# Northwest Review.

"AD MAJOREM DEI GLORIAM."

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## THE NOR'WESTER'S TIMELY REVIEW

### Of Mr. Fisher's 1890 pamphlet on the school case.

Some time ago we reproduced some quotations from Mr. Fisher's pamphlet of 1890 containing views he then expressed as to the conditions requisite for the maintenance of a practical national system of schools that would at the same time afford a reasonable solution of the present difficulty. In that pamphlet there are many facts stated and many thoughts suggested which are of particular interest at this time.

It must be understood that Mr. Fisher from the commencement of the controversy has declared himself as wholly in favor of a national school system, and as approving the school law of 1890 itself as against any separate or denominational system. But his knowledge of the history of the question in other provinces, as well as of the provisions of the constitution affecting it, forced him at the very outset of the discussion to realize that the proposal made by the Greenway government to abolish separate schools would inevitably involve us in difficulties and lead to complications little thought of by its promoters.

After observing that there was no agitation in the province for a change in the law, up to the time that the policy of the government was announced in 1889, Mr. Fisher acknowledged that at the same time "it was apparent that the movement to establish national schools met with a very cordial response in the province," and after referring to objections that were found to the old law, he said:

"And yet, though you and I should concede most fully (as I do for my part) our very decided preference for a purely national, as against a purely denominational, or a mixed national and denominational system of education, there may be room to doubt the wisdom of the legislature in the attempt to abolish separate schools—if, in the first place, there is any higher law or right restraining our power to legislate finally in that direction; or if, in the next place, there are circumstances in the present position of the province making the exercise of that power unreasonable."

Mr. Fisher proceeded to point out what constituted the

OBJECTIONS TO THE NEW LAW.

He quoted in the first place the clause in the Union act placing it beyond the power of the provincial legislature to pass a law prejudicially affecting rights with respect to denominational schools established "by law" at the union. He drew attention to the New Brunswick case, where it was admitted on all sides, and formally decided by the privy council, that the provisions of the constitution did not apply to that province because there were in it no denominational schools established "by law" at the union. He pointed out the manner in which the corresponding clause in the Manitoba act was made wider so as to meet this very objection by extending the constitutional schools existing at the union, whether "established by law," or "enjoyed by practice."

Upon the question of

THE INTENTION OF PARLIAMENT

in adding to the Manitoba act the two words "or practice" not found in the Confederation act, Mr. Fisher remarked:

"Manifestly these words were introducted into our act for some purpose. Manifestly, to the purpose of the clause as a whole was to limit the power of the legislature to legislate on the question of education, in regard at all events to denominational schools. The clause expressly declares this."

"Parliament in passing it had clearly in view that there might be denominational schools in Manitoba at the time of the union, and that certain classes of persons might have been at that time 'by practice' if not 'by law,' in the enjoyment of some right or privilege with respect to them. And in view of such possibility, parliament proceeded to provide that the legislature of Manitoba should have no power to pass any law that would prejudicially affect such rights or privileges. Parliament had some years before passed the sub-clause of the Confederation act already quoted, and there is no doubt at all as to what its purpose was in so doing. It was done with the avowed object of perpetuating separate schools for the Catholic minority in Ontario, and for the Protestant minority in Quebec. Is it necessary to argue that parliament must have had a like object in putting every word of the limiting clause in the constitution of Manitoba? Surely that is too evident to require argument. Once more let me recall the fact that the clause without modification would not be applicable to Manitoba, because of the non-existence of denominational schools established by law. Let us keep before us also the further truth that there were in fact denominational schools in the province, though not recognized by law. Is it not perfectly plain that the object of the modified clause introducing the words "or practice" was to make sure that the local legislature should not have the power to interfere with the privileges of those who might enjoy such schools?"

