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"AD MAJOREM DEI GLORIAM."

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EWART RIDDLES HIS ARMOUR.

MR. ARMOUR'S DIALECTICS.

From the Toronto Week.

The reason which Mr. Armour gives for reviewing the Manitoba School case is "that it has been so often misunderstood;" a reason which reminds one (as he notices Mr. Armour's repeated mistakes) of the inflated rustic's contemptuous criticism of some neighbours "who eats their peas with their fingers, instead of their knives." Throughout the whole controversy there has been but one man that has made as many mistakes as Mr. Armour, and that man was aware of his errors whereas Mr. Armour has not got that far.

Not only upon the simplest questions of fact, not only upon the merest quotations of documents, does Mr. Armour err with almost absolute perfection; but his conclusions of law lead to such palpable absurdities that any layman can see that he not only is, but must be wrong.

1. Here is one of his legal propositions (the seventh of his conclusions): "If the Parliament of Canada passes an Act, in default of the action of the Manitoba Legislature, it must also execute, or carry out, the exact terms of the order, or the Act would be void, as its jurisdiction exists for that purpose only." No statute says this. What the statute does say is that if Manitoba does not pass an Act "then, and in every such case, and *as far only as the circumstances of each case may require*, the Parliament of Canada may make remedial laws, etc." Mr. Armour would have it that Parliament may make remedial laws, but shall discuss the circumstances only for the purpose of ascertaining whether an Act in "the exact terms of the order" ought to be passed or not. Parliament may come to the conclusion that some small modification of "the exact terms" is advisable, but it is powerless to alter a line of it. It is shut up to Yes or No; and, by saying Yes, to do injustice to one side; or, by saying No, to do injustice to the other. The great Parliament of Canada is compelled to do wrong. It is powerless to escape. If it act it must go to excess; and if it do not act it fails to do equity. It must act constitutionally; and if it does so it does wrong, and cannot do otherwise. If Mr. Armour wants "a curiosity in constitution-building" he need not go to any rational conception of the Manitoba Act, or other where, I think, than to his own handiwork.

2. Take another example of his legal propositions (the eighth of his conclusions): "If the Parliament of Canada passes such an Act, its jurisdiction is exhausted, and the primary fundamental jurisdiction of the Provincial Legislature over education remains unimpaired." By this he means that "immediately after the Dominion Act has been passed," if "the Provincial Legislature.....again deem it advisable to abolish separate schools, it seems clearly to have the power to do so." Which is to say that an *appeal* is given from the Local Legislature; and if the appeal be allowed the Local Legislature may snap its fingers at the award, and itself reverse the decision—that there may be an appeal to the Governor-General-in-Council; protracted argument and difficulties of all sorts there; a remedial order which sets all Canada debating, and most of the parsons fulminating; adjournments of the Local Legislature for consideration; elaborate debate afterwards; a resolution of refusal; dissensions (possibly) in the Dominion Cabinet over the next step; debate in Parliament, with religious rather than party divisions; an Act passed; public meetings with Mr. Armour in the front vigorously denouncing; excitement intense; the foundations of Confederation shaken; and all with what result? Veritably with none, for the Local Legislature meets the next day, and Separate Schools vanish again! This is indeed "a curiosity in constitution-building" that surpasses anything hitherto imagined, or, in my opinion, hereafter imaginable. But the bye, if Manitoba "seems clearly to have" this self-resurrective power, why all these columns denouncing Federal interferenc? Federal interfernce is a myth, and not worthy a passing notice (save as a curiosity in constitution-building) if Manitoba, after all, be supreme!

3. Mr. Armour is quite wrong, too, when he says that after the remedial order "the Provincial Legislaturee retains its jurisdiction, but acts under the superior order of the Governor-General-in-Council." The Governor-General has no power to "order" the Local Legislature to do anything; so that it is impossible to say that the Legislature acts under his order.

4. It is quite inaccurate, also, to speak of the power of disallowance as being "incident to a superior executive body, having a supervisory power over an inferior legislative body." The Dominion Government has no "supervisory power;" and disallowance is not "incident" to anything, or to any body; but is the only power which the Dominion Government has in respect to local legislation (except in the matter of education).

If these be samples of Mr. Armour's law, in which region Mr. Armour is rightly believed to be an expert (when Roman Catholicism is not involved), what may be expected from his facts which so easily take the colour of their narrator? Let us see.

