IN RE CERTAIN STATUTES OF THE PROVINCE OF MANITOBA RELATING TO EDUCATION.

1893
*Oct. 17.
1894
*Feb. 20.

SPECIAL CASE REFERRED BY THE GOVERNOR GENERAL IN COUNCIL.

Manitoba Constitutional Act—33 Vic., ch. 3, sec. 22, subsec. 2—*Powers of Provincial Legislature in matters of education—Rights and privileges—Legislative power to repeal previous statutes—Right of appeal to Governor General in Council—B. N. A. Act*, 1867, sec. 93 subsec. 3.

Sec. 22 of the Manitoba Act, 33 Vic. ch. 3 (D.) enacts: In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

(2.) 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.

Subsection 3 of sec. 93 of the British North America Act, 1867, enacts:

(3.) Where in any province a system of separate or dissentient schools exists by law at the union, or it 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 of the Queen's subjects in relation to education.

By certain statutes of the Province of Manitoba, relating to education, passed in 1871 and subsequent years, the Catholic minority of Manitoba enjoyed up to 1890 the immunity of being taxed for other schools than their own, &c., &c., but by the Public Schools Act, 53 Vic. ch. 38 (1890), these acts were repealed and the Roman Catholics were made liable by assessment for the public schools which are non-denominational, but were left free to send their

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children to the public schools. On a petition and memorials sent to the Governor General in Council by the Catholic minority, alleging that rights and privileges in the matter of education secured to them since the union had been affected, and praying for relief under subsecs. 2 and 3 of sec. 22 of the Manitoba Act, 1871 a special case was submitted to the Supreme Court of Canada, and it was held :

1. That the said rights and privileges in the matter of education, being rights and privileges which the Legislature of Manitoba had itself created, and there being no clear express and unequivocal words in sec. 22 of the Manitoba Act, 1871, restricting the constitutional right of the legislature of the Province to repeal the laws it might itself enact in relation to education, no right of appeal lies to the Governor General in Council as claimed either under subsec. 2 of sec. 22 of the Manitoba Act, or subsec. 3 of sec. 93 of the British North America Act, 1867. Fournier and King JJ. contra.

2. That the right of appeal given by subsec. 2 of sec. 22 of the Manitoba Act is only from an act or decision of the legislature which might affect any rights or privileges existing at the time of union as mentioned in subsec. 1, or of any provincial executive or administrative authorities affecting any right or privilege existing at the time of the union. Fournier and King JJ. dissenting.

Per Taschereau and Gwynne JJ., that the decision in *Barrett* v. *Winnipeg* ([1892] A. C. 443), disposes of and concludes the present application.

Quære—Per Taschereau J.—Is section 4 of 54 & 55 Vic. ch. 25, which purports to authorize such a reference for hearing "or" consideration, *intra vires* of the Parliament of Canada ?

SPECIAL CASE referred by the Governor General in Council to the Supreme Court of Canada for hearing and consideration, pursuant to the provisions of "An Act respecting the Supreme and Exchequer Courts," Revised Statutes of Canada, chapter 135, as amended by 54 & 55 Vic., chap. 25, sec. 4.

The special case referred was as follows :—

[2103]

REPORT *of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the* 31*st July*, 1893.

On a report dated 20th of July, 1893, from the Acting Minister of Justice, submitting with reference to his

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report of the 7th July, inst., which was approved on the 8th July, 1893, a case for reference to the Supreme Court of Canada, touching certain statutes of the province of Manitoba relating to education and the memorials of certain persons complaining thereof.

The Minister recommends that the case, a copy of which is appended to the above-mentioned Order in Council, be referred to the Supreme Court of Canada for hearing and consideration, pursuant to the provisions of an Act respecting the Supreme and Exchequer Courts, Revised Statutes, Canada, chap. 135, as amended by 54-55 Vic., chap. 25, sec. 4.

The Committee submit the same for Your Excellency's approval.

JOHN J. McGEE,
Clerk of the Privy Council.

[1990]

REPORT *of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 8th July*, 1893.

On a report dated 7th July, 1893, from the Acting Minister of Justice, submitting that in conformity with an order of Your Excellency in Council, dated 22nd April, 1893, a draft case prepared for reference to the Supreme Court of Canada, touching certain statutes of the province of Manitoba relating to education, and the memorials of certain petitioners in Manitoba complaining thereof, was communicated to the Lieutenant-governor of Manitoba, and to Mr. John S. Ewart, Q.C., counsel for the petitioners, for such suggestions and observations as they might respectively desire to make in relation to such case, and the questions which should be embraced therein. No reply has been received from the Lieutenant-governor of Manitoba. Mr. Ewart, under date 4th May, 1893, has made certain observations and

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suggestions which he, the Minister, has had under consideration. The Minister, upon such consideration, has made some amendments to the draft case, which he submits for Your Excellency's approval.

The minister recommends that the case as amended, a copy of which is herewith submitted, be approved by Your Excellency, and that copies thereof be transmitted to the Lieutenant-governor of Manitoba and to Mr. Ewart, with the information that the same is the case which it is proposed to refer to the Supreme Court of Canada touching the statutes and memorials above referred to.

The Committee submit the same for Your Excellency's approval.

JOHN J. McGEE,
Clerk of the Privy Council.

CASE.

Annexed hereto is an order of His Excellency the Governor General in Council, made on the 29th December, 1892, approving of a report of a sub-Committee of Council thereto annexed upon certain memorials complaining of two statutes of the Legislature of Manitoba, relating to education, passed in the session of 1890. The memorials therein referred to, and all correspondence in connection therewith, are hereby made part of this case, together with all statutes, whether Provincial, Dominion, or Imperial, in any wise dealing with, or affecting the subject of education in Manitoba, and all proceedings had or taken before the Court of Queen's Bench, Manitoba, the Supreme Court of Canada, and the Judicial Committee of the Privy Council in the causes of *Barrett* v. *the City of Winnipeg*, and *Logan* v. *the City of Winnipeg*; and all decisions or judgments in such cases are to be considered as part of this case and are to be referred to accordingly.

The questions for hearing and consideration by the Supreme Court of Canada being the same as those indicated in the report of the Sub-Committee of Council above referred to, are as follows :—

(1.) Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by sub-section 3 of section 93 of the British North America Act, 1867, or by sub-section 2 of section 22 of the Manitoba Act, 33 Victoria (1870), chapter 3, Canada?

(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the sub-sections above referred to, or either of them?

(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett* v. *the City of Winnipeg*, and *Logan* v. *the City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?

(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?

(5.) Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?

(6.) 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, or establish a "system

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of separate and dissentient schools within the meaning of subsection 3 of section 93 of 'the British North America Act, 1867,'" if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?

REPORT *of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 29th of December*, 1892.

The Committee of the Privy Council have had under consideration a report, hereto annexed, from a sub-committee of Council, to whom where referred certain memorials to Your Excellency, complaining of two statutes of the Legislature of Manitoba, relating to education, passed in the session of 1890.

The Committee, concurring in the report of the sub-committee, submit the same for Your Excellency's approval, and recommend that Saturday, the 21st day of January, 1893, at the chamber of the Privy Council, at Ottawa, be fixed as the day on which the parties concerned shall be heard with regard to the appeal in the matter of the said statutes.

The Committee further advise that a copy of this minute, if approved, together with a copy of the report of the sub-committee of Council, be transmitted to the Lieutenant-governor of Manitoba.

JOHN J. McGEE,
Clerk of the Privy Council.

To His Excellency the Governor General in Council :—

The sub-committee to whom were referred certain memorials, addressed to Your Excellency in Council, complaining of two statutes of the Legislature of

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Manitoba, relating to education, passed in the session of 1890, have the honor to make the following report:

The first of these memorials is from the officers and executive committee of the "National Congress," an organization which seems to have been established in June, 1890, in Manitoba.

This memorial sets forth that two Acts of the Legislature of Manitoba, passed in 1890, intituled respectively, "An Act respecting the Department of Education" and "An Act respecting Public Schools," deprive the Roman Catholic minority in Manitoba of rights and privileges which they enjoyed with regard to education previous to the establishment of the province, and since that time down to the passing of the Acts aforesaid, of 1890.

The memorial calls attention to the fact that soon after the passage of those Acts, (and in the year 1891) a petition was presented to Your Excellency, signed by a large number of the Roman Catholic inhabitants of Manitoba, praying that Your Excellency might entertain an appeal on behalf of the Roman Catholic minority against the said Acts, and that it might be declared "that such Acts had a prejudicial effect on the rights and privileges, with regard to denominational schools, which the Roman Catholics had, by law or practice, in the province, at the union;" also that directions might be given and provision made in the premises for the relief of the Roman Catholics of the Province of Manitoba.

The memorial of the "National Congress" recites, at length, the allegations of the petition last hereinbefore referred to, as having been laid before Your Excellency in 1891. The substance of those allegations seems to be the following: That, before the passage of the Act constituting the Province of Manitoba, known as the "Manitoba Act," there existed, in the territory now

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constituting the province, a number of effective schools for children, which schools were denominational, some of them being erected and controlled by the authorities of the Roman Catholic Church, and others by the authorities of various Protestant denominations; that those schools were supported, to some extent by fees, and also by assistance from the funds contributed by the members of the church or denomination under whose care the school was established; that at that period the Roman Catholics had no interest in or control over the schools of Protestant denominations, nor had Protestants any interest in or control over the schools of Roman Catholics; that there were no public schools in the province, in the sense of State schools; that members of the Roman Catholic Church supported schools for their own children and for the benefit of Roman Catholic children, and were not under obligations to contribute to the support of any other schools.

The petition then asserted that, in consequence of this state of affairs, the Roman Catholics were separate from the rest of the community, in the matter of education, at the time of the passage of the Manitoba Act.

Reference is then made to the provisions of the Manitoba Act by which the legislature was restricted from making any law on the subject of education which should have a prejudicial effect on the rights and privileges, with respect to denominational schools, "which any class of persons had, by law or practice, in the province at the "'union.'"

The petition then set forth that, during the first session of the Legislative Assembly of the Province of Manitoba, an Act was passed relating to education, the effect of which was to continue to the Roman Catholics the separate condition, with reference to education, which they had enjoyed previous to the union; and

that ever since that time, until the session of 1890, no attempt was made to encroach upon the rights of the Roman Catholics in that regard; but that the two statutes referred to, passed in the session of 1890, had the effect of depriving the Roman Catholics altogether of their separate condition with regard to education, and merged their schools with those of the Protestant denominations, as they required all members of the community, whether Roman Catholic or Protestant, to contribute to the support of what were therein called "Public Schools," but what would be, the petitioners alleged, in reality a continuation of the Protestant schools.

After setting forth the objections which Roman Catholics entertain to such a system of education as was established by the Acts of 1890, the petitioners declared that they appealed from the acts complained of and they presented the prayer for redress which is hereinbefore recited.

The petition of the "Congress" then sets forth the minute of Council, approved by Your Excellency on the 4th April, 1891, adopting a report of the Minister of Justice, which set out the scope and effect of the legislation complained of, and also the provisions of the Manitoba Act with reference to education. That report stated that a question had arisen as to the validity and effect of the two statutes of 1890, referred to as the subject of the appeal, and intimated that those statutes would probably be held to be *ultra vires* of the legislature of Manitoba if they were found to have prejudicially affected "any right or privilege with respect to denominational schools which any class of persons had, by law or practice, in the province at the union." The report suggested that questions of fact seemed to be raised by the petitions, which were then under consideration, as to the practice in Manitoba with regard

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to schools, at the time of the union, and also questions of law as to whether the state of facts then existing constituted a "right or privilege" of the Roman Catholics, within the meaning of the saving clauses in the Manitoba Act, and as to whether the acts complained of (of 1890) had "prejudicially affected" such "right or privilege." The report set forth that these were obviously questions to be decided by a legal tribunal, before the appeal asserted by the petitioners could be taken up and dealt with, and that if the allegations of the petitioners and their contentions as to the law, were well founded, there would be no occasion for Your Excellency to entertain or to act upon the appeal, as the courts would decide the act to be *ultra vires*. The report and the minute adopting it, were clearly based on the view that consideration of the complaints and appeal of the Roman Catholic minority, as set forth in the petitions, should be deferred until the legal controversy should be determined, as it would then be ascertained whether the appellants should find it necessary to press for consideration of their application for redress under the saving clauses of the British North America Act and the Manitoba Act, which seemed, by their view of the law, to provide for protection of the rights of a minority against legislation (within the competence of the legislature), which might interfere with rights which had been conferred on the minority, after the union.

The memorial of the "Congress" goes on to state that the Judicial Committee of the Privy Council, in England, has upheld the validity of the acts complained of, and the "memorial" asserts that the time has now come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the Manitoba Act.

There was also referred to the sub-committee a memorial from the Archbishop of Saint Boniface, complaining of the two Acts of 1890, before mentioned, and calling attention to former petitions on the same subject from members of the Roman Catholic minority in the province. His Grace made reference, in this memorial, to assurances which were given by one of Your Excellency's predecessors before the passage of the Manitoba Act, to redress all well founded grievances and to respect the civil and religious rights and privileges of the people of the Red River territory. His Grace then prayed that Your Excellency should entertain the appeal of the Roman Catholics of Manitoba and might consider the same, and might make such directions for the hearing and consideration of the appeal as might be thought proper, and also give directions for the relief of the Roman Catholics of Manitoba.

The sub-committee also had before them a memorandum made by the "Conservative League" of Montreal remonstrating against the (alleged) unfairness of the Acts of 1890, before referred to.

Soon after the reference was made to the sub-committee of the memorial of the "National Congress" and of the other memorials just referred to, intimation was conveyed to the sub-committee, by Mr. John S. Ewart, counsel for the Roman Catholic minority in Manitoba, that, in his opinion, it was desirable that a further memorial, on behalf of that minority, should be presented before the pending application should be dealt with, and action on the part of the sub-committee was therefore delayed until the further petition should come in.

Late in November this supplementary memorial was received and referred to the sub-committee. It is signed by the Archbishop of St. Boniface, and by the President of the "National Congress," the Mayor of St.

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Boniface, and about 137 others, and is presented in the name of the "members of the Roman Catholic Church resident in the province of Manitoba."

Its allegations are very similar to those hereinbefore recited, as being contained in the memorial of the congress, but there is a further contention that the two acts of the Legislative Assembly of Manitoba, passed in 1890, on the subject of education, were "subversive of the rights and privileges of the Roman Catholic minority provided for by the statutes of Manitoba, prior to the passing of the said acts of 1890, thereby violating both the British North America Act and the Manitoba Act."

This last mentioned memorial urged:—

(1.) That Your Excellency might entertain the appeal and give directions for its proper consideration.

(2.) That Your Excellency should declare that the two acts of 1890 (chapters 37 and 38), do prejudicially affect the rights and privileges of the minority, with regard to denominational schools, which they had by law or practice, in the province, at the union.

(3.) That it may be declared that the said acts affect the rights and privileges of Roman Catholics in relation to education.

(4.) That the re-enactment may be ordered by Your Excellency of the statutes in force in Manitoba, prior to these acts of 1890, in so far, at least, as may be necessary to secure for Roman Catholics in the province the right to build, maintain, &c., their schools in the manner provided by such statutes, and to secure to them their proportionate share of any grant made out of public funds of the province for education, or to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from payment or contribution to the support of any other schools; or

that these acts of 1890 should be so amended as to effect that purpose.

Then follows a general prayer for relief.

In making their report the sub-committee will comment only upon the last memorial presented, as it seems to contain, in effect, all the allegations embraced in the former petitions which call for their consideration and is more specific as to the relief which is sought.

As to the request which the petitioners make in the second paragraph of their prayer, viz.: "That it may be declared that the said Acts (53 Vic., chs. 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools which the Roman Catholics had by law or practice in the province of Manitoba at the time of the union," the sub-committee are of opinion that the judgment of the Judicial Committee of the Privy Council is conclusive as to the rights with regard to denominational schools which the Roman Catholics had at the time of the union, and as to the bearing thereon of the statutes complained of, and Your Excellency is not, therefore, in the opinion of the sub-committee, properly called upon to hear an appeal based on those grounds. That judgment is as binding on Your Excellency as it is on any of the parties to the litigation, and, therefore, if redress is sought on account of the state of affairs existing in the province at the time of the union, it must be sought elsewhere and by other means than by way of appeal under the sections of the British North America Act and of the Manitoba Act, which are relied on by the petitioners as sustaining this appeal.

The two Acts of 1890, which are complained of, must, according to the opinion of the sub-committee, be regarded as within the powers of the Legislature of Manitoba, but it remains to be considered whether the appeal should be entertained and heard as an appeal.

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against statutes which are alleged to have encroached on rights and privileges with regard to denominational schools which were acquired by any class of persons in Manitoba, not *at the time of the union*, but *after the union*.

The sub-committee were addressed by counsel for the petitioners as to the right to have the appeal heard, and from his argument, as well as from the documents, it would seem that the following are the grounds of the appeal :—

A complete system of separate and denominational schools, *i.e.*, a system providing for Public Schools and for Separate Catholic Schools, was, it is alleged, established by Statute of Manitoba in 1871, and by a series of subsequent Acts. That system was in operation until the two Acts of 1890 (chapters 37 and 38) were passed.

The 93rd section of the British North America Act, in conferring power on the provincial legislatures exclusively to make laws in relation to education, imposed on that power certain restrictions, one of which was (sub-section 1) to preserve the right with respect to denominational schools which any class of persons had by law in the province at the union. As to this restriction it seems to impose a condition on the validity of any Act relating to education, and the sub-committee have already observed that no question, it seems to them, can arise, since the decision of the Judicial Committee of the Privy Council.

The third sub-section, however, is as follows :—

"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

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Roman Catholic minority of the Queen's subjects in relation to education."