**While, however, it was plainly manifest that the intention of parliament by the first subsection of section 22 of the Manitoba act was to**

PROTECT THE DENOMINATIONAL SCHOOLS

as they existed at the union, just as those of the minority in Ontario and Quebec were protected, Mr. Fisher did not deny that the clause itself was so worded as to leave it in great doubt whether it had the effect intended. On the contrary, he practically anticipated the judgment rendered by the privy council two years later in the Barrett case, holding that the act of 1890 was within the power of the legislature. On this point Mr. Fisher said:

"Now it sometimes happens that an act of parliament does not have the effect that was intended by the body that enacted it. It is possible that this may turn out to be a case in point. I think it would not surprise us if it should be held that this clause does not restrict the power of the legislature to abolish, at all events the denominational schools that were established by itself under the late system. Indeed, if I mistake not, the current of legal opinion in the province is in that direction and that view seems most reasonable. . . . The truth is that here, as in the case of many other questions of constitutional law, it is not safe to affirm any positive opinion until it has been judicially decided upon by the court of ultimate ressort."

In other words while parliament evidently intended to prohibit the legislature from creating a system that did not recognize denominational schools the language used was not such as clearly and beyond doubt to have that effect.

In this connection it is interesting to quote from the recent judgment of the Privy Council on the appeal case the words in which reference is made to the judgment of 1892 in the Barrett case. The following is the language of the judgment:

"In Barrett's case the sole question raised was whether the Public Schools act of 1890 prejudicially affected any right or privilege which the Roman Catholics by law or practice had in the province at the union.

"It was not doubted that the object of the 1st sub-section of Section 22 was to afford protection to denominational schools, or that it was proper to have regard to the intent of the legislature and the surrounding circumstances in interpreting the enactment. But the question which had to be determined was the true construction of the language used. It is true that the construction put by this board upon the 1st sub-section reduced within very narrow limits the protection afforded by that sub-section in respect to denominational schools. It may be that those who were acting on behalf of the Roman Catholic community in Manitoba and those who either framed or assented to the wording of that enactment, were under the impression that its scope was wider, and that it afforded protection greater than their lordships held to be the case. But such considerations cannot properly influence the judgment of those who have judicially to interpret a statute. The question is, not what may be supposed to have been intended, but what has been said."

Granting that the constitutionality of the act might by possibility be sustained, as Mr. Fisher has said, he held that we were still only at the

THRESHOLD OF THE DIFFICULTY.

There remained the second sub-clause of section 22, providing for an appeal by the minority of the federal powers against a provincial law affecting their rights and privileges, even if those rights and privileges did not exist at the union at all, but were acquired afterwards, and even if that law were in itself quite constitutional and within the powers of the Manitoba legislature to pass. Upon this question we quote Mr. Fisher's words:

"Assuming, however, that the strictly constitutional question is decided in favor of the province, I see another and a greater difficulty before us. There is a further clause in the act of confederation, reenacted with some modifications in the Manitoba act, which affects the question very seriously. The third sub-clause of the same 93rd section of the Confederation act is in these words:

"Where in any province, a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the Governor-General-in-Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority in relation to education."

"By the terms of this clause it will be seen that there are two cases in which an appeal will lie to the Governor-in-Council. First: Where in any province separate schools existed by law at the union. Second: Where such a system was established after the union by the provincial legislature."

Now the framers of the Manitoba act must have seen, and parliament must have seen, that this clause could not certainly at that time, and possibly might never, apply to Manitoba. The first condition could not apply at all, because it was not even a province till the union was accomplished, much less a province having separate schools existing by law. The second condition could not apply unless and until the legislature should establish such a system, which it might never do. It would have been useless, then, to adopt the clause as it stood for Manitoba. It was determined, therefore, as it would appear, to modify it so as to ensure a right of appeal to the minority here, beyond all doubt. This was done by striking out the two conditions entirely and making the clause read in this plain and simple language:

"An appeal shall lie to the Governor-General-in-Council from any act or decision of the legislature of the province, or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

**Mr. Fisher says:**

"Once more we must give the amended legislation a meaning, and who can doubt that it was intended, and that it has the effect, to give to the Catholic minority in Manitoba an absolute right of appeal to the Governor-General-in-Council against any legislation affecting their rights in relation to education. And who will say that our new law does not affect the privileges claimed by Catholics? Parliament seemed bound to make sure, in the case of Manitoba, that there should be an appeal against provincial legislation, and so the clause was made to provide expressly for such an appeal.