5. He says that the Manitoba Act of 1871 "established a system of education which *permitted* the establishment of Separate Schools for Roman Catholics." There is the colour of the narrator. The Act of 1871 itself established, and did not merely permit the establishment of Separate Schools. Were the fact as Mr. Armour puts it our case would be most materially weakened. And yet Mr. Armour did not intend anything by this alteration of the statutes, for he makes no point out of it. It is merely his anti-popery bias.

6. Mr. Armour says: "It was asserted.....that many, if not most, of the Roman Catholics were dissatisfied with the Roman Catholic Schools and preferred the Protestant school system." Again, "No steps seem to have been taken to ascertain whether the Roman Catholic minority were really in favour of the retrogressive step.....It seems to have been assumed that the petition of a few Roman Catholics, and the allegations of their clergy were sufficient proof of this serious question of fact." If Mr. Armour had been looking for the contrary of these statements he could not have missed the fact that "the petitions of a few Roman Catholics" was signed by 4,267 Roman Catholics in Manitoba, out of a total population of 15,000 to 20,000, counting men, women, and children! A returned African hunter, decrying mission work, once asserted that there were no real converts on the whole continent; that he had never met a single one. To which a returned missionary said that there were no elephants or lions there either. What you find depends somewhat upon what you are looking for, does it not? By the bye, were there more than 4.267 members of the Equal Rights Association which was going to last for aye (but did not), or were there just "a few Protestants, and the allegations of their apostles"?

7. Mr. Armour says: "As an instance of what was the standard of teaching which must have prevailed in them [Roman Catholic Schools] I take the liberty of quoting in full a paper set by a priest and a barrister for the examination of teachers for *a first-class certificate*." He quotes it and adds: "When these were the limits of knowledge required to qualify a teacher of the first-class, it is a wonder, etc." Mr. Armour was not looking for converts, or he would have ascertained that these were not "the limits of knowledge required, etc.," but that he was only quoting one out of several papers set at the examination. He should be more careful.

In order that the public may be satisfied upon the question of examination of teachers under the old system, I make Mr. Armour a proposal. I have placed in the hands of the Editor of The Week an envelope in which there are two sets of examination papers, for first-class certificates, one of which was given to Roman Catholic, and one to Protestant applicants. Mr. Armour may open the envelope if he will agree that, after reading the papers, he will give his opinions on two points: (1) Which is the harder set of papers? and (2) Were they, or was either of them, sufficient for an examination for first-class certificate? In order to remove the operation of Mr. Armour's bias, I have eliminated such questions as would enable him to detect the authorship of the papers. There are plenty left whereby to estimate merit.

8. Mr. Armour says: "And it is a most remarkable thing that affidavits of facts thought by counsel for the minority to be necessary for the information of the Ministers, were immediately withdrawn when counsel for Manitoba proposed to put in affidavits in answer." Such was not the reason for the withdrawal. It was because Mr. McCarthy said that he would require an adjournment of the argument in order to obtain the affidavits. It was to obviate delay, and not for fear of reply, that I withdrew the affidavits. My language was: "Allow me to say that that would throw the matter over so late, that it would be impossible that anything could be done this year; *and rather than that should happen I would withdraw the affidavits and rest the case upon the other material.*" To which Mr. McCarthy added: "I cannot object to that course." But Mr. Armour thinks it "a most remarkable thing!"

9. Mr. Armour says that "matters of fact were completely ignored"—he means by the Government. Such is not the fact. Let Mr. Armour mention a fact that was ignored.

10. Mr. Armour says that "matters of assumed and alleged fact were made the basis of the argument and decision." As to the bad facts in the argument I pointed them out at the time, and do not deny their existence. I do deny that they were made the basis of the decision, for I corrected them.