The Manitoba Act passed in 1870, by which the province of Manitoba was constituted, contains the following provisions, as regards that province:—

By section 22 the power is conferred on the legislature exclusively to make laws in relation to education, but subject to the following restrictions:

(1) "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have, by law or practice, in the province at the union."

This restriction, the sub-committee again observe, has been dealt with by the judgment of the judicial committee of the Privy Council.

Then follows:

(2) "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."

It will be observed that the restriction contained in subsection 2 is not identical with the restriction of subsection 3 of the 93rd section of the British North America Act, and questions are suggested, in view of this difference, as to whether subsection 3 of section 93 of the British North America Act applies to Manitoba, and, if not, whether subsection 2 of section 22 of the Manitoba Act is sufficient to sustain the case of the appellants; or, in other words, whether, in regard to Manitoba, the minority has the same protection against laws which the legislature of the province has power to pass, as the minorities in other provinces have, under the subsection before quoted from the British North

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America Act, as to separate or denominational schools established after the union.

The argument presented by counsel on behalf of the petitioners was, that the present appeal comes before Your Excellency in Council, not as a request to review the decision of the judicial committee of the Privy Council, but as a logical consequence and result of that decision, inasmuch as the remedy now sought is provided by the British North America Act, and the Manitoba Act, not as a remedy to the minority against statutes which interfere with the rights which the minority had at the time of the union, but as a remedy against statutes which interfere with rights acquired by the minority after the union. The remedy, therefore, which is sought, is against acts which are *intra vires* of the provincial legislature. His argument is also that the appeal does not ask Your Excellency to interfere with any rights or powers of the legislature of Manitoba, inasmuch as the power to legislate on the subject of education has only been conferred on that legislature with the distinct reservation that Your Excellency in Council shall have power to make remedial orders against any such legislation which infringes on rights acquired after the union by any Protestant or Roman Catholic minority in relation to separate or dissentient schools.

Upon the various questions which arise on these petitions the sub-committee do not feel called upon to express an opinion, and, so far as they are aware, no opinion has been expressed on any previous occasion in this case or any other of a like kind, by Your Excellency's Government or any other Government of Canada. Indeed, no application of a parallel character has been made since the establishment of the Dominion.

The application comes before Your Excellency in a manner differing from applications which are ordinarily

made, under the constitution, to Your Excellency in Council. In the opinion of the sub-committee the application is not to be dealt with at present as a matter of a political character or involving political action on the part of Your Excellency's advisers. It is to be dealt with by Your Excellency in Council, regardless of the personal views which Your Excellency's advisers may hold with regard to denominational schools and without the political action of any of the members of Your Excellency's Council being considered as pledged by the fact of the appeal being entertained and heard. If the contention of the petitioners be correct, that such an appeal can be sustained, the inquiry will be rather of a judicial than a political character. The sub-committee have so treated it in hearing counsel, and in permitting their only meeting to be open to the public. It is apparent that several other questions will arise, in addition to those which were discussed by counsel at that meeting, and the sub-committee advises that a date be fixed at which the petitioners, or their counsel, may be heard with regard to the appeal, according to their first request.

The sub-committee think it proper that the Government of Manitoba should have an opportunity to be represented at the hearing, and they further recommend, with that view, that if this report should be approved, a copy of any minute approving it, and of any minute fixing the date of the hearing with regard to the appeal, be forwarded, together with copies of all the petitions referred to, to His Honour the Lieutenant-Governor of Manitoba, for the information of His Honour's advisers.

In the opinion of the sub-committee the attention of any person who may attend on behalf of the petitioners, or on behalf of the Provincial Government, should be called to certain preliminary questions which seem to arise with regard to the appeal.

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Among the questions which the sub-committee regard as preliminary are the following:—

(1.) Whether this appeal is such an appeal as is contemplated by sub-section 3 of section 93 of the British North America Act, or by sub-section 2 of section 22 of the Manitoba Act.

(2.) Whether the grounds set forth in the petitions are such as may be the subject of appeal under either of the sub-sections above referred to.

(3.) Whether the decision of the Judicial Committee of the Privy Council in any way bears on the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union have been interfered with by the two statutes of 1890 before referred to.

(4.) Whether subsection 3 of section 93 of the British North America Act applies to Manitoba.

(5.) Whether Your Excellency in Council has power to grant such orders as are asked for by the petitioner, assuming the material facts to be as stated in the petition.

(6.) Whether the Acts of Manitoba, passed before the session of 1890, conferred on the minority a "right or privilege with respect to education," within the meaning of sub-section 2 of section 22 of the Manitoba Act, or established "a system of separate or dissentient schools," within the meaning of sub-section 3 of section 93 of the British North America Act, and if so, whether the two Acts of 1890, complained of, affect, "the right or privilege" of the minority in such a manner as to warrant the present appeal.

Other questions of a like character may be suggested at the hearing, and it may be desirable that arguments

should be heard upon such preliminary points before any hearing shall take place on the merits of the appeal.

Respectfully submitted,

JNO. S. D. THOMPSON,
M. BOWELL,
J. A. CHAPLEAU,
T. MAYNE DALY.

ST. BONIFACE, 22nd September, 1892.

SIR,—I have the honour to transmit to you herewith inclosed a petition for the consideration of His Excellency the Governor General in Council concerning the appeal of the Roman Catholics of the province of Manitoba with regard to education.

I have, etc.,

† ALEX. TACHÉ,
Arch. of St. Boniface, O.M.I.

To the Honourable
The Secretary of State for Canada,
Ottawa, Ont.

To His Excellency the Governor General in Council :

The humble petition of the undersigned, Archbishop of the Roman Catholic Church in the province of Manitoba, respectfully sheweth :—

1st. That two statutes, 53 Vic., chap. 37 and 38, were passed in the Legislative Assembly of Manitoba to merge the Roman Catholic Schools with those of the Protestant denominations, and to require all members of the community, whether Roman Catholic or Protestant, to contribute, through taxation, to the support of what are therein called Public Schools, but which are in reality a continuation of the Protestant Schools.

2nd. That on the 4th of April, 1890, James E. P. Prendergast, M.P.P. for Woodlands, transmitted to the

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honourable the Secretary of State for Canada a petition, signed by eight members of the legislative assembly of Manitoba, to make known to His Excellency the Governor General the grievances under which Her Majesty's Roman Catholic subjects of the province of Manitoba were suffering by the passage of the said two acts, respectively intituled: "An Act respecting the Department of Education," and "An Act respecting Public Schools," (53 Vic., chaps. 37 and 38). The said petition ended by the following words:—"Your petitioners, therefore, humbly pray that Your Excellency may be pleased to take such action and grant such relief and remedy as to Your Excellency may seem meet and just."

3rd. That on the 7th of April, the same year, 1890, the Catholic section of the Board of Education, in a petition signed by its president, the Archbishop of St. Boniface, and its secretary, T. A. Bernier, "most respectfully and earnestly prayed His Excellency the Governor General in Council that said last mentioned acts (53 Vic., chaps. 37 and 38) be disallowed to all intents and purposes."

4th. That on the 12th of April, 1890, the undersigned brought before His Excellency some of the facts concerning the outbreak which occurred at Red River during the winter of 1869-70; the part that the undersigned was invited, by Imperial and Federal authorities, to take in the pacification of the country; the promise intrusted to the undersigned in an autograph letter from the then Governor General that the people of Red River "may rely that respect and attention will be extended to the different religious persuasions;" the furnishing the undersigned with a proclamation to be made known to the dissatisfied population, in which proclamation the then Governor General declared:—"Her Majesty commands me to state to you that she

will be always ready, through me as her representative, to redress all well-founded grievances." By Her Majesty's authority, I do therefore assure you that on your union with Canada "all your civil and religious rights and privileges will be respected." In the strength of such assurance the people of Red River consented to their union with Canada, and the Act of Manitoba was passed, giving guarantees to the minority that their rights and privileges, acquired by law or practice, with regard to education, would be protected. The cited Acts, 53 Vic., chaps. 37 and 38, being a violation of the assurances given to the Red River population, through the Manitoba Act, the undersigned ended his petition of the 12th April, 1890, by the following words:—

"I therefore most respectfully and most earnestly pray that Your Excellency, as the representative of our most beloved Queen, should take such steps that in your wisdom would seem the best remedy against the evils that the above mentioned and recently enacted laws are preparing in this part of Her Majesty's domain."

5th. That later on, working under the above mentioned disadvantage and wishing for a remedy against laws which affected their rights and privileges, in the matter of education, 4,267 members of the Roman Catholic Church, in the province of Manitoba, on behalf of themselves and their co-religionists, appealed to the Governor General in Council from the said acts of the legislature of the province of Manitoba, the prayer of their petition being as follows:—

"(1.) That Your Excellency, the Governor General in Council, may entertain the said appeal, and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

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"(2.) That it may be declared that such Provincial law does prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

"(3.) That such directions may be given and provisions made for the relief of the Roman Catholics of the Province of Manitoba, as to Your Excellency in Council may seem fit."

6th. That in the month of March, 1891, the Cardinal Archbishop of Quebec and the Archbishops and Bishops of the Roman Catholic Church in Canada, in a petition to His Excellency the Governor General in Council, shew that the 7th Legislature of the Province of Manitoba, in its 3rd session assembled, had passed an Act intituled: "An Act respecting the Department of Education," and another Act to be cited: "The Public School Act," which deprived the Catholic minority of the province of the rights and privileges they enjoyed with regard to education; and the venerable prelates added:—"Therefore your petitioners humbly pray Your Excellency in Council to afford a remedy to the pernicious legislation above mentioned, and that in the most efficacious and just way."

7th. That on the 21st March, 1891, the Honourable the Minister of Justice reported on the two Acts alluded to above, cap. 37, "An Act respecting the Department of Education," and cap. 38, "An Act respecting Public Schools," and here are the conclusions of his report:—"If the legal controversy should result in the decision of the Court of Queen's Bench (adverse to Catholic views) being sustained, the time will come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the Manitoba Act, quoted in the early part

of this report, and which are analogous to the provisions made by the British North America Act in relation to the other provinces.

"Those subsections contain in effect the provisions which have been made as to all the provinces, and are obviously those under which the constitution intended that the Government of the Dominion should proceed if it should at any time become necessary that the Federal powers should be resorted to for the protection of a Protestant or Roman Catholic minority against any act or decision of the Legislature of the province, or of any provincial authority, affecting any 'right or privilege' of any such minority 'in relation to education.'"

A committee of the Honourable the Privy Council having had under consideration the above report submitted the same for approval, and it was approved by His Excellency the Governor General in Council on the 4th of April, 1891.

8th. That the Judicial Committee of Her Majesty's Privy Council has sustained the decision of the Court of Queen's Bench.

9th. That your petitioner believes that the time has now "come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba, for redress, under subsections 2 and 3 of section 22 of the Manitoba Act" as it has "become necessary that the Federal power should be resorted to for the protection of the Roman Catholic minority."

Your petitioner therefore prays—

1. That Your Excellency the Governor General in Council may entertain the appeal of the Roman Catholics of Manitoba, and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

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2. That such directions may be given and provisions made for the relief of the Roman Catholics of the province of Manitoba as to Your Excellency in Council may seem fit.

And your petitioner will ever pray.

† ALEX. TACHÉ, *Archbishop of St. Boniface.*

ST. BONIFACE, 22nd September, 1892.

(*Translation.*)

ST. BONIFACE, MANITOBA,
30th September, 1892.

To the Hon. J. C. PATTERSON,
Secretary of State, &c.,

SIR,—I have the honour to transmit herewith, for submission to His Excellency the Governor General in Council, a petition signed by the executive of the National Congress, organized on the 24th June, 1890, asking the Dominion Government to consider the petitions already presented by the Catholics of this province, with a view to obtain redress of the grievances inflicted upon them in relation to education by the action of the provincial legislature of Manitoba, in 1890, and to request that you will submit the said petition to His Excellency in Council with as little delay as possible.

I have, &c.,
A. A. C. LARIVIÈRE.

(*Translation.*)

OFFICE OF THE NATIONAL CONGRESS,
ST. BONIFACE, 20th Sept., 1892.

To the Hon. Mr. LARIVIÈRE, M.P., St. Boniface.

SIR,—In behalf of the National Congress, organized 24th June, 1890, I beg to request that you will transmit to His Excellency the Governor General in Council the inclosed petition asking the Dominion Government to consider the petitions already presented by the Catholics of this province, with a view to obtaining redress

of the grievances inflicted upon them in the matter of education, by the provincial legislation of Manitoba, in 1890.

I have the honour, &c.,

T. A. BERNIER,

Pres. pro tem.

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

The humble petition of the undersigned members of the Roman Catholic Church, in the province of Manitoba, and dutiful subjects of Her Most Gracious Majesty, doth hereby respectfully represent that:—

The seventh legislature of the province of Manitoba, in its third session assembled, did pass in the year eighteen hundred and ninety an act intituled "An Act respecting the Department of Education," and also an act respecting public schools, which deprive the Roman Catholic minority in the said province of Manitoba of the rights and privileges they enjoyed with regard to education previous to and at the time of the union, and since that time up to the passing of the acts aforesaid.

That subsequent to the passing of said acts, and on behalf of the members of said Roman Catholic Church, the following petition has been laid before Your Excellency in Council:—

To His Excellency the Governor General in Council:

The humble petition of the undersigned members of the Roman Catholic Church, in the province of Manitoba, presented on behalf of themselves and their co-religionists in the said province, sheweth as follows:—

1. Prior to the passage of the Act of the Dominion of Canada, passed in the thirty-third year of the reign of Her Majesty Queen Victoria, chapter three, known as the Manitoba Act, and prior to the Order in Council

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issued in pursuance thereof, there existed, in the territory now constituting the province of Manitoba, a number of effective schools for children.

2. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations.

3. The means necessary for the support of the Roman Catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools and the rest was paid out of the funds of the church contributed by its members.

4. During the period referred to Roman Catholics had no interest in or control over the schools of the Protestant denominations, and the Protestant denominations had no interest in or control over the schools of the Roman Catholics. There were no public schools in the sense of state schools. The members of the Roman Catholic Church supported the schools of their own church for the benefit of the Roman Catholic children and were not under obligation to, and did not, contribute to the support of any other schools.

5. In the matter of education, therefore, during the period referred to, Roman Catholics were as a matter of custom and practice separate from the rest of the community.

6. Under the provisions of the Manitoba Act it was provided that the Legislative Assembly of the province should have the exclusive right to make laws in regard to education, subject to the following provisions :—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

(2.) 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.

(3.) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council, or any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General under this section.

7. During the first session of the Legislative Assembly of the province of Manitoba an act was passed relating to education, the effect of which was to continue to the Roman Catholics that separate condition with reference to education which they had enjoyed previous to the erection of the province.

8. The effect of the statute, so far as the Roman Catholics were concerned, was merely to organize the efforts which the Roman Catholics had previously voluntarily made for the education of their own children. It provided for the continuance of schools under the sole control and management of Roman Catholics, and of the education of their children according to the methods by which alone they believe children should be instructed.

9. Ever since the said legislation, and until the last session of the legislative assembly, no attempt was made to encroach upon the rights of the Roman Catholics so confirmed to them as above mentioned, but during said session statutes were passed (53 Vic., chaps. 37 and 38) the effect of which was to deprive the

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Roman Catholics altogether of their separate condition in regard to education; to merge their schools with those of the Protestant denominations; and to require all members of the community, whether Roman Catholic or Protestant, to contribute, through taxation, to the support of what are therein called public schools, but which are in reality a continuation of the Protestant schools.

10. There is a provision in the said act for the appointment and election of an advisory board, and also for the election in each municipality of school trustees. There is also a provision that the said advisory board may prescribe religious exercises for use in schools, and that the said school trustees may, if they think fit, direct such religious exercises to be adopted in the schools in their respective districts. No further or other provision is made with reference to religious exercises, and there is none with reference to religious training.

11. Roman Catholics regard such schools as unfit for the purposes of education, and the children of Roman Catholic parents cannot and will not attend any such schools. Rather than countenance such schools Roman Catholics will revert to the voluntary system in operation previous to the Manitoba Act, and will at their own private expense establish, support and maintain schools in accordance with their principles and their faith, although by so doing they will have in addition thereto to contribute to the expense of the so-called public schools.

12. Your petitioners submit that the said act of the legislative assembly of Manitoba is subversive of the rights of Roman Catholics guaranteed and confirmed to them by the statute erecting the province of Manitoba, and prejudicially affects the rights and privileges with respect to Roman Catholic schools which Roman Catholics had in the province at the time of its union with the Dominion of Canada.

13. Roman Catholics are in minority in said province.

14. The Roman Catholics of the province of Manitoba therefore appeal from the said act of the Legislative Assembly of Manitoba.

YOUR PETITIONERS THEREFORE PRAY—

1. That Your Excellency the Governor General in Council may entertain the said appeal, and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

2. That it may be declared that such provincial law does prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

3. That such directions may be given and provisions made for the relief of the Roman Catholics of the Province of Manitoba as to Your Excellency in Council may seem fit.

And your petitioners will ever pray.

†ALEX., Arch. of St. Boniface.
HENRI F., Ev. d'Anemour.
JOSEPH MESSIER, P.P. of St. Boniface.
T. A. BERNIER.
J. DUBUC.
L. A. PRUD'HOMME.
M. A. GIRARD.
A. A. LARIVIÈRE, M.P.
JAMES E. PRENDERGAST, M.P.P.
ROGER MARION, M.P.P.,
and 4,257 more names.

That on the consideration by the Privy Council of Canada of the two Acts aforesaid, the following report of the Honourable the Minister of Justice, dated 21st March, 1891, was approved by His Excellency the

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Governor General in Council on the 4th of April, 1891, viz.:—

DEPARTMENT OF JUSTICE,
CANADA, 21st March, 1891.

