That section (the only one on the subject) makes—*exceptionally*—provisions for "separate schools" in protection of minorities in religion *only* for the Canada (Upper and Lower) of that day, as constituted and governed under the Treaty of 1763, between France and Britain, and the British Imperial Statutes of 1774 and 1791, supplemented in consolidation by that of 1840 (the Union Act), with its larger attributions (but ever limited in Imperial concern) of self (or "home") government.

In such attribution—properly, and as a principle of British national policy, like that of old Roman dominion—the civic life—viz., local or home laws, franchise, institutions—utmost civil and religious liberty of the conquered or subject people, so far as compatible with suzerainty, was left unimpaired. In this sense was the express reservation in the Treaty of 1763: "His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. He will consequently give the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Roman Church, *as far as the laws of Great Britain permit.*"

This was in accordance with the article (*ad rem*) of capitulation of 8th September, 1760, which runs thus: "Article 27. The free exercise of the Catholic, Apostolic, and Roman religion shall subsist entire, in such manner that all the states and people of the towns and country places and distant posts shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay to the priests the tithes, and all the taxes they were used to pay, under the government of his most Christian Majesty."

Answer of General Amherst: "Granted, as to the free exercise of their religion. The obligation of paying the tithes to the priests will depend on the king's pleasure."

There were other demands at the capitulation for more extended powers in the administration of affairs pertinent to the Roman Catholic Church, but all were refused. The concrete of concession in this regard is in the treaty as above cited.

As to education nothing is said, either in the terms of capitulation, or in the treaty, or in any act of state. The subject followed the conquest (or "cession"), and became matter of purely British *dominium.*

Up to that time the law of France (in force in Canada) as to mortmain—applying to scholastic as well as ecclesiastical and even eleemosynary bodies (corporate or other) or institutions—was as restrictive and prohibitive against the tenure of realty, or even of the movable proceeds (price) of realty, as that of England as to the same—both systems of law, *quoad hoc*, having, in common, and, during long periods, integrally, their root in the feudal system.

True, in Canada, there were, under the French régime, educational grants of Crown domain in its wild; but they were and, properly and constitutionally, could, objectively, be only for state purposes, viz., exploitation and effective colonization, as in the case of all other concession of Crown lands from the Crown. As to religion *per se*, France, in its national autonomy, ever distinctly and emphatically, in its internal jurisprudence as in its external state policy, asserted its independence of ultramontane Popedom; repudiating dictation in state governance from the chair of Saint Peter. This, historically, is known as the Gallicanism of France, a principle of state policy essentially conservative, yet progressive, as exemplified in the position of France to-day in contrast with European powers of ultramontane traditions and tendency. And here the question suggests itself: Why should Canada, in a matter of such vital interest to its existence and progress as a British colony, adopt and subsidize an abnormal system of "Separate Schools" with the avowed purpose of sectarian religious education in the direction of ultramontane Popery, *i.e.*, with subordination of civic life, as well as religious, to the Vatican?

The disintegrating effect of such education is obvious, is the historical lesson of all national experience. Yet the England of Queen Elizabeth; of William of Orange; of Cromwell; of the Commons and Lords (the people in their representative integrity) of 1688—constitutionally "Protestant"—seems to have repudiated her traditions in this regard. Not so the greater England across the main. In this is British Canada's refuge in case of necessity, for to bow, in any way, the knee to any power of earth, save their own, is not in any Briton worthy the name.

To proceed to another point, to meet the issue of the hour.

By the terms of the British North America Act, section 93, the provisions in it as to Separate Schools are confined to Quebec (Lower Canada) and Ontario (Upper Canada). They do not apply to Manitoba.

As to Manitoba, its own constitution, section 22, governs. That, in express terms, applies only to rights (scholastic) in question, "*at the date of the union with Canada.*"

There is nothing in the section, nor in the Act, nor in any legislation, as to rights under any legislation or authority subsequent to the union; the whole section speaks of, and by rule of interpretation applies only to, rights and facts as they were "at the date of union." After that the legislature (provincial) had the full control, subject only to the right of a minority to appeal to the Dominion Government in case of grievance to any right held "at the date of union," but no other.

As to rights *ad rem* subsequently created by Provincial legislation, they were ever under the full control of the power that created them. On this point the judgment of the Supreme Court in Ottawa, especially the opinion of the Chief Justice—admittedly the highest legal authority of the Dominion—and also that of Mr. Justice Taschereau, the senior Quebec judge on the bench, a Roman Catholic—brother (I believe) of Cardinal Taschereau, of Quebec—was clear and emphatic. Briefly—as said the Chief Justice (Sir S. Henry Strong)—"Where a legislature has power to do, it has to undo; unless expressly restricted."

The proposition is axiomatic.

To get over the difficulty, the Lord Chancellor (Herschell), in delivering the judgment of his court, *assumed* that by "implication"—such is the reported word of the judgment—subsection 3 of section 93 of the British North America Act of 1867, providing as to rights created by legislation *subsequent* to that Act, "might fairly"—such was his application—"be held to apply," or terms to that effect.

At the same time, strange to say, in the same judgment, in his own words, the Act of Manitoba of 1890, rescinding the previous enactments creating denominational schools, was declared constitutional and valid; also that section 93 of the British North America Act of 1867, on Education, was superseded entirely by section 22 (on the same subject) in the constitutional Act creating Manitoba. The contradiction is obvious; and, further, it is material as, really, the *assumed* basis of the judgment in question.

In fact, in this, the Chancellor has, in a way, made a law unto himself; as if, under some influence above the judicial mind, or under temporary forgetfulness of simple elementary principles in judicial adjudication, he had assumed, for the nonce, a Brehon capacity with its (to use the ancient Irish term) "heavenly judgments."

This is wrong. No principle in the administration of justice, in these latter days of intelligent parliaments and well-regulated courts, is better established—or, at least, accepted, by the legal profession in England, as in other advanced civilized countries—that judges, in matters of statute—and this, in its exceptional nature, is purely so—are merely interpreters of legislation, and not its equipollent substitutes.

In the previous cases—Barrett and Logan—in, virtually, the same matter, by a larger court, viz., six or seven, instead of four—the judgment—an exhaustive one, admirable in every respect, and, really, covering the whole case—there is no ground for such exception. It was final, or should have been considered so, especially after its virtual endorsement in the present case by the Supreme Court of the country more immediately concerned.

There are other points, of a technical nature, but fatal, in a legal sense, which might be urged, not only against the judgment in question, but the subsequent procedure of the Government and Parliament of Canada on the judgment.

LEX.

The Boston Transcript tells the story of a woman who walked into a Boston bookstore in search of Elizabeth Stuart Phelps's "Burglars in Paradise." But what she asked for, however, was "Smugglers in Heaven."