Mr. Armour gets himself into such a maze of bad facts and bad law about the capacity in which the Dominion Government acted—whether judicial, political, or constitutional—that I almost despair of extricating him. But I must try. As well as I can straighten out his remarks they amount to this (the figures refer to the columns of The Week, Mr. Armour's article being taken by itself):—(a) That "judicial functions do not belong to the Cabinet, and never have been exercised by it under the British Constitutional System, since the Court of Star Chamber passed out of existence" (10); (b) That "the Judicial Committee expressly declared that the appeal was a political and in no sense a judicial one" (10); (c) That "the Privy Council were particular to say that they left the Governor-General-in-Council and Parliament free to act as they thought best" (11); (d) That "the report to His Excellency which accompanied the remedial order claimed 'that it is a judicial utterance'" (13); (e) and "that they were acting judicially and without responsibility" (10); (f) That "upon the presentation of the petition the late Premier, when the Council assembled, announced that the Ministers sat in a judicial capacity to discharge judicial functions, and deprecated public discussion of their action on the ground that the question had ceased to be a political, and had become a judicial one" (6); (g) That "the Ministers asserted again that in hearing the appeal they were acting judicially, and not in their political capacity" (8); (h) and further "that the question was not one of political significance, but a purely constitutional one" (8); (i) that "the secret truth of the whole matter is that the Government desire to remove from themselves the odium and responsibility of restoring Separate Schools" (13); (j) "a more desperate attempt to evade responsibility is not recorded" (9); (k) that "the action of the Government was purely political" (10); (l) that "the Government was unfit to act judicially because before the reference to the Supreme Court it had determined to act upon the petition" (6); (m) that "the Premier promised that if the first appeal was unsuccesstul he would entertain favourably their appeal to the Governor-General" (6); (n) that "the late Minister of Justice himself dispatched his deputy to Manitoba to prepare the first case for argument before the Courts" (10).

11-17. Now, I do not believe that there is a single one of these fourteen statements that can be upheld even for a moment; and yet one half of them involves for refutation nothing more than reference to documents which Mr. Armour had at hand. I assert that that which Mr. Armour says the Judicial Committee declared (b and c), it did not declare; that that which Mr. Armour says the report His Excellency claimed (d and e), it did not claim; that that which Mr. Armour says the Premier deprecated (f), he did not deprecate; and that which Mr. Armour says the Ministers asserted (g and h), they did not assert. Although he is more nearly right in these last two assertions than in the others, he is still far enough astray (see §§ 21, 22). Seven out of the fourteen statements are misrepresentations of official documents. The other seven statements require a few words each.

To the assertion (a) that "judicial functions do not belong to the Cabinet," it might be sufficient to oppose Mr. D'Alton McCarthy's statement that, "It is not denied that in the determination of this, as indeed of almost every questions which comes before the Government for decision, the consideration of legal questions may be involved. The veto power involves the legal question of the constitutionality of every Provincial Act. The right to exempt vessels that have passed through the canals from tolls requires that the Cabinet should consider and determine the meaning of the Washington Treaty, which, as an international obligation, is a law overriding all municipal law. And so with almost every matter that comes up for determination by the Committee known as the Dominion Cabinet, or Council." (*Canadian Magazine*, March, 1893). I may, however, add the well-known cases of judicial functions exercised by the Railway Committee of the Cabinet, and the daily decisions under the Customs Act. Mr. Armour makes for himself most unnecessary difficulty by insisting that the Cabinet shall act either judicialy, or "*purely* politically." (See post § 22). Many of its functions combine considerations both of law and justice upon the one hand, and of political expediency upon the other.

19-20. With reference to statements (i and j) that the Government desired to escape "odium and responsibility" and that "a more desperate attempt to escape responsibilty is not recorded," Mr. Armour with all his bias must have known that he was exaggerating, if, indeed, he overlooked the fact that he was misrepresenting. I say so because Mr. Armour himself refers (9) to the present Premier's remark to Mr. McCarthy (to be quoted in a moment) in which he acknowledged responsibility. Mr. Armour says that this admission was made by the Premier "when he was hard pushed by Counsel for Manitoba," and that "the Premier went so far as to fling a challenge in studiously refined and classical language to Mr. McCarthy to 'go on the stump' and debate the question." Even if that were true the attempt to escape responsibility would be at once relieved of all its desperate character, and the incident would demand the use of a totally different adjective. But it is not true. Mr. McCarthy was arguing at great length that the Government was politically responsible, something which Sir John Thompson had long previously himself asserted. When Mr. McCarthy had finished reading a more than usually long extract from an authority, and everyone knew that time was being wasted by mere talk to the gallery, Sir Mackenzie Bowell interrupted and said: "Your object in reading that is to show that we should be responsible politically as an executive?" Mr. McCarthy answered: "Yes." And Sir Mackenzie replied: "*We do not deny that.*" Mr. McCarthy added: "Then I need not take up further time"; but nevertheless he continued his argument, and told all about the judicial functions of the Star Chamber, and whacked away at his straw man just the same as before.