To His Excellency the Governor General in Council:

The undersigned has the honour to report upon the two Acts of the following titles passed by the Legislature of the Province of Manitoba at its session held in the year 1890, which Acts were received by the Honourable the Secretary of State on the 11th April, 1890:—

Chapter 37, "An Act respecting the Department of Education," and chapter 38, "An Act respecting the Public Schools."

The first of these Acts creates a Department of Education, consisting of the Executive Council or a Committee thereof appointed by the Lieutenant-Governor in Council, and defines its powers. It also creates an Advisory Board, partly appointed by the Department of Education and partly elected by teachers, and defines its powers. Also.

The "Act respecting Public Schools" is a consolidation and amendment of all previous legislation in respect to public schools. It repeals all legislation which created and authorized a system of separate schools for Protestants and Roman Catholics. By the Acts previously in force either Protestants or Roman Catholics could establish a school in any school district, and Protestant ratepayers were exempted from contribution for the Catholic schools, and Catholic ratepayers were exempted from contribution for Protestant schools.

The two Acts now under review purport to abolish these distinctions as to the schools, and these exemptions as to ratepayers, and to establish instead a system under which public schools are to be organized in all the schools districts, without regard to the religious views of the ratepayers.

The right of the province of Manitoba to legislate on the subject of education is conferred by the act which created the province, viz., 32-33 Vic., chap. 3 (The Manitoba Act), section 22, which is as follows :—

"22. In and for the province of Manitoba the said legislature may exclusively make laws in relation to education, subject to the following provisions :—

"(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

"(2.) An appeal shall lie to the Governor General in Council from the 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.

"(3.) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor in Council, on any appeal under this section, is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section."

In the year 1870, when the "Manitoba Act" was passed there existed no system of education established or authorized by law, but at the first session of the provincial legislature in 1871 an "Act to establish a system of education in the province" was passed. By that act the Lieutenant Governor in Council was empowered to appoint not less than ten or more than fourteen to be a Board of Education for the province, of whom

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one-half were to be Protestants and the other half Catholics, with one superintendent of Protestant and one superintendent of Catholic schools. The Board was divided into two sections, Protestant and Catholic, each section to have under its control and management the discipline of the schools of its faith, and to prescribe the books to be used in the schools under its care which had reference to religion or morals.

The moneys appropriated for education by the legislature were to be divided equally, one moiety thereof to the support of Protestant schools, and the other moiety to the support of Catholic schools.

By an act passed in 1875 the board was increased to twenty-one, twelve Protestants and nine Roman Catholics; the moneys voted by the legislature were to be divided between the Protestant and Catholic schools in proportion to the number of children of school age in the schools under the care of Protestant and Catholic sections of the board respectively.

The Act of 1875 also provided that the establishment in a school district of a school of one denomination should not prevent the establishment of a school of another denomination in the same district.

Several questions have arisen as to the validity and effect of the two statutes now under review; among those are the following:—

It being admitted that "no class of persons" (to use the expression of the Manitoba Act), had "by law" at the time the province was established, "any right or privilege with respect to denominational (or any other) school," had "any class of persons" any such right or privilege with respect to denominational schools "by practice" at that time? Did the existence of separate schools for Roman Catholic children, supported by Roman Catholic voluntary contributions, in which their religion might be taught and in which

text books suitable for Roman Catholic schools were used, and the non-existence of any system by which Roman Catholics, or any other, could be compelled to contribute for the support of schools, constitute a "right or privilege" for Roman Catholics "by practice" within the meaning of the Manitoba Act? The former of these, as will at once be seen, was a question of fact and the latter a question of law based on the assumption, which has since been proved to be well founded, that the existence of separate schools at the time of the "union" was the fact on which the Catholic population of Manitoba must rely as establishing their "right or privilege" "by practice." The remaining question was whether, assuming the foregoing questions, or either of them, to require an affirmative answer, the enactments now under review, or either of them, affected any such "right or privilege."

It became apparent at the outset that these questions required the decision of the judicial tribunals, more especially as an investigation of facts was necessary to their determination. Proceedings were instituted with a view to obtaining such a decision in the Court of Queen's Bench of Manitoba several months ago, and in course of these proceedings the facts have been easily ascertained, and the two latter of the three questions above stated were presented for the judgment of that court with the arguments of counsel for the Roman Catholics of Manitoba on the one side, and of counsel for the provincial government on the other.

The court has practically decided, with one dissentient opinion, that the acts now under review do not "prejudicially affect any right or privilege with respect to denominational schools" which Roman Catholics had "by practice at the time of the union," or, in brief, that the non-existence, at that time, of a system of public schools and the consequent exemption from taxation

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for the support of public schools and the consequent freedom to establish and support separate or "denominational" schools did not constitute a "right or privilege" "by practice" which these acts took away.

An appeal has been asserted and the case is now before the Supreme Court of Canada, where it will, in all probability, be heard in the course of next month.

If the appeal should be successful these acts will be annulled by judicial decision; the Roman Catholic minority of Manitoba will receive protection and redress. The acts purporting to be repealed will remain in operation, and those whose views have been represented by a majority of the Legislature cannot but recognize that the matter has been disposed of with due regard to the constitutional rights of the province.

If the legal controversy should result in the decision of the Court of Queen's Bench being sustained the time will come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the "Manitoba Act" quoted in the early part of this report and which are analogous to the provisions made by the British North America Act in relation to the other provinces.

Those subsections contain in effect the provisions which have been made as to all the provinces and are obviously those under which the constitution intended that the Government of the Dominion should proceed if it should at any time become necessary that the Federal powers should be resorted to for the protection of a Protestant or Roman Catholic minority against any Act or decision of the Legislature of the province, or of any provincial authority, affecting any "right or privilege" of any such minority "in relation to education."

Respectfully submitted,

JOHN S. D. THOMPSON,

Minister of Justice.

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That a recent decision of the Judicial Committee of the Privy Council in England having sustained the judgment of the Court of Queen's Bench of Manitoba, upholding the validity of the Acts aforesaid, your petitioners most respectfully represent that, as intimated in said report of the Honourable the Minister of Justice, the time has now come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the "Manitoba Act."

That your petitioners, notwithstanding such decision of the Judicial Committee of the Privy Council in England, still believe that their rights and privileges in relation to education have been prejudicially affected by said Acts of the Provincial Legislature.

Therefore, your petitioners most respectfully and most earnestly pray that it may please Your Excellency in Council to take into consideration the petitions above referred to, and to grant the conclusions of said petitions and the relief and protection sought for by the same.

And your petitioners will ever pray.

SAINT BONIFACE, 20th September, 1892.

Members of the Executive Committee of the National Congress.

T. A. BERNIER, Acting President,
A. A. C. LARIVIÈRE,
JOSEPH LECOMTE,
JAS. E. P. PRENDERGAST,
J. ERNEST CYR,
THEO. BERTRAND,
H. F. DESPARS,
M. A. KERVALK,
TÉLESPHORE PELLETIER,
DR. J. H. OCT. LAMBERT,
JOSEPH Z. C. AUGER,
A. F. MARTIN.

Secretaries, { A. E. VERSAILLES, R. GOULET, JR.

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WINNIPEG, MAN., 31st October, 1892.

The Honourable the Secretary of State,
Ottawa, Ont.

SIR,—I have the honour to inclose you another petition on behalf of the Catholic minority of Manitoba with reference to the position in which they find themselves in reference to education in this province. I do not desire that this petition should be substituted for the others already presented, but that it should rather be taken as supplementary to those others. May I ask that the matter may be brought before His Excellency the Governor General in Council at the earliest possible date?

I have, &c.,

JOHN S. EWART.

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

The humble petition of the members of the Roman Catholic Church residing in the Province of Manitoba sheweth as follows:—

1. Prior to the passage of the Act of the Dominion of Canada, passed in the 33rd year of the reign of Her Majesty Queen Victoria, chap. 3, known as the Manitoba Act, and prior to the Order in Council issued in pursuance thereof, there existed in the territory now constituting the Province of Manitoba a number of effective schools for children.

2. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations.

3. The means necessary for the support of the Roman Catholic schools were supplied to some extent by school fees paid by some of the parents of the children who

attended the schools, and the rest was paid out of the funds of the church contributed by its members.

4. During the period referred to Roman Catholics had no interest in or control over the schools of the Protestant denominations, and the members of the Protestant denominations had no interest in or control over the schools of the Roman Catholics. There were no public schools in the sense of State schools. The members of the Roman Catholic Church supported the schools of their own church for the benefit of Roman Catholic children and were not under obligation to, and did not, contribute to the support of any other schools.

5. In the matter of education, therefore, during the period referred to, Roman Catholics were as a matter of custom and practice separate from the rest of the community.

6. Under the provisions of the Manitoba Act it was provided that the Legislative Assembly of the province should have the exclusive right to make laws in regard to education, subject, however, and according to the following provisions:—

"(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

"(2.) 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.

"(3.) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor

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General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General under this section."

7. During the first session of the Legislative Assembly of the province of Manitoba an act was passed relating to education, the effect of which was to continue to the Roman Catholics that separate condition with reference to education which they had enjoyed previous to the erection of the province.

8. The effect of this statute, so far as the Roman Catholics were concerned, was merely to organize the efforts which Roman Catholics had previously voluntarily made for the education of their own children. It provided for the continuance of schools under the sole control and management of Roman Catholics, and for the education of their children according to the methods by which alone they believe children should be instructed. Between the time of the passage of the said act, and prior to the statute next hereinafter referred to, various acts were passed amending and consolidating the said act, but in and by all such later acts the rights and privileges of the Roman Catholics were acknowledged and conserved and their separate condition in respect to education continued.

9. Until the session of the Legislative Assembly held in the year 1890 no attempt was made to encroach upon the rights of the Roman Catholics so confirmed to them as above mentioned, but during said session statutes were passed (53 Vic., chaps. 37 and 38) the effect of which was to repeal all the previous acts; to deprive the Roman Catholics altogether of their sepa-

rate condition in regard to education ; to merge their schools with those of the Protestant denomination ; and to require all members of the community, whether Roman Catholic or Protestant, to contribute, through taxation, to the support of what are therein called public schools, but which are in reality a continuation of the Protestant schools.

10. There is a provision in the said act for the appointment and election of an advisory board, and also for the election in each district of school trustees. There is also a provision that the said advisory board may prescribe religious exercises for use in schools, and that the said school trustees may, if they think fit, direct such religious exercises to be adopted in the schools in their respective districts. No further or other provision is made with reference to religious exercises, and there is none with reference to religious training.

11. Roman Catholics regard such schools as unfit for the purposes of education, and the children of the Roman Catholic parents cannot and will not attend any such schools. Rather than countenance such schools Roman Catholics will revert to the voluntary system in operation previous to the Manitoba Act, and will at their own private expense establish, support and maintain schools in accordance with their principles and their faith, although by so doing they will have in addition thereto to contribute to the expense of the so-called public schools.

12. Your petitioners submit that the said acts of the Legislative Assembly of Manitoba are subversive of the rights of the Roman Catholics guaranteed and confirmed to them by the statute erecting the province of Manitoba, and prejudicially affect the rights and privileges with respect to Roman Catholic schools which Roman Catholics had in the province at the time of its union with the Dominion of Canada.

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13. Your petitioners further submit that the said acts of the legislative assembly of Manitoba are subversive of the rights and privileges of Roman Catholics provided for by the various statutes of the said legislative assembly prior to the passing of the said acts and affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in the said province in relation to education so provided for as aforesaid, thereby offending both against the British North America Act and the Manitoba Act.

14. Roman Catholics are in a minority in the said province, and have been so for the last fifteen years.

15. The Roman Catholics of the province of Manitoba, therefore, appeal from the said acts of the legislative assembly of the province of Manitoba.

Your petitioners therefore pray—

1. That Your Excellency the Governor General in Council may entertain the said appeal and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

2. That it may be declared that the said acts (53 Vic. chaps. 37 and 38) do prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

3. That it may be declared that the said last mentioned acts do affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in relation to education.

4. That it may be declared that to Your Excellency the Governor General in Council it seems requisite that the provisions of the statutes in force in the province of Manitoba prior to the passage of the said acts should be re-enacted, in so far at least as may be necessary to secure to the Roman Catholics in the said

province the right to build, maintain, equip, manage, conduct and support their schools in the manner provided for by the said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education, and to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payment or contribution to the support of any other schools; or that the said Acts of 1890 should be so modified or amended as to effect such purposes.

5. And that such further or other declaration or order may be made as to Your Excellency the Governor General in Council shall, under the circumstances, seem proper, and that such directions may be given, provisions made and all things done in the premises for the purpose of affording relief to the said Roman Catholic minority in the said province as to Your Excellency in Council may seem meet.

And your petitioners will ever pray.

† ALEX., Arch. of St. Boniface, O.M.I.
T. A. BERNIER, President of the National Congress.
JAMES E. P. PRENDERGAST, Maire de la Ville de St. Boniface.
J. ALLARD, O.M.I., V.G., and about 137 others.
JOHN S. EWART, Counsel for the Roman Catholic minority in the Province of Manitoba.

THE MANITOBA SCHOOL LAW.

The Conservative League, faithful to the enduring traditions of the Conservative party, wishes to record its regret that good feeling and a spirit of conciliation, so essential to the well-being of our public affairs, do not actuate the Government and the majority of the people of Manitoba; it regrets that, in the name of "Equal Rights," liberty of conscience, justice and

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equality of rights have been denied by the school law of 1890 to a very large portion of the inhabitants of that province.

In common with every citizen of the province of Quebec this League has the right to make itself heard on this question, because the province of Quebec accepted confederation only on the express condition that the rights of minorities would be respected and kept safe. Therefore it is that the League asserts itself to vindicate its principles and to defend the privileges and immunities of the minority in Manitoba.

The education of children is the exclusive province of the father of the family, and their education devolves on him as a matter of strict duty. It follows as a necessary consequence from this principle that the father of a family has the undeniable right to fulfil this duty according to the dictates of his conscience, that in the exercise of this duty and of this right the State has no lawful power to interfere with or restrict his freedom of action, and that any law which tends to trammel such free action is offensive to good conscience.

The Manitoba School Law of 1890 is a usurpation by the State of the rights of the *pater familias*. It is an Act subversive of his rights,—it is an abuse of power inspired by intolerance and fanaticism and is of a nature to inspire fear for the very existence of confederation if a remedy be not applied in good time.

No one can honestly deny the treaty of 1870, between the Government of Canada and the people of Manitoba, by which it was formally covenanted and agreed that their separate schools should be preserved to them. Nor can any one with honesty deny that the Manitoba School law of 1871, made and adopted by the very men who had themselves been parties to the treaty of the year before, maintained these separate schools for Catholics and Protestants.

And yet, the highest tribunal in England took into account neither the solemn treaty of 1870, nor the unequivocal interpretation of that treaty contained in the law of 1871.

For a moment only let the opposite state of things be supposed; let us suppose that a French Catholic majority in Manitoba refused separate schools to a Protestant minority. Who will believe that in such a state of things the Privy Council would have interpreted the Manitoba treaty in the same sense? Their Lordships would have shewn that our Catholic good faith, that our national honour were solemnly bound. They would have been eloquent in defence of the liberty of the citizens and learned as to the rights belonging to a father of a family; and they would have been right. But the supposition is altogether unfounded, for French Canadians have ever given constant proof, not in mere words but by deed and practice, of the truest liberality towards the Protestant minority of the province of Quebec. Fair play deserves fair play in return.

But there is more than this to be said. The Treaty of Paris (1763) fixed the conditions of the cession of Canada to England, and by this treaty England promised that the people of this country should remain free in the exercise of the Catholic religion. But, since it is obligatory for the Catholic to give his children a religious education, it follows that to banish religious instruction from the primary school is to deny him the right to obey the precepts of his religion, and this can only be done in violation of the exacted promise on the faith of which Canada became a British colony.

For these reasons the Conservative League protests against the school law in force in Manitoba, and expresses the hope that our statesmen and public men

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will labour manfully and uncompromisingly until these laws shall have been remedied.

Another question arises out of this subject, and claims our earnest attention. The present crisis would have been avoided if the Privy Council in England had rendered a decision according to equity, and based on the true state of the case. Unfortunately in the present instance, as in every other where the interests of the Catholics of this country and of the French Canadians have been involved, that high tribunal has rendered an arbitrary judgment. Since unhappily this appears to be true, it is most opportune to consider whether indeed the Privy Council has jurisdiction in such matters and to have it taken away if it exists: for the time has gone by and is past when a country or a people can be made to suffer injustice indefinitely.

MONTREAL, 3rd November, 1892.

THE CONSERVATIVE LEAGUE.

DERARTMENT OF THE SECRETARY OF STATE OF CANADA,

OTTAWA, 26th September, 1892.

MY LORD ARCHBISHOP,—I have the honour to acknowledge the receipt of your letter of the 22nd instant, transmitting for the consideration of His Excellency the Governor General a petition concerning the appeal of the Roman Catholics of the province of Manitoba with regard to education, and to state that the matter will receive consideration.

I have, &c.,

L. A. CATELLIER,

Under-Secretary of State.

His Grace the Lord Archbishop of St. Boniface,

St. Boniface, Man.

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 5th October, 1892.

SIR,—I have the honour to acknowledge receipt of your letter of the 30th of last month, inclosing for sub-

mission to His Excellency the Governor General in Council a petition signed by the members of the Executive of the National Congress, asking the Dominion Government to consider the petitions presented by the Catholics of the province of Manitoba on the question of the schools of that province, and to inform you that the said petition will receive attention.

I have, &c.,

L A. CATELLIER,

Under-Secretary of State.

A. A. C. LARIVIÈRE, M.P., St. Boniface, Man.

DEPARTMENT OF THE SECRETARY OF STATE OF CANADA,

OTTAWA, 5th November, 1892.

