

Manitoba School Case.

particular Act of 1890 does infringe a right or privilege of a minority within the meaning of subsection 2.

The Lord CHANCELLOR.—Because the contention is that that covers the point that the second subsection does not cover any right or privilege acquired after the union.

Mr. HALDANE.—I think more than that. It is not put so. That is not the way the question is put. The question which is put is this—

Lord WATSON.—That is splitting one question, or two at the outside, into six.

Mr. HALDANE.—“Did the Acts of Manitoba relating to education passed prior to the session of 1890 confer on or continue to the minority a ‘right or privilege in relation to education’ within the meaning of subsection 2 of section 22 of the Manitoba Act.” And then it puts a number of alternatives, I need not consider it yet in detail, but that seems to me to be the question which your Lordships, I will not say are bound to advise upon, because you are not bound by any Canadian statute at all, but which the Canadian statute which makes you a court of appeal *ad hoc* from the Supreme Court, necessitates your answering.

Lord WATSON.—It is a mere corollary of answers given by the previous questions—

Mr. HALDANE.—I think so—

Lord WATSON.—If these words in subsection 2 include any right or privilege conferred by a statute intermediate between the date of union and that of 1890.

Mr. HALDANE.—I misunderstood your Lordship in suggesting an affirmative answer. Still there remains the point; but it is an abstract and academic question which nobody may ever raise.

Lord WATSON.—All we have got to say is whether it raises such a *prima facie* case that the Governor General ought to proceed with the appeal.

Mr. HALDANE.—The government of Manitoba is not here to argue at your Lordship's bar an abstract or academic questions on the constitution. They are only here because they hold that a condition precedent to a right of appeal to the Governor General has not arisen.

Lord WATSON.—If there is any intermediate privilege conferred it is unnecessary for us to decide whether it is struck at by the Act of 1890.

Mr. BLAKE.—Yes, that is one of the questions. If your Lordship will look at the latter part of the sixth question, it is the last limb of the sixth question.

Lord WATSON.—Whether the Act of 1890 affects any right only in such manner as that an appeal will lie. That is all.

Mr. BLAKE.—Quite so.

The Lord CHANCELLOR.—It seems to me that if subsection 2 refers to privileges and rights created by post-union legislation, then it is a question of fact for the government to determine, rather than a question of law, whether any privileges or rights acquired by post-union legislation were being interfered with by the Acts of 1890.

Mr. HALDANE.—Can it be said to be a question of fact? If we are dealing simply with the right or privilege which is the creation of statute, surely the condition precedent of the Governor General's appeal arises on the consideration of the two statutes.

The Lord CHANCELLOR.—But it may be a question of fact and not one of law. There is no mystery about the words “right or privilege.” A right is a right and a privilege is a privilege, and the question is whether a man's rights become less or his privileges become less. If so they are affected.

Mr. HALDANE.—The learned judges in the court below who assumed a good many things, seemed to have assumed that this was a simpler question than we venture to suggest to your Lordships it is. I will keep that point, and say a few words on it when I come to subsection 2. I am anxious to follow out just now a point that arose a few minutes ago on the position of the Governor General. As I understand the other side it involves this, that if the meanest court of Manitoba had given a decision that a statute was *intra vires* the jurisdiction of the Governor General was ousted. It comes to that.

The Lord CHANCELLOR.—Nobody suggests that though *intra vires*, it might still be a matter of appeal to him.

Mr. HALDANE.—Well, my Lord, that is hardly our proposition.