

Lord WATSON.—You cannot refer that phrase “ the Protestant or Roman Catholic minority ” to some temporary proportion which is a fluctuating one. Does not it mean the minority at the date when the Act that is said to infringe on their privilege becomes law ?

Mr. HALDANE.—I think it may be that. I am content to take it so.

Lord WATSON.—I think you must fix some period, otherwise they may have been the minority half a dozen times, and the majority time and time about.

Mr. HALDANE.—But still it is a right or privilege which they are to have in their capacity of a minority. I mean to go back to Lord Macnaghten’s illustration. It cannot be that the Roman Catholics, who had to pay rates equally with everybody else to support an undenominational system, could say, “ Oh, we have a right or privilege. We object to this undenominational system being swept away, and we have a right or privilege to have education organized by the payment of rates.” That will not do. If that will not do, then you have to say into which category the statute you are construing falls—whether it falls into the category of a statute of that kind which confers rights and privileges on the community as a whole, or whether it falls into the category of a statute which confers rights and privileges upon some sort or class who may *quâ* class become the minority afterwards. My submission to your Lordships is that these intermediate statutes are of a kind which created rights and privileges of the first order, which came upon the community as a whole. It is not necessary for me to go into the details of them. I only point out to your Lordships this, that starting with the Act of 1871, which is a good illustration of what happened later, the control of education was given to a common board, and it was only when you came to what you may call the minority rights, when you came to the question of the provision of religious books, and the selection of teachers, that Catholics *quâ* Catholics or Protestants *quâ* Protestants, had any recognition at all. For the rest, the teaching was indifferent on the general board. There might have been Mahommedans or Unitarians or members of any sect. There is no religious qualification, and for that reason I say, that while you have a denominational system there within the meaning of subsection 2, the rights and privileges conferred were conferred on the community as a whole, and never did become the rights and privileges of any class who could assume the position of a minority. Now, when you pass to the Manitoba School Act of 1881, which contains a code, you have some things which illustrate what happened very strikingly. In the first place the Act re-constitutes the board, making its members 21, and giving a majority to the Protestants. Nobody complained of that. Of course it may be observed that they did not think it worth appealing against ; but at any rate they did not appeal against it, and they apparently construed that alteration not as one which affected the rights and privileges of a minority.

The Lord CHANCELLOR.—Supposing they had passed an Act saying that no Roman Catholic should be eligible to be on the board, what would you have said then ? It did not interfere with any right or privilege they had at the time of the union, because no such board existed. The board was only, as you say, a creation of the legislation.

Mr. HALDANE.—I will give your Lordship my answer. It would have been open to the legislature of Manitoba to sweep away the whole system.

The Lord CHANCELLOR.—But still before we come to that there is the prior question, would there have been any appeal to the Governor General in Council ?

Mr. HALDANE.—Is your Lordship speaking of a statute which was passed for the first time or an amending statute ? Because if it is a statute passed for the first time—

The Lord CHANCELLOR.—The first time they provided for equal numbers, because at that time they were about equal, and I suppose it may have been considered that they could protect themselves, but one or the other grew—I am supposing the Protestants to grow, as was the case—and supposing instead of merely increasing the number of Protestant representatives they had excluded all Roman Catholics. That, of course, would have been *intra vires*.

Mr. HALDANE.—Yes.