JOHN S. EWART, Esq., Q.C., of Messrs. Ewart, Fisher & Wilson, Barristers, Winnipeg, Man.

SIR,—I have the honour to acknowledge the receipt of your letter of the 31st ult., transmitting for submission to His Excellency the Governor General in Council another petition on behalf of the Catholic minority in Manitoba with reference to the position in which they find themselves consequent on the passing of certain provincial statutes, dealing with education in Manitoba, as therein set forth, and to state that the said petition will receive attention.

I have, &c.,

L. A. CATELLIER,

Under-Secretary of State.

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 4th January, 1893.

To His Honour the Lieutenant-Governor of Manitoba, Winnipeg, Man.

SIR,—I have to inform you that His Excellency the Governor General, having had under his consideration in Council a report from a sub-committee of the honourable the Privy Council, to whom had been

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referred certain memorials to His Excellency, complaining of two statutes of Manitoba, relating to education, passed in the session of 1890, has been pleased to make an order in the premises, a copy of which, together with a copy of the report above mentioned, I have the honour to transmit herewith, for the information of Your Honour's Government.

I have, &c.,

L. A. CATELLIER,

Under-Secretary of State.

GOVERNMENT HOUSE,

WINNIPEG, 7th January, 1893.

The Under-Secretary of State, Ottawa.

SIR,—I have the honour to acknowledge the receipt of your despatch No. 13, file No. 4,988, dated 4th instant, informing me that His Excellency the Governor General, having had under his consideration in Council a report from a sub-committee of the honourable the Privy Council (to whom had been referred certain memorials to His Excellency, complaining of two statutes of Manitoba, relating to education, passed in the session of 1890), has been pleased to make an order in the premises, and transmitting, for the information of my government, a copy of the order referred to, together with a copy of the report above mentioned, and to inform you that I have this day transmitted the inclosures mentioned to my government.

I have, &c.,

JOHN SCHULTZ,

Lieutenant-Governor.

GOVERNMENT HOUSE,

WINNIPEG, 18th January, 1893.

The Under-Secretary of State, Ottawa.

SIR,—Referring to your letter No. 13, file No. 4988, dated the 4th instant, covering the certified copy of a

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report of a committee of the honourable the Privy Council, to whom had been referred certain memorials to His Excellency the Governor General, (complaining of two statutes of Manitoba, relating to education, passed in the session of 1890), approved by His Excellency the Governor General in Council on the 29th December, 1892, a copy of which was transmitted to my government on the 7th instant, I have now the honour to inform you that my government have this day advised me as follows:—

"DEPARTMENT OF THE PROVINCIAL SECRETARY,

"WINNIPEG, 18th January, 1893.

"The Hon. JOHN C. SCHULTZ, Lieutenant Governor,

"Province of Manitoba, Winnipeg.

"SIR,—With reference to Your Honour's letter of the 7th instant, regarding two petitions presented to His Excellency the Governor General in Council, complaining of two (2) statutes of Manitoba, relating to education, passed in the session of 1890, and the documents transmitted therewith, I am instructed to say that Your Honour's Government has decided that it is not necessary that it should be represented on the hearing of the appeal, to take place on the 21st instant, before the Privy Council. I have, &c., J. D. CAMERON, *Provincial Secretary.*"

I have the honour to be sir,

Your obedient servant,

JOHN SCHULTZ,

Lieutenant Governor.

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 21st January, 1893.

To His Honour the Lieutenant-Governor of Manitoba, Winnipeg, Manitoba.

SIR,—In continuation of prior correspondence on the subject of an Order of His Excellency the Governor-

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General in Council, dated 29th December last, in the matter of certain memorials complaining of two statutes of Manitoba, relating to education, passed in the session of 1890, I have now to acknowledge receipt of your despatch No. 55 C., dated the 18th instant, in which is given the text of a letter from Your Honour's Provincial Secretary, dated concurrently, setting forth that your advisers had decided that it is not necessary for your Government to be represented on the hearing of the appeal, to take place this day, the 21st instant, before the Honourable the Privy Council.

I have, &c.,

L. A. CATELLIER,

Under Secretary of State.

The following are the statutes of Manitoba referred to and relating to the subject of education :—

34 Victoria (1871), Chap. XII., " An Act to establish a system of education in this province."

36 Victoria (1873), Chap. XXII., " An Act to amend the Act to establish a system of education in this province."

39 Victoria (1876), Chap. I., " An Act to amend the School Acts of Manitoba, so as to meet the special requirements of incorporated cities and towns."

41 Victoria (1878), Chap. XIII., " An Act to create a fund for educational purposes."

44 Victoria (1881), Chap. IV., " An Act to establish a system of Public Schools in the Province of Manitoba."

53 Victoria (1890), Chap. XXXVII., " An Act respecting the Department of Education."

53 Victoria (1890), Chap. XXXVIII., " An Act respecting Public Schools."

On the 4th October, 1893, the Solicitor General of the Dominion of Canada submitted the case to the court. Ewart Q.C. being present on behalf of the petitioners, and there being no person present to

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represent the Province of Manitoba, the Chief Justice stated that the court in exercise of the powers conferred by 54 & 55 Vic. ch. 25, sec. 4, substituted for sec. 37 R. S. C. c. 135, would direct the registrar to request C. Robinson Q.C., the senior member of the Ontario bar, to appear and argue the case as to any interest of the Province of Manitoba which is affected.

On October 17, 1893, the case having been called :—

Solicitor-General Curran :—My learned friends, representing the other parties, are ready.

Mr. Ewart :—I appear for the petitioners, my lords.

Mr. Robinson :—I appear, under the statute, by direction of the court.

TASCHEREAU J. :—You represent Manitoba Mr. Robinson? It is just as well to know whom you represent.

THE CHIEF JUSTICE :—You appear under the statute?

Mr. Robinson :—I appear. under the statute, by direction of the court.

Mr. Wade :—I appear on behalf of the Province of Manitoba. I desire to state, that while Manitoba appears here it is simply to acknowledge that the Province has been served with a copy of the case by the Clerk of the Privy Council, and not to take any part in the argument; I appear, out of deference to the court, to acknowledge that the Province has been served.

I might say further, my lords, as to Mr. Robinson, that the Province does not know him in the matter.

The argument of the case was then proceeded with.

Ewart Q.C. for the petitioners. Under the 22nd section of the Manitoba act there may be two readings, viz., in the first place, that which would make of the first two subsections two limitations of the jurisdiction of the province; the other reading would

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be that which would make the first subsection a limitation of the jurisdiction, and the second subsection the remedy which was provided in case of excess of jurisdiction.

In the view that I have the honour of submitting to your lordships the former of these two is the correct reading, that there are two limitations in these two subsections, and not merely a limitation in the first and a remedy provided in the second.

Under the first subsection of section 22 of the Manitoba act I beg to point out that a statute which offends against it is *ultra vires*. Then, it would seem to be an extraordinary thing that after the first subsection declares something to be *ultra vires* the second subsection should provide for an appeal from that statute, because, if the statute is *ultra vires*, there is no necessity of appealing from it at all, in fact there is nothing to appeal from, it has no operation, there is nothing upon which an appeal would rest. That is rendered stronger when one considers the third subsection, which is the complement, as it were, of the second subsection and provides what is to be done upon that appeal. Remedial legislation may follow upon that appeal. It would be in the last degree absurd if, starting with an *ultra vires* statute, we were to have, not only an appeal from it but remedial legislation in consequence of it.

I would further illustrate it in this way: The present Manitoba statute of 1890 has been held to be *intra vires*; supposing it had been held to be *ultra vires* we could not ask remedial legislation; there is nothing to remedy; we could not say that any of our rights and privileges had been affected; the statute is *ultra vires*, it has done nothing; there can be no appeal, and there can be no remedial legislation.

Then again, under the British North America Act, which in every respect is *in pari materiâ* with the Manitoba Act, that is clearly the law as to the other provinces.

There the first subsection provides for a limitation of the jurisdiction of the legislature; it shall not prejudicially affect any right or privilege with respect to denominational schools which any class of persons has by law in the province at the union. That is almost the same as the wording of the Manitoba act. The third subsection also, which corresponds with the second in the Manitoba act, provides for cases where separate or dissentient schools have existed at the time of the union, or are thereafter established; there is to be an appeal to the Governor General in Council.

Under that statute it seems to me that the appeal provided for is not what is provided for in the first subsection, that what is provided for in the first subsection is that something is to be *ultra vires*. Then, if it is not *ultra vires*, what can you do? If you feel yourself aggrieved at any time during any period of the subsequent history of any of the provinces in which separate schools existed at the time of the union, or were thereafter established, you can appeal if your rights which existed at any time during that period are interfered with.

I wish further, in support of that argument that those two subsections are dealing with different matters and different sets of cases, to point out the difference between them in two or three respects. If it is intended that the appeal is to lie in case of a breach of the first subsection then we would certainly find that the person to appeal under the second subsection was the person injured under the first. It would not be possible that the person to appeal would be a different person from the person affected under the first subsection, and yet,

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when one looks at the first subsection, we see "that no right or privilege" whether of the majority or the minority, is to be affected. If any right or privilege, either of the majority or the minority, is affected the act is *ultra vires* but who can appeal? It is only a member of the minority that can appeal. If it is claimed that the act is *ultra vires* then any member of the community can set the law in motion and contend that the act is *ultra vires*. If this appeal that is given is intended to be from an *ultra vires* statute then there is this extraordinary thing, a great many people who can be hurt under the first subsection cannot appeal under the second; for instance, Mr. Logan, who took action against this very statute, under the first subsection, claiming that the act was *ultra vires*, was not a member of the minority but was a member of the majority. He had a perfect right under the first subsection to go into the court and question the *intra vires* character of the statute, but he could not be an appellant, such as we are, because, under the second subsection, it is only given to a member of the Protestant or Roman Catholic minority. So that we would have the extraordinary case of there being a wrong, and the remedy being given in favour of some person who was not wronged. Under the first subsection, Mr. Logan, as a member of the community, as a member of the Church of England, in that capacity, moved the courts to take action, but, under the second subsection, your lordships will see that it is only a member of the Protestant or Roman Catholic minority that can appeal. That seems to me to be a very strong argument to show that these sections are dealing with different cases.

A further argument in the same line is this:—That the rights which are to be interfered with under the two sections are different rights, or may be different rights; not only is the appellant, possibly, a different person,

but what he has to appeal in respect of may be different, under the two sections. If under the first subsection, it is only in case rights which existed at the union are interfered with; and, under the second subsection, any right or privilege is dealt with, no matter when it arises.

The next point that I submit to your lordships, and perhaps the principal one, is, whether an appeal is given in respect of rights which arose subsequent to the union, or whether the statute is limited to rights which existed at the time of the union.

I quite admit we have no right or privilege which was infringed upon prior to the union; we say we have rights or privileges subsequent, and in respect of those we have an appeal. I say this statute applies to that, and I refer to the analogous section of the British North America Act, and I say it is perfectly clear that that section, at all events, covers the case of rights and privileges arising subsequent to the union; sec. 93, subsec. 3. Your lordships will observe that it applies to cases in which separate schools are established in a province for the first time subsequent to the union. For instance, if New Brunswick to-day were to establish a system of separate schools, it would come under subsec. 3, sec. 93.

Now, it is perfectly evident, I submit, that New Brunswick, having no separate school system at the time of the union, might establish one after the union; then that would be a case within this statute. Rights and privileges would be given to the Roman Catholic minority by that statute subsequent to the union, and there would be an appeal from an infringement of any of the rights and privileges given by that statute. That seems perfectly clear under the British North America Act.

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It is a provision similar to various provisions under our charter, under the British North America Act, for the supersession, by the Dominion, of acts of the local legislatures. We know that with reference to railways the Dominion Parliament may declare railways, and did declare all railways, even built by provinces, to be for the general benefit of Canada, and so swept all the railways, generally speaking, outside of the jurisdiction of the provinces. We know that under our decisions in bankruptcy and insolvency numbers of provincial statutes may be passed providing for various things, but if the Dominion legislates upon these subjects the Dominion legislation supersedes the other legislation. We have a particularly good example of that with reference to agriculture and immigration, under sec. 93 of the British North America Act, two subjects that one would think peculiarly came within the exclusive jurisdiction of the province, and yet it is provided that: "Any law of the legislature of a province relative to agriculture or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any act of the Parliament of Canada." In other words, that the law is not the law of the United States where every State is supreme, where the residuum, as it were, of the legislation is given to it, but that the legislatures here act under restricted charters, and that large supervisory powers have been retained by the Dominion in the way of disallowance, in the way of appeal, in the way of supersession of its legislation, bankruptcy, insolvency and a great many subjects; and so I say it is not opposed to the general scope and the genius of the British North America Act if we find that in such a subject as education there is a limitation upon the right of a province, having once accorded to a religious minority in the province certain rights and privileges under which

they may have obtained large vested rights, accumulated large properties, that the British North America Act should say to the majority those rights are not to be ruthlessly swept away; while you have a right to legislate with reference to it it is always subject to an appeal to the Executive of the Dominion, and then to the final arbitrament of the general Parliament.

Then, my first point is that all the other Provinces are in the position that Manitoba is to-day; that is, if there were separate schools at the union then there is an appeal; if separate schools are established since the union, then there is an appeal in respect of any rights and privileges given subsequent to the union, because they could not have been given prior.

Otherwise, that clause clearly means nothing. It seems to me the scope of it is clearly this: The Province may hereafter give to minorities certain privileges; it may have given them prior to the union, or it may think proper to give them after the union; why should there be an appeal in the one case and none in the other? It does not matter, so far as the principle of appeal is concerned, whether given prior to or subsequent to the union, the principle being that rights or privileges having been accorded at one time are not to be ruthlessly swept away without an appeal.

Another argument in support of this present point, that the appeal arises in respect of rights after the union, is to be derived from a consideration of how rights and privileges may arise? How can rights and privileges arise, such as are contemplated, in the first place, by the British North America Act? Under the British North America Act the rights and privileges referred to, no doubt, are those which have arisen by statute, that is, not by constitutional acts, but by ordinary statutes of the different provinces. Those acts may have been passed prior to the union, they

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may be passed subsequent to the union, that seems to make no difference under the British North America Act; then, why should it make any difference under the Manitoba Act? It says, an appeal shall lie from *any* act affecting any right or privilege. It does not say when that right or privilege came into being, it does not limit it and say it must be a right or privilege which existed at the time of the union. Quite the contrary. If your lordships will observe, the words "at the union" are left out of this second subsection. Under the first subsection, in order that a statute may be *ultra vires*, rights and privileges which existed at the union must be affected; but there may be an appeal no matter when any right or privilege arose.

Manitoba's Constitutional Act is intended to last, not for a year or two but for all time, with perhaps modifications. It seems to me it would be absurd to argue that Manitoba may go on legislating with reference to education for say 50 years, by which time a perfectly new system has been established, something that perhaps we have not conceived of at the present time but something agreeable to all parties, and then in the 51st year to say, that all that is reversed, and when we desire to appeal to have it said, let us go back to the union and see what your rights were at that time. That is not the case at all. It is not the rights and privileges which existed at the union that we have an appeal in respect of, but the rights and privileges which have accrued to us subsequent to that, and which existed at that time. It would seem to me as reasonable to say that your lordships' court, having jurisdiction on appeal from all final judgments of a court, were not to entertain appeals from judgments decided after your lordships' constituting act. Your lordships are given jurisdiction of appeal from every judgment, no matter when it has been decided. These

rights and privileges arising by statute are prior to or after the union. Now, if we are limited to a statute passed prior to the union, that is, if we can only appeal in respect of rights and privileges which were given to us by a statute prior to the union, of course there is no such thing, and Parliament, when it passed this statute, knew there was no such thing, and so there would be no appeal at all; the only possible case in which there is an appeal is from a statute which is passed after the union giving rights and privileges, and therefore the appeal here, unless the provision is nugatory altogether, must be an appeal in respect of rights and privileges subsequent to the union.

I would venture to suggest an analogous case to this, provided for by subsection 2, which provides for an appeal from "any Act or decision affecting any right or privilege." Supposing a statute provided, if any one interfered with another man's right to a property that there should be a certain redress, would it be argued for an instant that that statute only applied to rights which existed at the time of the statute? It is intended to apply, I should think, clearly, to any interference with rights no matter when the rights arise; it is always a question of whether rights were interfered with, not a question of when they came into being.

I wish to cite to your lordships two cases upon this point. *Attorney-General* v. *Saggers* (1); *Lane* v. *Cotton* (2).

There is one more matter to which I wish to call attention upon this point, as to whether the rights and privileges referred to in subsection 2 are those which arose subsequent to the union or not, and that is this: that an appeal is given, not only from an act of the legislature, but from the decision of any provincial

(1) 1 Price 182. (2) 12 Mod. 486.

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authority, and I would submit then, that under that part of the section, if we were administering this present statute of 1890, there would be an appeal from its wrongful administration. Supposing we had any rights under this present act of 1890, that would be a case within this section for an appeal from its wrongful administration. It seems to me that it could not have been intended to limit it to statutes which existed at the time of the union, but it was clearly intended to give a right of appeal from wrongful administration of statutes existing at a subsequent time, otherwise there would be really no appeal from administration at all; as soon as one statute was repealed, and another statute passed, they would say, well, there was a right of appeal from the administration under that old statute, but there was no right of appeal from the administration under this present statute. It seems to me it is a constitutional statute, intended to give a right of appeal from wrongful administration at any time. The rights and privileges spoken of here are the rights and privileges as they exist from time to time.

I will now deal with the question as to whether rights and privileges have been in any way prejudicially affected; and of course in entering upon this discussion we must observe what the Privy Council decided in *Barrett* v. *Winnipeg* (1).

