it being apparently wrong to compel Catholics to pay for the support of schools to which they cannot conscientiously send their children. I believe our Minister of Justice and his colleagues think it so ; but the Judicial Committee were judges and not arbitrators, and were therefore bound to abide by the strict rules of legal construction in applying the provisions of the British North America Act and the Dominion of Manitoba Act to the case.

There is a provision in section 23 of the B.N.A. Act for an appeal to the Governor-General in Council in cases of this kind, and it is said an appeal has been made by the Catholics of Manitoba : but is it not questionable whether such appeal could be maintained in the face of the decision that the Manitoba School Act does not prejudicially affect any right or privilege which the Catholics of Manitoba had at the time of the Union ?

W.

Ottawa, September 14th.

[The above letter was received a day too late to insert in our last issue.—  
ED. C.L.J.]