"Granting once more that there is a possibility of a decision that sub-clause one, even if modified in the Manitoba act, does not restrain us altogether from legislating in the direction of abolishing separate schools and creating a system that does not permit of their existence, is there any doubt that under sub-clause three the Roman Catholics have a clear right of appeal from our new law?"

It is instructive to notice how their lordships of the Privy Council dealt with the same question in January 1895. We quote again from the judgment:

"It was argued that the omission from the 2nd sub-section of section thirty-two of the Manitoba act of any reference to a system of separate or dissentient schools, "thereafter established by the legislature of the province" was unfavorable to the contention of the appellants. If the words with which the third sub-section of section ninety-three commences had been found in sub-section two of section twenty-two of the Manitoba act, the omission of the following words would no doubt have been important. But the reason for the difference between the sub-sections is manifest. At the time the Dominion act was passed a system of denominational schools adapted to the demands of the minority existed in some provinces, in others it might thereafter be established by legislation, whilst in Manitoba in 1870 no such system was in operation, and it could only come into existence by being "thereafter established." The words which preface the right of appeal in the act creating the Dominion, would therefore have been quite inappropriate in the act by which Manitoba became a province of the Dominion. But the terms of the critical sub-section of that act are, as has been shown, quite general, and not made subject to any condition of limitation."

Touching this right of appeal, and as to the powers and duties of the Dominion government and parliament in the matter, Mr. Fisher's opinion, written before such an appeal came up, is at this time worthy of reproduction:

"Let us first understand clearly what this right of appeal means. It must not be confounded with the power of disallowance, which is simply a prerogative right that enables the Governor-General on the advice of his council, to veto legislation that the Dominion executive have no authority to after or modify in the slightest degree. An appeal under this clause, on the other hand, gives the Dominion government complete authority to deal with the question, as one within its own jurisdiction, and it may decide that the law passed by our legislature must be changed or modified in accordance with its own views. In other words the opinions of the Dominion government are to prevail, in this particular case, over those of the legislature of Manitoba. And in order to give the federal executive an effective means of carrying out its views, it is provided in the next sub-clause that if the legislature of Manitoba shall fail to make the law conform to what is demanded by the Ottawa government then the parliament of Canada shall have the right to pass remedial legislation that will have that effect."

"The result is that our power to legislate in the direction of abolishing separate schools, if we have it at all under sub-clause one, is

NOT FINAL,

but is subject to be decided in the end by the parliament of Ottawa. Remember that we cannot under our constitution object to that Parliament dealing with the question. Let no one be carried away with the thought that we can fight the Dominion authorities in this case as we did with the disallowance matter. There we were fighting for our rights and for the maintenance of the constitution. The power of Manitoba to charter the Red River Valley railroad was subject to no appeal to any higher authority that might change or modify the charter. In the case of the education act, however, our jurisdiction over the question is limited from the outstart and has gone for the time, entirely, the moment an appeal is entered. Under the appeal the Dominion government first, and then the Dominion parliament in a certain event, has the absolute right to deal with the question. In such a case the parliament at Ottawa has the same right to pass remedial laws to give effect to the opinions of the federal executive as it has to pass laws relating to the customs tariff or the department of Dominion lands. And the reversal by the Federal government and parliament of any part of our new act, affecting the right thus protected, would not be an interference with provincial rights, but the exercise of a power expressly conferred upon them by the constitution *and the exercise of which they have no right to refuse.*"

In no part of this pamphlet of forty-five pages is Mr. Fisher's language, uttered in 1890, more strikingly pertinent to the present situation than in the

PROPHETIC WORDS

with which he closes his statement of the constitutional difficulties raised by the act of that year. After referring to the New Brunswick case and to the union of all parties in the commons on two different occasions in an effort to press that province to grant separate schools to the Roman Catholics, and after referring to the fact that amongst others Mr. Thomas Greenway, then a member of the commons, joined with the majority in that effort, he proceeded as follows:

"When we find the government and parliament of the Dominion in 1872 and 1875 taking such a strong stand in a matter beyond their right, and without solicitation, is it likely they will fail to be equally decided in a case like ours, which they are bound to hear and decide by way of an appeal expressly provided by statute, and where we have for nigh twenty years by our own law provided denominational schools for Catholics?