The effect of 53 Vic. ch. 38 was that all the Roman Catholic schools, all their property, all their arrangements of every kind came under this new statute, and became what they call public schools. All their organization was swept away; everything was swept into this new arrangement. A provision is made by two or three sections at the close of the statute with reference to assets and liabilities (sec. 108 and following sections), but your lordships will observe that those sections

(1) [1892] A.C. 445.

only relate to the very few cases in which the boundaries of a Roman Catholic and a Protestant school district were identical. It provided for only those two or three cases. In every other case section 3 applies, and everything comes under the new school act.

So that I say the rights and privileges which have been interfered with are, in the first place, that all properties which we had are swept away, our separate condition, our organization, our right to self-government, our right to taxation for our own purposes, our right to share in government grants, all the rights incident to the condition of separate schools have been taken away from us.

I would also, upon that point, refer your lordships to the judgments of this court when the case was before your lordships before.

One other point remains. The fourth question which has been referred to your lordships may or may not turn out to be material; at all events your lordships are asked to give an answer to it.

The clause which seems to govern the answer to that question is the second section of the Manitoba Act.

I submit the British North America Act does apply to Manitoba, and for this reason:—I submit that one statute does not vary another, if it merely makes further provisions. For instance, if a statute provided that certain acts shall constitute theft, and then another act provided that a certain other thing shall constitute theft, that would not be a variation of the previous statute, it would be an addition to it. I argue in the same way here with reference to this second subsection, that it is wider, that it does not vary at all the third subsection of the British North America Act, save in this, that there is an addition to it, that it is inclusive and goes beyond it. The third subsection of the British North America Act provides that in two cases

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there is to be an appeal. There is nothing inconsistent in the Manitoba Act which says that in all cases there shall be an appeal. It goes beyond it, it does not vary it; it leaves it as it is, and adds to it.

There are a number of cases that might be referred to upon this point, but as they are all grouped together I will content myself with giving your lordships the pages at which they are to be found in Maxwell on Statutes (1). The treatment of the subjects extends beyond the particular pages that I give.

There is a case, analogous in some respects, which arose under the statute of Wills of Ontario, *Crawford* v. *Curragh* (2).

ROBINSON Q. C.—The subject matter for decision by the court in respect of the various questions on this important matter which have been referred by the Government of the Dominion is, how they should be answered, having reference simply to the construction of this statute. And I take it, that the whole thing depends upon the construction of these two statutes, the British North America Act and the Manitoba Act, taken and read in connection with the judgment of the Judicial Committee of the Privy Council in *Barrett* v. *Winnipeg* (3).

I submit that the British North America Act has no application. One would hardly expect it should have any application for this reason, that the subject matter of education is taken up and specially dealt with, as regards other provinces, by the British North America Act; the same subject is taken up and specially dealt with by the Manitoba Act as regards Manitoba; and, one would therefore expect that the provisions to be found in the Manitoba Act were intended to be the

(1) [2 ed., pp. 186, 198, 204, 222.] (2) 15 U.C.C.P. 55.
(3) [1892] A. C. 445.

complete and the only provisions dealing with that subject matter with regard to that province.

A difference, and a very marked difference, is plain upon the two statutes.

I do not concur with my learned friend, if I may venture to say so, when he says that adding to an enactment is not varying it. I should have thought, on the contrary, it was a very plain variation. To suggest a very familiar instance; if you were to say that murder should be a capital crime, I think you would be very materially varying that by saying that other things should be capital crimes. In one case, it is intended to deal with the whole subject of what is a capital felony, and if you were to add larceny to that, or other crimes, I think you would very materially vary it, and, therefore, when we find that particular subject matter dealt with specifically and by itself in the Manitoba Act, dealt with in a different manner from the way in which it is treated in the British North America Act, and when we find in the Manitoba Act a provision that except so far as the British North America Act may be varied by this act it shall be applicable to the Province of Manitoba, I should have thought the inference was very plain.

I cannot cite authorities upon such a point; it is almost impossible to find them. However, I may refer to a case your lordships may recollect of *Major* v. *The Canadian Pacific Railway* (1). There was a general provision in the Railway Act with respect to building branches, and a special provision in the Canadian Pacific Act. It was contended that that provision in the special Railway Act, in the Canadian Pacific Charter, was varied, and added to, by the general provision of the Railway Act, because it was imported into the Canadian Pacific Charter in very much the same words

(1) 13 Can. S.C.R. 233.

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as the British North America Act is imported here It having been held that that modified the special clause in the Canadian Pacific Act the judgment was reversed on the ground that that was an error.

It may be a natural question to ask: Can it have been intended that Manitoba should be in a worse position than the other provinces? I cannot say whether it was to be in a better or a worse position, but the statute very plainly says Manitoba is to be in a different position.

There are three questions which my learned friend has suggested which stand apart from the main subject:

First, does the the British North America Act apply?

Secondly, what is the effect of the distinction between the two statutes, in the introduction of the words "Provincial authority," in one, and the addition in the other of the words "Acts of the Legislature"?

Lastly, are the rights and privileges in the Manitoba Act confined to rights and privileges existing at the union, or do they include rights and privileges subsequent as well?

Those are three questions which, so to speak, are separated from the main subject. I would like, in a few words, to dispose of them.

With regard to those words "Provincial authority" your lordships will remember that in section 93 subsection 3, an appeal shall lie from any act or decision of any provincial authority. In the Manitoba Act it is from any act or decision of the Legislature of the Province or of any provincial authority."

Now, one thing is very clear, that whoever framed those two statutes, and we may assume that the Manitoba section was framed in view of the similar section of the British North America Act, evidently had, to say the least of it, a doubt whether the words "Provincial authority" included legislation. My learned friend is

quite right in saying it may have been only *ex majore cautelâ*, but possibly for the want of some better reason, it suggests itself to me that perhaps the term "Provincial authority" hardly includes legislation, because the act of legislation is the act of the province itself, as it were. That is to say, the legislature, composed of the crown and the representatives of the people, is the province itself. It is not, in ordinary language, a provincial authority. I do not think you speak of the Dominion Parliament and the provincial legislatures, as being respectively Dominion authorities, and provincial authorities. The legislation of the country is the act of the province itself, not of any authority appointed, so to speak, by the province. At all events, we find it clear that there was the addition in the subsequent statute of the specific words which would seem to show that the legislature thought they were not included in the words "act or decision of provincial authority" in the first statute. I do not know that more can be said about that. It does not admit of much elaboration. The difference made by the legislature is plain. I suggest the probable reason for it, that it would be doubtful whether a statute of the legislature was an act or decision of a provincial authority. Whether it means an act in the sense of a statute, or an act of a provincial authority, all depends upon whether it is spelled with a capital "A" or a small "a," that is the real truth. We are speaking here of very refined distinctions in words. I see it spelled with a capital "A" in the statute I have before me, but if it meant an act or a decision of a provincial authority, you do not speak of an act of Parliament as a decision.

A suggestion occurred to me, that the act of the legislature was not exactly a provincial authority, it was an act of the province itself. I do not know

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whether an order in council might not be an act of "Provincial authority." There is some difference between the two.

Then, the next question my learned friend raised was, that the words "affecting any right or privilege" means affecting any right or privilege which existed at the union or was subsequently acquired.

Now, in the first place, we find that in subsection 1, rights and privileges at the union are specifically spoken of. One, therefore, assumes *primâ facie*, that when you find rights and privileges spoken of, with those words omitted, there was to be some sort of distinction and when we come to consider the effect of saying that those words "rights and privileges" mean rights and privileges whenever acquired, we are met with this obvious and, I submit, almost insuperable difficulty: it is contrary to all our ideas of legislation, contrary almost to our constitution, that the same legislature which creates cannot destroy. We have no instance of that, except in the British North America Act, that I know of. It is contrary to all principles of legislation, it is contrary to all principles of Government, and it is contrary to all constitutional principles if I may express it so strongly, that the same legislature to which you go for the creation of a right, and under which you enjoy the exercise of a right, has no power to deprive you of the right. It must surely, I submit, require most express and specific words to bring about that state of things.

When you add to that, that the insertion or the omission of those words involves a change of the organic law, then the argument becomes stronger that the omission of them cannot be supplied by anything in the shape of implication or construction, because to put them in would say that the legislature which made

a law, and created the right, could not repeal that law, or deprive those to whom they gave the right, of it.

Now, as to the main question, is there any right of appeal? I will read afterwards to your lordships the six questions, and see what specific answers should be given to them, and what reasons there are for suggesting that they should be answered in an opposite sense from that for which my learned friend contends; but, speaking substantially, he says the answers to all the questions should be in the affirmative. I submit reasons why the answers to the questions should be in the negative, but you may condense it all into one question: Is it competent for our Privy Council to entertain this appeal after the decision of the Judicial Committee of the Privy Council?

I submit that the obvious and plain difficulty in my learned friend's way is, that, as we read, or as I read and suggest to the court, that the judgment of the Judicial Committee should be read, they have decided, practically, that there is no such act to appeal from as is described in the appealing clause. What is it that you have a right to appeal from under the Manitoba Act? Leaving out the immaterial words, you have a right to appeal from any act of the provincial legislature "affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

What I say is this: The Judicial Committee decided that the existence of denominational schools, or the existence of a national system of non-sectarian schools, is in no way inconsistent with the rights and privileges which they have always enjoyed, and still enjoy, with respect to denominational schools.

Of course, if the section upon which the judicial committee proceeded in their judgment was precisely the same as the present section, there would

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be nothing more to argue. The question is, whether it is not the same in principle, and whether the principles which they have laid down do not necessarily make it applicable to the section we are now considering. If they do, there is no appeal; if they do not, there is an appeal.

Now, let us see what the differences are. In the first place, the words in the first subsection are "prejudicially affect"; is there any distinction between "prejudicially affect" and "affect"? In the argument, as my learned friend has mentioned to your lordships, it was said, and said, I submit, with unanswerable force, that there could be no distinction, for present purposes, between "affecting" and "prejudicially affecting"; in other words, the "affecting" which gives a right of appeal must be, in some sense, "prejudicially affecting." Any change, of course, is "affecting," but there could not be a right of appeal from a change enormously adding to their powers. There might be beneficial changes, changes which would give them infinitely greater rights; there could be no appeal there; therefore, I submit, there is no distinction between "affecting" and "prejudicially affecting."

Now, I quite admit that there is, in words, and in more than words, a plain distinction between the words "rights or privileges with respect to denominational schools which any class of persons has by law or practice in the province at the union," and "any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." Of course there is a very plain difference between those words and between, in some respects, the meaning of those words; but, in the first place, speaking of the words "in relation to education," and the way in which the "rights or privileges" of this statute were affected with reference to education, it

was that they were affected in relation to denominational schools. It was only because they alleged that their "rights or privileges in relation to denominational schools" were affected, that they said our rights "in relation to education" are affected. There was no other way in which they were assumed to be affected, so that I say there can be no distinction.

Then, was any right or privilege affected? Let us see what principle the judgment of the judicial committee lays down. The submission is, and the reason suggested to the court why those questions should be answered in the negative, and why no right of appeal exists, is, because there is no such statute existing as is defined in the clause giving the right of appeal. They can only appeal from a statute having a certain effect. The judicial committee of the Privy Council, as I submit, has decided that the statute from which they desire to appeal has not that effect. If it has not then of course there is no right of appeal.

The Judicial Committee says:—"Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools" (page 147). Then they cite the words of the appeal section "affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

Then, at the foot of page 147 the court says:—"Their lordships are convinced that it must have been the intention of the legislature to preserve every legal right or privilege and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons practically enjoyed at the time of the union."

Those words are strong, in this sense, that they define the kind of "right and privilege" which in their view the statute applied to, and intended to preserve. This

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statute they say was intended "to preserve every legal right or privilege, and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons practically enjoyed at the time of the union." And they say this statute does not infringe upon any legal right or privilege, with respect to denominational schools, which any class of persons practically enjoyed at the time of the union. That means "by practice," or practically, enjoyed at the time of the union.

Then, if that is the true construction of the statute, as laid down by the judicial committee of the Privy Council, they have decided that this is a statute which has not the effect of interfering with any such right or privilege.

Now, I am coming to the question: If it is not so restrained, does it make any difference, because the statute of 1871 established a system of denominational schools, as the Judicial Committee said? The statute of 1890 swept away that system; but, they go on to ask, and to define, what are the rights and privileges which the existence of that system involved, what are the immunities which it involved? First, they say there is no dispute as to the state of things which existed in Manitoba at the time of the union, and they describe it of course accurately, citing from the description of it by the archbishop. Then they say, even if that state of things which was described as existing in practice, had been established by law, what would have been the rights and privileges of the Roman Catholics with respect to denominational schools? They would have had, by law, the right to establish schools at their own expense, and so they have still, to maintain their schools by school fees, or voluntary contributions, and to conduct them in accordance with their own religion. "Every other religious body which was engaged in a

similar work at the time of the union would have had precisely the same right with respect to their denominational schools," I understood the Judicial Committee to say. So they have still. Possibly this right, if it had been defined or recognized by positive enactment, might have attached to it, as a necessary or appropriate incident, the right of exemption from any contribution under any circumstances to schools of a different denomination. But, in their lordships' opinion, it would be going much too far to hold that the establishment of a national system of education upon a non-sectarian basis is so inconsistent with the right to set up and maintain denominational schools that the two things cannot exist together, or that the existence of one necessarily implies or involves immunity from taxation for the purpose of the other.

I have read this judgment many times with the greatest possible care, because, I thought every thing turned upon it. If I understand rightly, it lays down in the broadest terms this principle, that the establishment of a national non-sectarian system of education, and the obligation of all persons, indifferently of every creed and denomination, to contribute to it, is in no way inconsistent with their rights with regard to denominational schools, nor with their rights, as I submit is the inference, in relation to education, because the only complaint is, that this is an infringement of their rights in relation to denominational schools. But the Judicial Committee have said it is not. How to meet that is the insuperable difficulty produced by that judgment.

Then they go on to say that no child is compelled to attend a public school. They say "but what right or privilege is violated or prejudicially affected by the law?"

Then, going to the other point, which my learned friend has called my attention to, of course if we are

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right in the contention that this only touches rights which existed at the union, why, there is an end of the matter, because these rights did not exist at the union. The act of 1871, and the subsequent acts under which my learned friend says they had certain rights in relation to education, and of which they were deprived by the legislation of 1890, has no application if my first contention is right. If that contention is not right, and by the appeal clause in the Manitoba Act, just as by the appeal clause in the other act, any rights which are called into existence by the legislature of Manitoba after the union cannot be interfered with or affected by the same legislature, then my learned friend points out, and points out truly, as I understand it, that this is the state of affairs, and these were the kind of rights they had, as is correctly described in the judgment of the Judicial Committee. They had a system of separate schools, or denominational schools, whichever you choose to call them, established, by which the Roman Catholics supported their own schools, and the Protestants supported their schools, nor could a Catholic be taxed for a protestant school. None of those privileges were interfered with. But, my learned friend says they had certain rights given to them by law by which they were entitled to assess their own people for the support of their own schools, and to participate in a certain legislative grant out of the general funds of the province. So far as I can understand my learned friend is perfectly right in that, and the result of establishing a system of national schools by the act of 1890 is to sweep that away. That seems beyond all question. That is the fact, as I understand it, and therefore, the question is: Is that a right or privilege in relation to education? As I understand it now, if the Roman Catholics or Protestants choose to support a school of their own for their own people, the law gives

them no power of assessment, the law does not assist them in doing it, it must be voluntary. And whatever right they had to any portion of the legislative grant to a denominational school, *qua* denominational school, they no longer get under the present act, because the present act establishes a national unsectarian system, and it simply says to everyone, you must all contribute to that. As to your denominational schools do just as you please, go to our schools or not, just as you like, and your children or not, as you please, we impose no disability on you because you do not take advantage of our schools; what we say is, that all people alike must contribute to this system of national education, all in the same degree and with equality; beyond that we do not interfere with you. Then, we submit that the judgment of the Privy Council says, in substance and in principle, that there is no right or privilege interfered with by this legislation. They had all these statutes before them, though I am quite free to admit, and your lordships will understand me always to admit, that they had nothing to deal with but the rights or privileges with regard to denominational schools.

From the position I occupy, having no special interest to insist upon, and no special interest of any client to advance, I do not think I would be justified in taking up more of the time of the court. I have done what seemed to be the desire of the court, given such assistance as I could by pointing out the considerations which seemed to me to indicate the reason why these different questions should be answered, not as my learned friend contends, but in the opposite sense.

I think that is all that occurs to me to say: First, that the rights and privileges which must be affected are only rights and privileges existing at the time of the union. That if they have other rights and privi-

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leges given by the legislature of Manitoba that legislature has a right to deal with them as they please. They created them, they can destroy them; and, as a matter of fact, in the result, there is no statute here affecting any right or privilege with regard to education which would form the subject matter of an appeal. I said I should read the different questions and suggest the answers which the court should give, but on reflection I hardly think that is worth while, because, if I am right, your lordships will see, from the result, exactly how those questions must inevitably be answered. If I am wrong, and my learned friend is right, they must be answered in the affirmative.

Ewart Q. C. in reply.—I shall refer very shortly to the points put forward by Mr. Robinson. First, upon the point that if there is this right of appeal from the legislature that it is something incongruous, something inconsistent with our whole system. I answered that to some extent before. I may perhaps add now, as his argument has led to this, that there is clearly a prohibition with reference to all the provinces which had a separate school system prior to the union. Those separate school systems existed by virtue of their own statutes, passed prior to the union. My learned friend says: Is it possible that a province which passes a statute has not power to repeal it? And I say yes, and I think my learned friend will have to agree with me, that in cases where there were rights and privileges prior to the union, by virtue of the province's own statute, they have not the power.

Then, if they are prohibited from repealing a statute passed prior to the union, why not prohibit them from repealing one they passed subsequent to the union? There is, after all, not an absolute prohibition, but it is this, that they shall not repeal it so as to prejudicially affect people to whom they had given rights, and who

had vested rights, as it were, grown up under the statutes which they themselves had passed.