21. I cannot imagine why Mr. Armour says that the Premier "went so far as to fling a challenge, in studiously refined and classical language to Mr. McCarthy to 'go on the stump' and debate the question." Nothing of the kind was said in connection with the Premier's acceptance of responsibility, with which Mr. Armour associates it. At a subsequent part of the argument—48 pages further on—when reference had been made to the Orange Order, and to a certain speech of Mr. McCarthy, Sir Mackenzie Bowell said: "I would like to have been there to meet you"; and Mr. McCarthy replied: "I am willing at any time to meet you *on the stump* or elsewhere." I am absolutely at a loss in endeavoring to imagine what Mr. Armour thinks can be gained by transferring Mr. McCarthy's language to Sir Mackenzie Bowell, and then sneering at it as "studiously refined and classical!"

I say that Sir John Thompson had long previously taken the same position as Sir Mackenzie Bowell, and that this attempt of the Government, desperate or pusillanimous, to escape responsibility exists now, probably, in the mind of Mr. Armour alone. As long ago as the sixth day of March, 1893, Mr. Tarte moved in the House of Commons the following resolution: "That all the words after 'That' in the main motion be erased, and the following substituted: 'That this House desires to express its disapproval of the action of the Government in dealing with the Manitoba School question, and in assuming to be possessed of the judicial functions conflicting with their duty as constitutional advisers of the Crown, which assumption is wholly unknown to law, and, if now acquiesced in, would be entirely subversive of the principle of Ministerial responsibility."

Sir John Thompson in speaking against the resolution said:—"But with regard to the questions which come up in the appeal the course of action has to be reversed; and *while, as I admit, we are perfectly responsible for everything that we will do*, we have to be guided, *in some degree at least*, by the judicial, rather than the political sense in ascertaining what the rights were of those who appeal, and how they should be dealt with, because those rights are entrusted to our safe keeping by the constitution." And again, in speaking of the resolution, he said:—"A motion which declares that we have assumed judicial functions, and that is entirely inconsistent with ministerial responsibilities. Sir, I do not hesitate to affirm as my belief and as true constitutional doctrine that *for everything a Minister does he is responsible to Parliament as well as to the people.*" In closing he said: "Therefore on behalf of my colleagues and myself, I disclaim in the strongest manner any attempt to evade ministerial responsibility."

Is not this a most "desperate attempt" to evade responsibility? Let Mr. Armour withdraw a charge, made, I doubt not, in ignorance of Sir John Thompson's speech.

Mr. Armour says: "that the action of the Government was *purely* political." He several times asserts that the Government claimed to have been acting judicially. He should be more careful. The first word said by Government upon that point was in the Order-in-Council of the 29th December, 1892, in which it is stated that "that the inquiry will be *rather* of a judicial than a political character." Does Mr. Armour differ from the extract just made from Sir John Thompson's speech that the Government ought "to be guided, in *some* degree, at least, by the judicial rather than the political sense, in ascertaining what were the rights of those who appeal," etc. Is that a "*purely political*" enquiry?

In my argument at Ottawa I said:—"I should think that one could not either affirm positively that they are acting as a judicial or as a non-judicial body. I should think that in some senses they are judicial, and in other senses they are not. But I would say that they have to proceed in this matter in a judicial manner, and they have to bring to bear upon it a judicial spirit. There is a grievance here; there are complainants and there are defendants. We come before you as an appellate jurisdiction, with our grievance in the shape of a complaint by a complainant complaining against a respondent. I think, therefore, that you should proceed in this matter in a judicial spirit to investigate the complaint upon the basis of justice, and fairness, and reasonableness of demand; and to decide upon the line of duty, not upon the line of mere political expediency as to what you should do under the circumstances." Is that right; or is this? (taken from the same debate):

"Sir Charles Hibbert Tupper—Would you go so far as to say that the main consideration in a matter of this kind should be the political effect of our action, and *not the actual merits and rights of it?*

"Mr. McCarthy—*That is undoubtedly my position.*"

That is pure political action. It may be good doctrine, but it has a somewhat revolting aspect.

23. Mr. Armour has a better chance with his statement (l) that the Government was unfit to act judicially, because before the reference to the Supreme Court it "determined to act upon the

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