"I very much fear for my part that this great question, instead of being happily settled, as many of you perhaps may have imagined, is only beginning to be opened up. We shall have, in the first place a struggle in the courts which will doubtless be appealed from one tribunal to another until a decision is reached at the hands of the privy council, and then we shall, if the case is decided in favor of the province, have this appeal under sub-clause 3 to the Dominion government probably, then to the Dominion parliament. From either of these bodies I see nothing to expect on our part but a decision adverse to the spirit of our recent legislation. I see no reason to doubt that the majority of the commons will still vote as our own Mr. Greenway did in 1875. And by legislation of the Dominion parliament we shall in that event and to that extent, be absolutely bound. In other words, we have not the power, I repeat, to legislate finally on this question, and our legislation is liable and likely to be reversed by an appellate power. And you and I without abating one jot our preference for, and support of, a purely national system of schools, and while approving the new law, if passed under other conditions, may well doubt the wisdom, to say no more, of passing legislation that is likely to lead to the question being made a football between parties and factions in Dominion politics, with the almost certain result of having our opinions reversed at Ottawa."

In striking contract with this fair and truthful statement of the case as regards the appeal to Ottawa, and with this remarkably accurate forecast of the existing situation which was thus presented at the very beginning of the discussion, was the language of Mr. Attorney-General Sifton in his

ABSURD BUT CONFIDENT

declaration that the decision in the Barrett case forever set the question at rest. To Mr. Sifton's mind the proceedings in appeal were nothing more than a vain attempt to reverse the decision in the Barrett case. Perhaps he has had new light on the question since then. Possibly, indeed, he may have forgotten that in November, 1892, after the appeal was entered he allowed himself to be reported in an interview as thus expressing himself:

"It is said," remarked the attorney-general, "that the Dominion government assumes the power to act as some kind of a court of appeal in this matter, and to receive petitions and to hear arguments." And presently he added, "We deny the right of the Dominion government to interfere in this matter in any way whatever. On no ground of principle can such interference be justified. Further, the Dominion government has no legal power to take such action. By the constitution the power lies wholly within the jurisdiction of the provincial government. The privy council dealt with that very point. To appeal from the privy council to the Ottawa ministry would be the height of absurdity."

In the foregoing digest of Mr. Fisher's opinions upon the school case, and the proper methods for arriving at a conclusion satisfactory to all parties, as arrived at by a Manitoba liberal, we have not exhausted the subject. There is another feature, upon which Mr. Fisher has not touched, and which is admirably presented by

LOUIS P. KRIBS,

a well known journalist, who has lately issued a pamphlet upon the school question. Mr. Kribs is a Protestant and an Orangeman, having no sympathy with the separate school system. His preposessions being of this nature, he determined to study the facts minutely and impartially in order to understand the true merits of the case. He tells us the result in the preface. He says: "I will not deny that, as a Protestant and an Orangeman, having no sympathy with separate schools as schools, though desirous of allowing my fellow subjects of the Roman Catholic faith every possible liberty of conscience and latitude of action, my desire may have to some extent influenced my views as above expressed.

"But the inexorable facts, as ascertained by careful study, force me to the opposite conclusion — to the conclusion that indubitably the Roman Catholic minority in Manitoba have in regard to separate schools rights under the law,—guaranteed by the constitution and pledged by the nation—lead to the belief that there might be many others similarly circumstanced as I was, and equally desirous of knowing the truth and abiding by it.

"For I venture to submit, with certain confidence, that the national honor is of even greater importance than the national school, and that the preservation of the former is essential to the eventual establishment of the latter."