We have something of the same sort in another part of our constitution, under the disallowance provision, and it was exercised in the case of *McLaren* v. *Caldwell* (1). It was because Ontario interfered with vested rights. There is a provision for the maintenance of vested rights.

My learned friend has referred to the decision of the Privy Council in *Barrett* v. *Winnipeg* (2), as being a complete answer to my position here. I think it is not, and for two reasons. He says that the Privy Council decided that it was only in respect of denominational schools, or contribution to denominational schools, that we could by any possibility object, that we could never object to subscriptions to national schools. Now, if that be so, in the Province of Quebec there is no guarantee for the protestants, although we have always assumed that there is a very carefully prepared clause guarding the protestants in Quebec. We all know that in the Province of Quebec there is not the national system, but there is the denominational system, the protestant and the catholic system. If my learned friend is right, why, the Province of Quebec to-morrow can pass an act establishing what it may choose to call what the Manitoba Act chooses to call these schools, national schools, and abolish all the protestant schools, and require the protestants to subscribe to the national schools.

If the principle in *Barrett* v. *Winnipeg* (2) were applied, not to the section to which they apply it, but to the subsequent section, then that would be the effect of it, and that is what my learned friend desires your lordship to do, to take the principle applied by their lord-

(1) 9 App. Cas. 392.

(2) [1892] A. C. 445.

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ships in *Barrett* v. *Winnipeg* (1) in one section and apply it to the other section. I think that would be unfortunate, because it would lead, in Quebec, to what I have said.

Then, the other reason is this, that even if that principle be applied to this section, still, that is only one of the points in which we are hurt.

Our principal grievance to-day is that we are without organization. We had organization under these statutes, we had a right to tax ourselves, we had a right to conduct our own schools under Governmental inspection and direction, we had to work up to a secular standard, and we are perfectly willing to do that and did do that, practically to the satisfaction of Manitoba, and what we are deprived of really is our organization. If we had that organization we would not care very much about the subscription to their national schools, because there are not any where we are. That does not apply to the cities where there would be national schools and where there would be our schools. There, we would be supporting our own, and we might have to support national schools too, but it does not apply to the great majority of cases. I mention that, not that your lordships may take it that the great majority of the schools are in that position, because your lordships have not that fact before you, but to emphasize this, that it is the deprivation of our organization that has hurt us specially, or that possibly may hurt us. One can easily see how it can hurt us. There are some matters of fact which appear in the petition which will go far to uphold what I have said.

I ask your lordships to refer amongst all the statutes that have been mentioned and those that have been printed and put before your lordships to the statute of 1885 particularly, which will show what our powers were, what moneys we got, and what powers of assessment we had, and where the revenue came from.

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THE CHIEF JUSTICE:—This case has been referred to the court for its opinion by His Excellency the Governor General in Council, pursuant to the provisions of "An Act respecting the Supreme and Exchequer Courts," Revised Statutes of Canada, chapter 135 as amended by 54 & 55 Victoria, ch. 25, sec. 4.

Six questions are propounded which are as follows:

(1.) Is the appeal referred to in the said memorials and petitions (referring to certain petitions and memorials presented to the Governor General in Council) and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Vic. (1870) chapter 3, Canada?

(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to or either of them?

(3.) Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1), dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province, have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials?

(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?

(5.) Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?

(6.) Did the Acts of Manitoba 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 or establish a system of 'separate or dissentient schools' within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found to be applicable to Manitoba; and if so, did the two Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?

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To put it in a concise form, the questions which we are called upon to answer are whether an appeal lies to the Governor General in Council either under the British North America Act, 1867, or under the Dominion Act establishing the Province of Manitoba, against an act or acts of the Legislature of Manitoba passed in 1890, whereby certain acts or parts of acts of the same legislature, previously passed, which had conferred certain rights on the Roman Catholic minority in Manitoba in respect of separate or denominational schools, were repealed.

The matter was brought before the court by the Solicitor General, on behalf of the crown, but was not argued by him. On behalf of the petitioners and memorialists who had sought the intervention of the Governor General, Mr. Ewart Q.C. appeared. Mr. Wade Q.C. appeared as counsel on behalf of the Province of Manitoba when the matter first came on, but declined to argue the case, and the court then, in exercise of the powers conferred by 54 & 55 Vic., chapter 25, section 4, (substituted for the Revised Statutes of Canada, chapter 135, section 37,) requested Mr. Christopher Robinson Q.C., the senior member of the bar practising before this court, to argue the case in the interest of the Province of Manitoba, and on a subsequent day the matter was fully and ably argued by Mr. Ewart and Mr. Robinson.

The proper answers to be given to the questions propounded depend principally on the meaning to be attached to the words "any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education" in subsection 2 of section 22 of the Manitoba Act. Do these words include rights and privileges in relation to education which did not exist at the union, but (in the words of section 93, subsection 3 of the British North America

Act) have been "thereafter established by the legislature of the province," or is this right or privilege mentioned in subsection 2 of section 22 of the Manitoba Act the same right or privilege which is previously referred to in subsection 1 of section 22 of the Manitoba Act, viz.: one which any class of persons had by law or practice in the province at the union or a right or privilege other than one which the legislature of Manitoba itself created?

Section 93 of the British North America Act, 1867, is as follows:—

In and for each Province the legislature may exclusively make laws in relation to education subject and according to the following provisions.

Subsec. 1 of the same section is as follows:—

Nothing in any such law shall prejudicially affect any right or privilege with reference to denominational schools which any class of persons have by law in the Province at the Union.

And subsec. 3 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 of the Queen's subjects in relation to education.

Section 22 of the Manitoba Act is as follows:—

In and for the Province the said legislature may exclusively make laws in relation to education subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the Union.

(2) 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 Cathotic minority of the Queen's subjects in relation to education.

It is important to contrast these two clauses of the acts in question, inasmuch as there is intrinsic evidence

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in the later act that it was generally modelled on the Imperial statute, the original Confederation Act; and the divergence in the language of the two statutes is therefore significant of an intention to make some change as regards Manitoba by the provisions of the later act.

It will be observed that the British North America Act, section 93, subsection 3, contains the words "or is thereafter established by the legislature of the province," which words are entirely omitted in the corresponding section (section 22, subsection 2) of the Manitoba Act. Again, the same subsection of the Manitoba Act gives a right of appeal to the Governor General in Council from the legislature of the province, as well as from any provincial authority, whilst by the British North America Act the right of appeal to the Governor General is only to be from the act or decision of a provincial authority. I can refer this difference of expression in the two acts to nothing but to a deliberate intention to make some change in the operation of the respective clauses. I do not see why there should have been any departure in the Manitoba Act from the language of the British North America Act unless it was intended that the meaning should be different. On the one hand, it may well be urged that there was no reason why the provinces admitted to confederation should have been treated differently; why a different rule should prevail as regards Manitoba from that which, by express words, applied to the other provinces. On the other hand there is, it seems to me, much force in the consideration, that whilst it was reasonable that the organic law should preserve vested rights existing at the union from spoliation or interference, yet every presumption must be made in favour of the constitutional right of a legislative body to repeal the laws which it has itself enacted. No doubt

this right may be controlled by a written constitution which confers legislative powers, and which may restrict those powers and make them subject to any condition which the constituent legislators may think fit to impose. A notable instance of this is, as my brother King has pointed out, afforded by the constitution of the United States, according to the construction which the Supreme Court in the well known "Dartmouth College case" put upon the provision prohibiting the state legislatures from passing laws impairing the obligation of contracts. It was there held, with a result which has been found most inconvenient, that a legislature which had created a private corporation could not repeal its own enactment granting the franchise, the reason assigned being that the grant of the franchise of a corporation was a contract. This has in practice been got over by inserting in such acts an express reservation of the right of the legislature to repeal its own act. But, as it is a *primâ facie* presumption that every legislative enactment is subject to repeal by the same body which enacts it, every statute may be said to contain an implied provision that it may be revoked by the authority which has passed it, unless the right of repeal is taken away by the fundamental law, the over-riding constitution which has created the legislature itself. The point is a new one, but having regard to the strength and universality of the presumption that every legislative body has power to repeal its own laws, and that this power is almost indispensable to the useful exercise of legislative authority since a great deal of legislation is of necessity tentative and experimental, would it be arbitrary or unreasonable, or altogether unsupported by analogy, to hold as a canon of constitutional construction that such an inherent right to repeal its own acts cannot be deemed to be withheld from a legislative

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body having its origin in a written constitution, unless the constitution itself, by express words, takes away the right. I am of opinion that in construing the Manitoba Act we ought to proceed upon this principle and hold the legislature of that province to have absolute powers over its own legislation, untrammelled by any appeal to federal authority, unless we find some restriction of its rights in this respect in express terms in the constitutional act.

Then, keeping the rule of construction just adverted to in view, is there anything in the terms of subsection 2 of section 22 of the Manitoba Act by which the right of appeal is enlarged and an appeal from the legislature is expressly added to that from any provincial authority, whilst in the British North America Act, section 93, subsection 3, the appeal is confined to one from a provincial authority only, which expressly or necessarily implies that it was the intention of those who framed the constitution of Manitoba to impose upon its legislature any disability to exercise the ordinary powers of a legislature to repeal its own enactments? I cannot see that it does, and I will endeavour to demonstrate the correctness of this opinion.

It might well have been considered by the Parliament of the Dominion in passing the Manitoba Act that the words "any provincial authority" did not include the legislature. Then, assuming it to have been intended to conserve all vested rights—"rights or privileges existing by law or practice at the time of the union,"—and to exclude or subject to federal control even legislative interference with such pre-existent rights or privileges, this prohibition or control would be provided for by making any act or decision of the legislature so interfering the subject of appeal to the Governor General in Council.

If, however, the words of section 93, subsection 3, "or is thereafter established by the legislature" had been repeated in section 22, the legislature would have been in express and unequivocal terms restrained from repealing laws of the kind in question which they had themselves enacted except upon the conditions of a right to appeal to the Governor General. If it was intended not to do this but only to restrain the legislature of Manitoba from interfering with "rights and privileges" of the kind in question existing at the union, this end would have been attained by just omitting altogether from the clause the words "or shall have been thereafter established by the legislature of the province." This was done.

Next, it is clear that in interpreting the Manitoba Act the words "any provincial authority" do not include the legislature, for that expression is there used as an alternative to the "legislature of the province."

It is not to be presumed that Manitoba was intended to be admitted to the union upon any different terms from the other provinces or with rights of any greater or lesser degree than the other provinces. Some difference may have been inevitable owing to the difference in the pre-existing conditions of the several provinces. It would be reasonable to attribute any difference in the terms of union and in the rights of the province to this and as far as possible by interpretation to confine any variation in legislative powers and other matters to such requirements as were rendered necessary by the circumstances and condition of Manitoba at the time of the union.

Now let us see what would be the effect of the construction which I have suggested of both acts—the British North America Act, section 93, and the Manitoba Act, section 22, in their practical application to the different provinces as regards the right of provincial

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legislatures to interfere with separate or denominational schools to the prejudice of a Roman Catholic or Protestant minority.

First then let us consider the cases of Ontario and Quebec, the two provinces which had by law denominational schools at the union. In these provinces any law passed by a provincial legislature impairing any right or privilege in respect of such denominational schools would, by force of the prohibition contained in subsection one of section 93 of the British North America Act, be *ultra vires* of the legislature and of no constitutional validity.

Should the legislatures of these provinces (Ontario and Quebec) after confederation have conferred increased rights or privileges in relation to education or minorities, I see nothing to hinder them from repealing such acts to the extent of doing away with the additional rights and privileges so conferred by their own legislation without being subject to any condition of appeal to federal authority.

What is meant by the term "provincial authority"? The Parliament of the Dominion, as shewn by the Manitoba Act, hold that it does not include the legislature, for in subsection 2 of section 22 they use it as an alternative expression and so expressly distinguish it from the legislature. It is true the British North America Act did not emanate from the Dominion Parliament, but nevertheless the construction which that Parliament has put on the British North America Act if not binding on judicial interpreters is at least entitled to the highest respect and consideration. Secondly, the words "provincial authority" are not apt words to describe the legislature, and in order that a provincial legislature should be subjected to an appeal, when it merely attempts to recall its own acts, the terms used should be apt, clear and unambiguous. To return

then to the cases of Ontario and Quebec, should any "provincial authority," not including in these words the legislature but interpreting the expression as restricted to administrative authorities (without at present going so far as to say it included courts of justice), by any act or decision affect any right or privilege whether derived under a law or practice existing at the time of confederation or conferred by a provincial statute since the union, still remaining unrepealed and in force, that would be subject to an appeal to the Governor General.

Secondly. As regards the Provinces of Nova Scotia and New Brunswick, those provinces not having had any denominational schools at the time of the union, there is nothing in their case for subsection one of section 93 to operate upon. Should either of these provinces by after-confederation legislation create rights and privileges in favour of Protestant or Catholic minorities in relation to education, then so long as these statutes remained unrepealed and in force an appeal would lie to the Governor General from any act or decision of a provincial administrative authority affecting any of such rights or privileges of a minority, but there would be nothing to prevent the legislatures of the provinces now under consideration from repealing any law which they had themselves enacted conferring such rights and privileges, nor would any act so repealing their own enactments be subject to appeal to the Governor General in Council.

Thirdly. We have the case of the Province of Manitoba; here applying the construction before mentioned the provincial powers in relation to education would be not further restricted but somewhat enlarged in comparison with those of the other provinces. Acting upon the presumption that in the absence of express words in the act of the Dominion Parliament, which

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embodies the constitution of the province, withholding from the legislature of the province the normal right of altering or repealing its own acts, we must hold that it was not the intention of Parliament so to limit the legislature by the organic law of the province. What, then, is the result of the legislation of the Dominion as regards Manitoba? What effect is to be given to section 22 of the Manitoba Act? By the first subsection any law of the province prejudicing any right or privilege with respect to denominational schools in the province existing at the union is *ultra vires* and void. This clause was the subject and the only subject, of interpretation in *Barrett* v. *Winnipeg* (1) and the point there decided was that there was no such right or privilege as was claimed in that case existing at the time of the admission of the province into the union. Had any such right or privilege been found to exist there is nothing in the judgment of the Privy Council against the inference that legislation impairing it would have been unconstitutional and void. That decision has, in my opinion, but a very remote application to the present case. The second subsection of section 22 of the Manitoba Act is as follows:—

> 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.

I put aside as entirely irrelevant here the question whether it was or was not intended by this subsection 2 to confer on the Privy Council of the Dominion appellate jurisdiction from the provincial judiciary, a question the decision of which, I may say in passing, might well be influenced by the consideration that the power given to Parliament by the British North America Act to create federal courts had not at the time of the passage of the Manitoba act been exercised.

(1) [1892] A. C. 445.

The first subject of appeal is then, any act or decision of the legislature of the province affecting any right or privilege of the minority in respect of the matters in question. Now if we are to hold, as I am of opinion we must hold, that it was not the intention of Parliament by these words so to circumscribe the legislative rights conferred by them on Manitoba as to incapacitate that legislature from absolutely, and without any subjection to federal control, repealing its own enactments and thus taking away rights which it had itself conferred, the right of appeal to the Governor General against legislative acts must be limited to a particular class of such acts, viz.: to such as might prejudice rights and privileges not conferred by the legislature itself, but rights and privileges which could only have arisen before confederation, being those described in the first subsection of section 22. That we must assume in the absence of express words that it was not the intention of Parliament to impose upon the Manitoba legislature a disability so anomalous as an incapacity to repeal its own enactments, except subject to an appeal to the Governor General in Council and possibly the intervention of the Dominion Parliament as a paramount legislature, is a proposition I have before stated.

Therefore, the right of appeal to the Governor General in Council must be confined to acts of the legislature affecting such rights and privileges as are mentioned in the first subsection, viz.: those existing at the union when belonging to a minority, either Protestant or Catholic. Then there would also be the right of appeal from any provincial authority. I will assume that the description "provincial authority" does not apply to the courts of justice. Then these words "provincial authority" could not, as used in this subsection 2 of section 22 of the Manitoba Act, have

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been intended to include the provincial legislature, for it is expressly distinguished from it being mentioned alternatively with the legislature. "An appeal shall lie from any act or decision of the legislature or of any "provincial authority," is the language of the section. It must then apply to the provincial executive or administrative authorities. No doubt an appeal would lie from their acts or decisions, upon the ground that some right or privilege existing at the date of the admission of the province to the federal union was thereby prejudiced. In this respect Manitoba would be in the same position as Ontario and Quebec. Unlike the cases of those provinces, and also unlike the case of the two maritime provinces, Nova Scotia and New Brunswick, there would not, however, in the case of Manitoba, be an appeal to the Governor General in Council from the act or decision of any "provincial authority," upon the ground that some right or privilege not existent at the time of union, but conferred subsequently by legislation, had been violated. This construction must necessarily result from the right of appeal against acts or decisions of provincial authorities, and against acts or decisions of the legislature, being limited to such as prejudiced the same class of rights or privileges. The wording of this subsection 2 shows clearly that only one class of rights or privileges could have been meant, and that the right of appeal was therefore to arise upon an invasion of these, either by the legislature or by a provincial authority. Then, as the impossibility of holding that it could have been intended to impose fetters on the legislature and to incapacitate it from absolutely repealing its own acts, requires us to limit the appeal against its enactments to acts affecting rights and privileges existing at the union, it must follow that the right of appeal must be in like manner limited as regards acts or decisions of provincial

authorities. This, however, although it makes a difference between Manitoba and the other provinces, is not a very material one. The provincial authorities would of course be under the control of the courts; they could therefore be compelled, by the exercise of judicial authority, to conform themselves to the law. Much greater would have been the difference between Manitoba and the other provinces if we were to hold that whilst, as regards the provinces of Nova Scotia and New Brunswick, their legislatures could enact a separate school law one session and repeal it the next, without having their repealing legislation called in question by appeal, and whilst, as regards Ontario and Quebec, although rights and privileges existing at confederation were made intangible by their legislatures, yet any increase or addition to such rights and privileges which these legislatures might grant could be withdrawn by them at their own pleasure, subject to no federal revision, yet that the legislation of Manitoba, on the same subject, should be only revocable subject to the revisory power of the Governor General in Council.

I have thus endeavoured to show that the construction I adopt has the effect of placing all the provinces virtually in the same position, with an immaterial exception in favour of Manitoba, and it is for the purpose of demonstrating this that I have referred to appeals from the acts and decisions of provincial authorities, which are not otherwise in question in the case before us.

That the words "any provincial authority" in the third subsection of section 93 of the British North America Act do not include the legislature is a conclusion which I have reached not without difficulty. In interpreting the Manitoba Act, however, what we have to do is to ascertain in what sense the Dominion

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Parliament in adopting the same expression in the Manitoba Act understood it to have been used in the British North America Act.

That they understood these words not to include the provincial legislatures is apparent from section 22, subsection 2 of the Manitoba Act, wherein the two expressions "provincial authority" and "legislature of the province" are used in the alternative, thus indicating that in the intendment of Parliament they meant different subjects of appeal.

Again, why were the words contained in the third subsection of section 93 of the British North America Act "or is thereafter established by the Legislature of the Province" omitted, when that section was in other respects transcribed in the Manitoba Act. The reason it appears to me is plain. So long as these words stood with the context they had in the British North America Act they did not in any way tie the hands of the provincial legislatures as regards the undoing, alteration or amendment of their own work, for the words "any provincial authority" did not include the legislature. But when in the Manitoba Act the Dominion Parliament thought it advisable for the better protection of vested rights—"rights and privileges" existing at the union—to give a right of appeal from the legislature to the Governor General in Council, it omitted the words "or is thereafter established by the legislature of the province," with the intent to avoid placing the provincial legislature under any disability or subjecting it to any appeal as regards the repeal of its own legislation, which would have been the effect if the third subsection of section 93 of the British North America Act had been literally re-enacted in the Manitoba Act with the words "of the legislature of the province" interpolated as we now find them in subsection 2 of the latter act. This seems to me to show con

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clusively that the words "rights or privileges" in subsection 2 of section 22 were not intended to include rights and privileges originating under provincial legislation since the union, and that the legislature of Manitoba is not debarred from exercising the common legislative right of abrogating laws which it has itself passed relating to denominational or separate schools or educational privileges, nor is such repealing legislation made subject to any appeal to the Governor General in Council.

In my opinion all the questions propounded for our opinion must be answered in the negative.

FOURNIER J.—By the statute 33 Vic. ch. 3, sec. 2 (D), the Manitoba Act, the provisions of the British North America Act, except so far as the same may be varied by the said act, are made applicable to the province of Manitoba, in the same way and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces united by the British North America Act. This act was imperialized, so to speak, by 34 Vic. ch. 38 (Imp.) which declares that 32 & 33 Vic. ch. 3 (D) shall be deemed to have been valid and effectual for all purposes whatsoever.

If we are now called upon to construe certain provisions of this statute, it seems to me that the same considerations will apply as if the provisions appeared in the British North America Act itself under the heading "Manitoba," and therefore as stated by the late Chief Justice of this court, Sir W. Richards, in the case of *Severn* v. *The Queen* (1), "in deciding important questions arising under the act passed by the Imperial Parliament for federally uniting the provinces of Canada, Nova Scotia, and New Brunswick, we must con-

(1) 2 Can. S.C.R. 70.

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sider the circumstances under which that statute was passed, the condition of the different provinces, their relations to one another, as well as the system of government which prevailed in those provinces and countries." For convenience therefore, I will place in paralle columns the sections of the Manitoba Act and the corresponding sections of the British North America Act in relation to education, upon which we are required to give an answer.

British North America Act. Sec. 93.	Manitoba Act. Sec. 22.
In and for the province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions :—	In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions :—
(1). Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union.	(1). Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.
(2). All powers, privileges and duties at the union by law conferred and imposed by Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.	
(3). 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 of the Queen's subjects in relation to education.	(2). 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.

(4). In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper authority in that behalf, 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 for the due execution of the provisions of this section and of any decision of the Governor General in Council.

(3). In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of this section, and of any decision of the Governor General in Council under this section.

What was the existing state of things in the territory then being formed into the province of Manitoba? Rebellion, as I have already stated in the case of *Barrett* v. *Winnipeg* (1) had thrown the people into a strong and fierce agitation, inflamed religious and national passions, and caused the greatest disorder, which rendered necessary the intervention of the Federal Government; and as matters then stood on the 2nd March, 1870, the government of Assiniboia, in order to pacify the inhabitants, appointed the Rev. Mr. Ritchot and Messrs. Black and Scott as joint delegates to confer with the Government of Ottawa, and negotiate the terms and conditions upon which the inhabitants of Assiniboia would consent to enter confederation with the Provinces of Canada.

Mr. Ritchot was instructed to immediately leave with Messrs. Black and Scott for Ottawa, in view of opening negotiations on the subjects of their mission with the Government at Ottawa.

When they arrived at Ottawa the three delegates, Messrs. Ritchot, Black and Scott, received on the 25th

(1) 19 Can. S.C.R. 374.

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April, 1870, from the Hon. Mr. Howe, the then Secretary of State for the Dominion of Canada, a letter informing them that the Hon. Sir John A. Macdonald and Sir George Cartier had been authorized by the Government of Canada to confer with them on the subject of their mission, and that they were ready to meet them.

The Rev. Mr. Ritchot was the bearer of the conditions upon which they were authorized to consent for the inhabitants of Assiniboia to enter confederation as a separate province.

These facts appear in exhibit L, Sessional Papers of Canada, 1893, 33 D., and in exhibit N of the same Sessional Paper, we see that the following conditions, arts. 5 and 7, read as follows:—

"(5.) That all properties, all rights and privileges possessed be respected, and the establishing and settlement of the customs, usages and privileges be left for the sole decision of the local legislature."

"(7.) That the schools shall be separate, and that the moneys for schools shall be divided between the several denominations *pro ratâ* of their respective populations."

Now, after negotiations had been going on, and despatches and instructions from the Imperial Government to the Government of Canada on the subject of the entrance of the province of Manitoba into the confederation had been received, the Manitoba Constitutional Act was prepared, and section 22 inserted as a satisfactory guarantee for their rights and privileges in relation to matters of education, as claimed by the above articles 5 and 7. And until 1890 the inhabitants of the province of Manitoba enjoyed these rights and privileges under the authority of this section and local statutes passed in conformity therewith.

However, it seems by the decision of the judicial committee of the Privy Council in the case of *Barrett* v.

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Winnipeg (1) that the delegates of the North-west and the Parliament of Canada, although believing that the inhabitants of Assiniboia had before the union "by law or by practice," certain rights and privileges with respect to denominational schools—for the words used in subsection 1 of this section 32 are, "which any class have by law or practice in the province at the union" —had in point of fact no such right or privilege by law or practice with respect to denominational schools, and therefore that subsection 1 is, so to speak, wiped out of the Manitoba Constitutional Act, having nothing to operate upon.

But if the parties agreeing to these terms of union, were in error in supposing they had by law or practice prior to the union certain rights or privileges, they certainly were not in error in trusting that the provincial legislature, (as the legislature of Quebec did after the union for the Protestant minority) which was being created would forthwith settle and establish their usages and privileges and secure by law and in accordance with Arts. 5 & 7 of the bill of rights separate schools for the Catholics of Manitoba and would make provisions so that the moneys would be divided between the Protestant and Catholic denominations *pro ratâ* to their respective populations. These once established and secured by their own local legislature in accordance with the terms of the union, is not the minority perfectly within the spirit and the words of the constitutional act in contending that rights and privileges so secured by an act of the legislature are at least in the same position as rights secured to minorities in the provinces of Quebec and Ontario under section 93 of the British North America Act and that subsections 2 and 3 were inserted in the act so that they might be protected by the Governor General against any subsequent legisla-

(1) [1892] A. C. 445.

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tion, by either a Protestant or Catholic majority in after years ?

In the present reference, being again called upon to construe this same section 22, but as if subsection 1 was repealed or wiped out by judicial authority, we must, I think, take into consideration the historical fact that the Manitoba Act of 1870 was the result of the negotiations with parties who agreed to join and form part of the confederation as if they were inhabitants of one of the provinces originally united by the British North America Act, and we must credit the Parliament of Canada with having intended that the words "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" (which are also the words used in the 93rd section of the British North America Act) should have some effect. The only meaning and effect I can give them is that they were intended as an additional guarantee or protection to the minority, either protestant or catholic, whichever it might happen to be, that the laws which they knew would be enacted immediately after the union by their own legislature in reference to education, would be in accordance with the terms and conditions upon which they were entering the union; this guarantee was given so as to prevent later on interference with their rights and privileges by subsequent legislation without being subject to an appeal to the Governor General in Council should such subsequent act of the legislature affect any right or privilege thus secured to the Protestant or Catholic minority by their own legislature.

In my opinion the words used in subsection 2: "an appeal shall lie from any act of the legislature," neces-

sarily mean an appeal from any statute which the legislature has power to pass in relation to education if *at the time* of the passing of such statute there exists by law any right or privilege enjoyed by the minority. There is no necessity of appealing from statutes which are *ultra vires*, for the assumption of any unauthorized power by any local legislature under our system of government is not remedied by appeal to the Governor General in Council but by courts of justice.

Then, as to the words "right or privilege" in this subsection, they refer to some right or privilege in relation to education to be created by the legislature which was being brought into existence, and which, once established, might thereafter be interfered with at the hand of a local majority so as to affect the Protestant or Catholic minority in relation to education.

It is clear, therefore, that the Governor General in Council has the right of entertaining an appeal by the British North America Act, as well as by subsection 2 of section 22 of the Manitoba Act. He has also the power of considering the application upon its merits. When the application has been considered by him upon its merits, if the local legislature refuses to execute any decision to which the Governor General in Council has arrived in the premises, the Dominion Government may then, under subsection 3 of section 22 of the Manitoba Act, pass remedial legislation for the execution of his decision.

In construing, as I have done, the words of subsection 2 of the 22nd section of the Manitoba Constitutional Act, which is, as regards an appeal to the Governor General in Council, but a reproduction of subsection 3 of section 93 of the British North America Act, except that the clear, unequivocal and comprehensive words, "from any act or decision of the legislature of the province," are added, I am pleased to see that I am but concurring in

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the view expressed by Lord Carnarvon in the House of Lords on the 19th February, 1867, when speaking of this right of appeal to be granted to minorities when a local act might affect rights or privileges in matters of education, as the following extract from Hansard's Parliamentary Debates, 3rd series, Feb. 19, 1867, shows:—

> LORD CARNARVON.—Lastly, in the 93rd clause, which contains the exceptional provisions to which I referred, your Lordships will observe some rather complicated arrangements in reference to education. I need hardly say that this great question gives rise to nearly as much earnestness and division of opinion on that as on this side of the Atlantic. This clause has been framed after long and anxious controversy in which all parties have been represented, and on conditions to which all have given their consent. It is an understanding which, as it only concerns the local interests affected, is not one that Parliament would be willing to disturb, even if in the opinion of Parliament it were susceptible of amendment; but I am bound to add, as the expression of my own opinion, that the terms of the agreement appear to me to be equitable and judicious. For the object of the clause is to secure to the religious minority of one province the same rights and privileges and protection which the religious minority of another province may enjoy. The Roman Catholic minority of Upper Canada, the Protestant minority of the Maritime Provinces, will thus stand on a footing of entire equality. But in the event of any wrong at the hand of the local majority, the minority have a right of appeal to the Governor General in Council, and may claim the application of any remedial laws that may be necessary from the central parliament of the Confederation.

This being so, the next point of inquiry is whether the acts of 1890 of Manitoba affect any right or privilege secured to the Catholic minority in matters of education after the union, for we have now nothing to do with the inquiry whether the Catholic minority had at the time of the union any right by law or practice, that point, as I have already stated, having been decided adversely to their contention by the decision of the Privy Council in the case of *Barrett* v. *Winnipeg* (1). By referring to the legislation from the date of the union to 1890, it is evident that the Catholics enjoyed the immunity of

(1) [1892] A.C. 445.

being taxed for other schools than their own, the right of organization, the right of self-government in this school matter, the right of taxation of their own people, the right of sharing in Government grants for education, and many other rights under the statute of a most material kind. All these rights were swept away by the acts of 1890, as well as the properties they had acquired under these acts with their taxes and their share of the public grants for education. Could the prejudice caused by the acts of 1890 be greater than it has been? The scheme that runs through the acts of 1871 and 1881 up to 1890, as Lord Watson of the Privy Council is reported to have so concisely stated on the argument of the case of *Barrett* v. *Winnipeg* (which is printed in the sessional papers of Canada, 1893), appears to have been that "no rate payers shall be taxed for contribution towards any school except one of his own denomination," and I will add that this scheme is clearly pointed out in Arts. 5 and 7 of the conditions of union above already referred to, which were the basis of the constitutional act.

Now is this a legal right or privilege enjoyed by a class of persons? In this case the immunity from contributing to any schools other than one of its own denomination was acquired by the Catholic minority *qua* Catholics by statute and Catholics certainly, at the time the legislation was passed, represented a class of persons comprising at least one-third of the inhabitants of the Province of Manitoba. It is unnecessary, I think, after reading the able judgments delivered in the case of *Barrett* v. *Winnipeg* (1) to show by authority that the right so acquired by the Catholic minority after the union by the act of 1871 was a legal right, and that if it is shown by subsequent legislation enacted by the legislature of the Province of Manitoba that there has been any interference with such

(1) 19 Can. S.C.R. 374; [1892] A. C. 445.

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right, then I am of the opinion that such interference would come within the very words of this section 22 of the Manitoba Constitutional Act, which gives a right of appeal to the Governor General in Council from "any act of the legislature" (words which are not in section 93 of the British North America Act, but are in subsection 2 of section 22 of the Manitoba Act), affecting a right acquired by the Roman Catholic minority of the Queen's subjects in relation to education.

The only other question submitted to us I need refer to is the 4th question. Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba? The answer to this question is to be found in the second section of the Manitoba Act (33 Vic.) which says "from and after the said date the provisions of the British North America Act shall apply, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be, specially applicable to, or only to affect one or more, but not the whole of the Provinces now comprising the Dominion, and except so far as the same may be varied by this act, and be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several provinces of Canada, and as if the Province of Manitoba had been one of the provinces originally united by the said Act." The Manitoba Act has not varied the British North America Act though subsection 2 of section 22 has a somewhat more comprehensive wording than the subsection 3 of section 93 of the British North America Act, in relation to appeal in educational matters. A statute does not vary or alter if it merely makes further provision, it is simply an addition to it. The 2nd subsection is wider but does not vary at all from the 3rd subsection of section 93 of the British North America Act, save in this

that there is an addition to it, that it includes it, and goes beyond it by adding the words "and from any act of the legislature." The 3rd subsection of the British North America Act provides that in two cases there is to be an appeal. There is nothing inconsistent in the Manitoba Act which says that in all cases there shall be an appeal, it goes beyond the British North America Act, it does not vary it, but leaves it as it is and adds to it.

We see by the opinion expressed by some of the Lords of the Privy Council, how far the right of appeal extends under section 2 of the Manitoba Act, for in the argument on that question before the Privy Council, Sessional Papers, No. 33*a*, 33*b*, 1893, we read, at p. 134, that when Mr. Ram (counsel) was arguing on behalf of Mr. Logan in the case of *Winnipeg* v. *Logan* he said :—

> I venture to think that under subsection 2 what was contemplated was this : that apart from any question, *ultra vires* or not, if a minority said, "I am oppressed," that was the party who had to come under that section 3 and appeal to the Government.

Lord Hannen added :—

> It has a right to appeal against any act of the legislature.

And Lord Shand :—

> Even *intra vires*.

This being also my opinion, I will only add that, having already stated that I think that we should read the Manitoba Constitutional Act in the light of the British North America Act, and that it was intended, as regards all civil rights in educational matters, to place the province of Manitoba on the same footing as the provinces of Quebec and Ontario, and that subsection 1 of section 22 having been enacted for the purpose of protecting rights held by law or practice prior to the union, but which have been declared not to exist, I am of the opinion that subsection 2 of section 22 of the

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Manitoba Constitutional Act provides for an appeal to the Governor General in Council, by memorial or otherwise, on the part of the Roman Catholic minority contending that the two acts of the legislative assembly of Manitoba, passed in 1890, on the subject of education, are subversive of the rights and privileges of the Roman Catholic ratepayers not to be taxed for contribution towards schools, except those of their own denomination, and that such right has been acquired by statute subsequent to the union.

For the above reasons, I answer the questions submitted by His Excellency the Governor General in Council, as follows:—

(1.) Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Vic. (1870) chapter 3, Canada?—Yes.

(2.) Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?—Yes.

(3.) Does the decision of the judicial committee of the Privy Council in the cases of *Barrett* v. *The City of Winnipeg*, and *Logan* v. *The City of Winnipeg*, dispose of or conclude the application for redress, based on the contention that the rights of the Roman Catholic minority, which accrued to them after the union, under the statutes of the province, have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?—No.

(4.) Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?—Yes.

(5.) Has His Excellency the Governor General in Council power to make the declarations or remedial

orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?—Yes.

(6.) 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, "or establish a system of separate or dissentient schools" within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found applicable to Manitoba, and if so, did the two acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?—Yes.