## The Ontario System.

### UNANIMOUSLY APPROVED AT A PUBLIC MEETING.

**Mr. Fisher, M. P. P., Addresses His Constituents at Fort Ellice on the School Question—Resolutions Approving Ontario System Unanimously Adopted.**

BINSCARTH, May 6.—Mr. Fisher addressed a meeting of his constituents at Fort Ellice on Saturday evening. Throughout the entire afternoon a heavy rain fell over that whole district and the result was a small attendance at the meeting. There was a fair number, however, of representative men. Mr. T. V. Wheeler, merchant, occupied the chair. Mr. Fisher confined his remarks mainly to the school question, which he discussed at length. The Protestant settlers are opposed to the old system being restored, and the idea having been circulated, apparently very systematically, that Mr. Fisher advocated a return to the old system in all its details, some of those at the meeting were surprised to find that his position had been wholly misstated. They were more surprised when he quoted from the statement made before the governor-general-in-council the offer of the Roman Catholic minority to accept a law something after the manner of the Ontario system, and all the more so when Mr. Sifton's admission in Haldimand that the Roman Catholics did not ask for the old system or object particularly to government control over the schools, was read.

Mr. Cheney Burdett, a councillor of the municipality and one of the warmest supporters of the Greenway government in the district, had come to the meeting greatly opposed to what he understood was Mr. Fisher's attitude on the question. At the close of the address Mr. Burdett frankly admitted that he had been wholly misled, and that he was prepared to support Mr. Fisher in advocating the adoption of the Ontario system, and in urging that the provincial legislature should offer that system to the minority. He declared that he saw but two ways out of the difficulty, one was the Ontario system and the other secular schools and he saw that the latter would not be acceptable to the minority.

Mr. Wheeler, the chairman, Mr. T. T. Selby and others then expressed their entire satisfaction with Mr. Fisher's position. After some further discussion a series of resolutions on the subject was proposed by Mr. T. T. Selby, seconded by Mr. A. W. Henderson, and supported by Mr. W. C. O'Keefe, ex-reeve of Ellice, and being submitted from the chair was carried without a dissenting voice.

The resolutions are as follows:

In the opinion of this meeting the present school law is satisfactory to the great majority of the people of Manitoba. Its repeal und the re-enactment of the former law would be most injurious to the interests of education, and this meeting most earnestly protests against any action in that direction, and against any relinquishment by government of its control over education and the schools.

We recognise at the same time that the power of the provincial legislature to make laws on the subject, though primarily exclusive, is not absolute but limited, and these limitations were embodied in the constitution for the purpose of safeguarding the rights and privileges which Protestant or Roman Catholic minorities might enjoy under sanction of law with respect to schools whether created before or after the Union. One of these limitations is in the form of a right given to such minority to appeal to the federal parliament against a provincial law affecting such rights even though primarily it may be within the power of the legislature to pass such a law. It would be doing violence to the spirit of the constitution if these rights of appeal were not respected, and due effect given to them when a minority is aggrieved by a provincial law. The supreme court of the empire has decided that the rights and privileges of the Roman Catholic minority in Manitoba have been infringed upon by the law of 1890, that their present appeal as against that law is well founded, that it is the duty of the governor-general-in-council to determine in what manner it seems requisite to alter the law so as to do justice, that the provincial legislature is primarily the body that should provide legislative relief, and that on its failure so to do, the parliament of Canada will have power to pass remedial legislation for that purpose.

The same high court in reporting its decision to Her Majesty the Queen has made a suggestion that the provisions of the existing law may be modified by supplemental provisions so as to give adequate relief to the aggrieved minority without re-enacting the old law, and so as to maintain the present law in its general application. Her Majesty the Queen, sitting in council, has formally approved the conclusions of the court, and has been pleased to order that the directions and recommendations of the court be punctually observed and carried into effect, and it is the duty of all parties interested to give due effect to that order.

The governor-general-in-council having heard the appeal has declared and communicated to our legislature in what respects it seems to him requisite that remedial legislation should be passed to give relief, but he has at the same time, following the suggestions of the privy council, respectfully urged upon the provincial legislature the desirability of dealing with the question and modifying the existing law without interfering with its general operation.

The Roman Catholic minority have formally offered to accept legislation on the lines suggested by the privy council; they have offered to settle the whole question with the provincial legislature in a spirit of compromise, and they have disavowed any desire to place any of the schools under the control of the church.

It is desirable that the exclusive power of the province to manage its educational affairs should be maintained inviolate, and this meeting look to the possibility of the federal parliament exercising control over our education as fraught with danger to our best interests.

It is maintained by high legal authority that if the federal parliament shall once acquire jurisdiction to pass remedial laws, it will be impossible for the province ever after to recover the full jurisdiction at least without the intervention of the Imperial parliament. Such a possibility gives greater weight to the objections against leaving the question to be settled in Ottawa.

Having regard to the judgment of the privy council, to the order of Her Majesty confirming it, and directing its being carried into effect, to the suggestion of the privy council that a remedy should be found in modifications that would not interfere with the general working of the present law, to the recommendation of the governor-general-in-council that said suggestion be adopted and acted on by the provincial legislature; having regard also to the offer of the Roman Catholic minority to accept legislation on these lines, and to settle the questions at issue with the provincial authorities in a spirit of compromise, and having regard to the possibly serious results the necessity shall be forced to the federal parliament of dealing with the question, this meeting affirms that the legislature of Manitoba will be assuming a grave resposibility if it shall fail to make an earnest effort to effect a settlement in the manner suggested.

This meeting believes that such a settlement can be effected on the lines of the Ontario system so that adequate redress can be given to the minority without a repeal of the present law or restoration of the old system, so that all the schools shall be under the direct control of the provincial authorities.

This meeting therefore expresses an earnest hope that at the ajourned meeting of the legislature all parties will in a spirit of toleration and conciliation seek to bring about such a settlement, but no settlement will be satisfactory which will restore the old system or place any section of the schools under any other than state control.

RUSSELL, May 7.—Mr. James Fisher, M.L.A., addressed a large meeting here last night and was well received. Representative men were present from Silver Creek and Shell River as well as from this municipality. Mr. Fisher confined his remarks to the school question which he discussed at length, fully explaining his position. His reception was a most cordial one. When closed, some remarks were made by Messrs. Richardson and McLennan, of Assissippi, and G. E. Walker, J.P., of Millwood, after which, on the motion of Mr. Walker, seconded by Mr. Thomas McKenzie, the series of resolutions adopted at the Ellice meeting were put to the meeting and carried with great enthusiasm. Only one man held up his hand against them, but it was understood that he was joking. One or two explained that they did not care to vote. A number of ladies were present. The chair was filled by Mr. N. M. McKenzie. Mr. Fisher speaks at Rossburn to-night.—*Nor'Wester.*

## AN INSTRUCTIVE COMPARISON.

To-day's Free Press gives the total of children enrolled in the Public Schools of Winnipeg as 4,904. These represent the non-Catholic population of the city, which, from Henderson's census, is about 35,000, i. e. 38,000 minus the Catholic population, which is at most 3,000. Now, the number of pupils enrolled in the Catholic schools of Winnipeg is 718. A cursory glance at these figures will reveal the fact that, whereas the pupils of the Public Schools are not quite one seventh of the non-Catholic population, the pupils in the Catholic schools are almost one fourth of the Catholic population; which means that only one out of seven non-Catholics goes to school, while nearly one out of four Catholics goes there. Or, to put the comparison more exactly: if the non-Catholics of Winnipeg had as many children at school as the Catholics have, the assessor's list would reveal, not 4,904 as it did this morning, but 9,195. In other words there is almost twice as much zeal for learning or—which is equally consoling for us—twice as much natural increase of population, among Catholics as among the others. And we must not forget that Catholics have to pay double taxes in order to keep up their schools.

## University Examinations.

AT Brydon's Rink 287 condidates are competing for the University Examinations: 12 from St. Bonifacd College, 49 from St. John's, 92 from Manitoba, 54 from Wesley, 21 from Collegiate, 20 non-Collegiate, 30 for the Isbister prizes and 9 for the LL. B. The examinations, which began on Monday 29th, will last till Friday, 24th.