TASCHEREAU J.—I doubt our jurisdiction on this reference or consultation. Is section 4 of 54 & 55 Vic. ch. 25 which purports to authorize such a reference to this court for hearing "or" consideration *intra vires* of Parliament? By which section of the British North America Act is Parliament empowered to confer on this statutory court any other jurisdiction than that of a court of appeal under section 101 thereof? This court is evidently made, in the matter, a court of first instance, or rather, I should say, an advisory board of the federal executive, substituted, *pro hâc vice*, for the law officers of the crown, and not performing any of the usual functions of a court of appeal, nay, of any court of justice whatever. However, I need not, at present, further investigate this point. It has not been raised, and a similar enactment to the same import has already been acted upon. That is not con-

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clusive, it is true: but our answers to the questions submitted will bind no one, not even those who put them, nay, not even those who give them, no court of justice, not even this court. We give no judgment, we determine nothing, we end no controversy; and, whatever our answers may be, should it be deemed expedient, at any time, by the Manitoba executive to impugn the constitutionality of any measure that might hereafter be taken by the federal authorities against the provincial legislation, whether such measure is in accordance with or in opposition to the answers to this consultation, the recourse, in the usual way, to the courts of the country remains open to them. That is, I presume, the consideration, and a very legitimate one, I should say, upon which the Manitoba executive acted by refraining to take part in the argument on the reference, a course that I would not have been surprised to see followed by the petitioners, unless indeed they are assured of the interference of the federal authorities should it eventually result from this reference that, constitutionally, the power to interfere with the provincial legislation as prayed for exists. For if, as a matter of policy, in the public interest, no action is to be taken upon the petitioners' application, even if the appeal lies, the futility of these proceedings is apparent.

Assuming, then, that we have jurisdiction, I will try to give, as concisely as possible, the reasons upon which I have based my answers to the questions submitted.

In the view I take of the application made to His Excellency the Governor General in Council by the Catholics of Manitoba, I think it better to intervert the order of the questions put to us, and to answer first the fourth of these questions, that is, whether subsection 3 of section 93 of the British North America Act applies to Manitoba. To that question the answer,

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in my opinion, must be in the negative. That section of the British North America Act applies to every one of the provinces of the Dominion, with the exception however of Manitoba, for the reason that, for Manitoba, in its special charter, the subject is specifically provided for by section 22 thereof. The maxims *lex posterior derogat priori*, and *specialia generalibus derogant* have both here, it seems to me, their application. If it had been intended to purely and simply extend the operation of that section 93 of the British North America Act to Manitoba, section 22 of its charter would not have been enacted. The course since pursued for British Columbia and Prince Edward Island would have been followed. But where we see a different course pursued we have to assume that the difference in the law was intended. I cannot see any other reason for it, and none has been suggested. True it is that the words "or practice" in subsection 1, of section 22, are an addition in the Manitoba charter which the Dominion Parliament desired to specially make to the analogous provision of the British North America Act, but that was no reason to word subsection 2 thereof so differently as it is from subsection 3 of section 93 of the British North America Act. Then this difference may be easily explained though its consequences may not have been foreseen; I speak cautiously and mindful that I am not here allowed to controvert or even doubt any thing that has been said on the subject by the Privy Council. It is evident, to my mind, that it was simply because it was assumed by the Dominion Parliament, that separate or denominational schools had previously been, in that region, and were then, at the union, the basis and principle of the educational system, and with the intention of adapting such system to the new province, or rather of continuing it as found to exist, that, in the Union Act of 1870, the words of subsection 3 of

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section 93 of the British North America Act: "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," were stricken out as unnecessary and inapplicable to the new province. And I do not understand that the Privy Council denies to the petitioners their right to separate schools.

However, the reason of this difference between the constitution of the province and the British North America Act cannot, in my view of the question, bring much assistance in the present investigation: the fact remains, whatever may have been the reason for it, that no appeal is given to the minority, in Manitoba, in relation to the rights and privileges conceded to them since the union as distinguished from those in existence at the union. They have no rights but what is left to them by the judgment in the *Barrett* case; and, if I do not misunderstand that judgment, the appeal they now lay claim to is not, as a logical inference, thereby left to them.

And in vain now, to support their appeal, would they urge that the statute so construed is unreasonable, unjust, inconsistent and contrary to the intentions of the law giver; uselessly would they contend that to force them to contribute pecuniarily to the maintenance of the public, non-catholic schools is to so shackle the exercise of their rights as to render them illusory and fruitless, or that to tax, not only the property of each and every one of them individually but even their school buildings for the support of the public schools is almost ironical; uselessly would they demonstrate the utter impossibility for them to efficaciously provide for the organization, maintenance and management of separate schools, and the essential requirements of a separate school system without statutory powers and

the necessary legal machinery; ineffectively would they argue that to concede their right to separate schools, and withal, deprive them of the means to exercise that right, is virtually to abolish it, or to leave them nothing of it but a barren theory. With all these, and kindred considerations, we, here, in answering this consultation, are not concerned. The law has authoritatively been declared to be so, and with its consequences, we have nothing to do. *Dura lex, sed lex. Judex non constituitur ad leges reformandas. Non licet judicibus de legibus judicare, sed secundum ipsas.* The Manitoba legislation is constitutional, therefore it has not affected any of the rights or privileges of the minority, therefore the minority has no appeal to the federal authority. The Manitoba legislature had the right and power to pass that legislation; therefore any interference with that legislation by the federal authority would be *ultra vires* and unconstitutional.

By an express provision of the British North America Act of 1871, it must not be lost sight of, the Dominion Parliament has not the power to, in any way, alter the Manitoba Union Act of 1870.

For these reasons I would answer negatively the fourth of the questions submitted, and say that, in my opinion, sub-section 3 of section 93 of the British North America Act does not apply to Manitoba.

I take up now the first of these questions: Does the right of appeal claimed by the petitioners exist under section 22 of the Manitoba Act? And here again, in my opinion, the answer must be in the negative, for the reason that it is conclusively determined, by the judgment of the Privy Council, that the Manitoba legislation does not prejudicially affect any right or privilege that the Catholics had by law or practice at the union, and if their rights and privileges are not

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affected there is no appeal. The rights or privileges mentioned in sub-section 2 of section 22 are the same rights and privileges that are mentioned in subsection 1, that is to say, those existing at the union, upon which subsection 3 provides for the interference, in certain cases, of His Excellency the Governor General in Council, and it is as to such rights or privileges only that an appeal is given. The appeal given, in the other provinces, by section 93 of the British North America Act as to the rights or privileges conferred on a minority after the union, is, as I have remarked, left out of the Manitoba constitution. Assuming, however, that the Manitoba constitution is wide enough to cover an appeal, by the minority, upon the infringement of any of their rights or privileges created since the union, or assuming that section 93 of the British North America Act, subsection 3, applies to Manitoba, I would be inclined to think that, by the *ratio decidendi* of the Privy Council, there are no rights or privileges of the Catholic minority that are infringed by the Manitoba legislation so as to allow of the exercise of the powers of the Governor in Council in the matter, as the Manitoba statutes must now be taken not to prejudicially affect any right or privilege whatever enjoyed by the Catholic community. It would seem, no doubt, by the language of both section 93 of the British North America Act and of section 22 of the Manitoba charter, that there may be provincial legislation which, though *intra vires*, yet might affect the rights or privileges of the minority so as to give them the right to appeal to the Governor in Council. For it cannot be of *ultra vires* legislation that an appeal is given. And the petitioners properly disclaiming any intention to base their application on the unconstitutionality of the Manitoba statutes, even for infringement of rights conferred upon them since the union, urge that though

the Privy Council has determined that the legislation in question does not affect the rights existing at the union so as to render it *ultra vires* yet that it does affect the rights conferred upon them by the provincial legislature since the union, so as to give them, though *intra vires*, an appeal to the Governor in Council. I fail to see, however, how this ingenious distinction, for which I am free to admit both the British North America Act and the Manitoba special charter give room, can help the petitioners. I assume here that the petitioners have an appeal upon rights or privileges conferred upon them since the union, as contra-distinguished from the rights previously in existence. The case is precisely the same as if the present appeal was as to their rights existing at the union. They might argue that though the Privy Council has held this legislation to have been *intra vires* yet their right to appeal subsists, and, in fact, exists because it is *intra vires*. But what would be this ground of appeal? Because the legislation affects the rights and privileges they had at the union. And the answer would be one fatal to their appeal, as it was to their contentions in the *Barrett case*, that none of these rights and privileges have been illegally affected. Now, the rights and privileges they lay claim to under the provincial legislation anterior to 1890 are, with the additions rendered necessary by the political organization of the country to enable them to exercise these rights, the same, in principle, that they had by practice at and before the union, and which were held by the Privy Council not to be illegally affected by the legislation of 1890.

And I am unable to see how, on the one hand, this legislation might be said to affect those rights so as to support an appeal and, on the other hand, not to affect the same rights so as to render it *ultra vires*.

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The petitioners, it seems to me, would virtually renew their impeachment of the constitutionality of the Manitoba legislation of 1890 upon another ground than the one taken in the *Barrett case*, namely, upon the rights conferred upon them since the union, whilst the controversy in the *Barrett case* was limited to their rights as they existed at the union. But that legislation, as I have said, is irrevocably held to have been *intra vires*, and it is not open to the petitioners to argue the contrary even upon a new ground. And if it is *intra vires*, it cannot be that it has illegally affected any of the rights or privileges of the Catholic minority though it may be prejudicial to such right. And if it has not illegally affected any of those rights or privileges they have no appeal to the Governor in Council.

It has been earnestly urged, on the part of the petitioners, in their attempt to distinguish the two cases, that in the *Barrett case* it was only their liability to assessment for the public schools that was in issue, and, consequently, that the decision of the Privy Council, binding though it be, does not preclude them from now taking, on appeal from the provincial legislation of 1890, the ground that this legislation sweeps away the statutory powers conceded to them under the previous statutes, and without which their establishment and administration of a separate school system is impracticable. But here again, it must necessarily be on the ground that their rights and privileges, or some of their rights and privileges, have been prejudicially affected that they have to rest their case, and from that ground they are irrevocably ousted by the judgment of the Privy Council, where not only the assessment clauses thereof, more directly in issue, but each and every one of the enactments of the statute impugned, were, as I read that judgment, held to have been and to be *intra vires*.

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Were it otherwise, and could the question be treated as *res integra*, it might have been possible for the petitioners to establish that they are entitled to the appeal claimed on that ground, namely, that the statutes of 1890, by taking away the rights and privileges of a corporate body vested with the powers essential to the organization and maintenance of a school system that had been granted to them by the previous statutes, are subversive of those rights and privileges and prejudicially affect them.

They might cogently urge, in support of that proposition, and might, perhaps, have succeeded in convincing me, that to take away a right, to cancel a grant, to repeal the grant of a right, to revoke a privilege, prejudicially affects that grant, prejudicially, injuriously affects that privilege. They might also perhaps have been able to convince me that the license to own real estate, the authorization to issue debentures, to levy assessments, the powers of a corporation, that had been granted to them, constituted for them rights and privileges.

And to the objection that no appeal lies under section 22 of the Manitoba charter but upon rights existing at the union they might perhaps have successfully answered, either that section 93 of the British North America Act extends to Manitoba, or, if not, that the legislation of Manitoba in the matter, since the union, prior to 1890, should be construed as declaratory of their right to separate schools, or a legislative admission of it, a legislation required merely to secure to them the means whereby to exercise that right, and that, consequently, their appeal relates back to a right existing at the union, so as to bring it, if necessary, under the terms of section 22 of the Manitoba Union Act.

However, from these reasons the petitioners are now precluded. If any of their rights and privileges had

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been prejudicially affected this legislation would be *ultrâ vires*; and it is settled that it is not *ultra vires*.

And the argument against their contention is very strong, that it being determined that it would have been in the power of the Manitoba legislature to establish, in 1871, at the outset of the political organization of the province, the system of schools that they adopted in 1890 by the statutes which the petitioners now complain of, it cannot be that by their adopting and regulating a system of separate schools, though not obliged to do so, they, forever, bound the future generations of the province to that policy, so that, as long at least as there would be even only one Roman Catholic left in the province, the legislature should be, for all time to come, deprived of the power to alter it, though the constitution vests them with the jurisdiction over education in the province. To deny to a legislative body the right to repeal its own laws, it may be said, is so to curtail its powers that an express article of its constitution must be shown to support the proposition; it is not one that can be deductively admitted.

If this legislation of 1890, it may be still further argued against the petitioners' contentions, had been adopted in 1871, it would, it must now be conceded, have been constitutional, and that being so, would the Catholic minority, then, in 1871, have had a right of appeal to the Governor in Council? Certainly, that is partly the same question in a different form. But it demonstrates, put in that shape, that the petitioners have now no right of appeal. The answer to their claim would then have been that they had no appeal because none of their rights and privileges had been prejudicially affected. Now, in my opinion, they have no other rights and privileges, in the construction that these words bear in the Manitoba charter, than the rights and privileges they had in 1870. And if they

would have had no appeal then, on a legislation in 1871 similar to that of 1890, they have none now if none of their rights and privileges have been prejudicially affected.

I would answer the first question in the negative. This conclusion determines my answers to the other questions submitted to the court, and, consequently, as at present advised, I would answer the six of them as follows:—

To no. 1.—Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Victoria (1870), chapter 3, Canada? I would answer, no.

To no. 2.—Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them? I would answer, no.

To no. 3.—Does the decision of the Judicial Committee of the Privy Council of the cases of *Barrett* v. *the City of Winnipeg*, and *Logan* v. *the City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials? I would answer, yes.

To no. 4.—Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba? I would answer, no.

To no. 5.—Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in

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Council any other jurisdiction in the premises? I would answer, no.

To no. 6.—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, or establish a system of separate or dissentient schools "within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found to be applicable to Manitoba; and if so, did the two acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council? I would answer, no.

GWYNNE J.—The questions submitted in the case stated by the order of His Excellency the Governor General in Council for the opinion of this court are as follows:—

I. Is the appeal referred to in the memorials and petitions stated in and made part of the case and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act of 1867, or by subsection 2 of section 22, of the Manitoba Act, 33 Vic. (1870) chapter 3, Canada?

2. Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to or either of them?

3. Does the decision of the Judicial Committee of the Privy Council in the cases of *Barrett* v. *The City of Winnipeg* and *Logan* v. *The City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union under the statutes of the province have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials.

4. Does subsection 3, of section 93, of the British North America Act 1867, apply to Manitoba?

5. Has His Excellency the Governor in Council power to make the declarations or remedial orders which are asked for in the said

memorials and petitions assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?

6. Did the Acts of Manitoba relating to education, passed prior to the session of 1890, confer or continue a "right or privilege in relation to education" within the meaning of subsection 2, of section 22, of the Manitoba Act, or establish a system of separate or dissentient schools, "within the meaning of subsection 3, of section 93, of the British North America Act 1867, if said section be found to be applicable to Manitoba" and if so, did the two acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council.

The memorials and petitions referred to in and made part of the case were presented to His Excellency the Governor General in Council in April, 1890, and in September and October, 1892; that of April, 1890, was signed by His Grace the Archbishop of St. Boniface and 4,266 others members of the Roman Catholic Church.

It alleged:—

1. That prior to the creation of the Province of Manitoba there existed in the territory now constituting that province a number of effective schools for children.

2. That these schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church and others by various Protestant denominations.

3. That the means necessary for the support of the Roman Catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools and the rest was paid out of the funds of the church contributed by its members.

4. That during the period referred to Roman Catholics had no interest in or control over the schools of the Protestant denominations, and the Protestant denominations had no interest in or control over the schools of the Roman Catholics; there were no public schools in the sense of State schools. The members of the Roman Catholic Church supported the schools of their own church for the benefit of the Roman Catholic children and were not under obligation to, and did not, contribute to the support of any other schools.

5. That in the matter of education therefore, during the period referred to, Roman Catholics were, as a matter of custom and practice separate from the rest of the community.

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The petition then set forth the 22nd section of the Manitoba Act (33 Vic. ch. 3) and proceeded as follows in paragraph 7 and following paragraphs:—

7. During the first session of the Legislative Assembly of the Province of Manitoba an Act was passed relating to education, the effect of which was to continue to the Roman Catholics that separate condition with reference to education which they had previous to the erection of the province.

8. The effect of the statute so far as Roman Catholics were concerned was merely to organize the efforts which Roman Catholics had previously voluntarily made for the education of their own children. It provided for the continuance of schools under the sole control and management of Roman Catholics, and of the education of their children according to the methods by which alone they believe children should be instructed.

9. Ever since the said legislation and until the last session of the Legislative Assembly no attempt was made to encroach upon the rights of the Roman Catholics, so confirmed to them as above mentioned, but during said session statutes were passed, 53 Vic., chaps. 37 and 38, the effect of which was to deprive the Roman Catholics altogether of their separate condition in regard to education, to merge their schools with those of the Protestant denominations, and to require all members of the community, whether Roman Catholic or Protestant, to contribute through taxation to the support of what was therein called public schools, but which are in reality a continuation of the Protestant schools.

10. There is a provision in the said act for the appointment and election of an advisory board, and also for the election in each municipality of school trustees; there is also a provision that the said advisory board may prescribe religious exercises for use in schools, and that the said school trustees may, if they think fit, direct such religious exercises to be adopted in the schools in their respective districts. No further or other provision is made with reference to religious exercises, and there is none with reference to religious training.

11. Roman Catholics regard such schools as unfit for the purposes of education, and the children of Roman Catholic parents cannot, and will not, attend any such schools. Rather than countenance such schools Roman Catholics will revert to the ordinary system in operation previous to the Manitoba Act, and will, at their own private expense, establish, support and maintain schools in accordance with their principles and their faith, although by so doing they will have, in addition thereto, to contribute to the expense of the so-called public schools.

12. Your petitioners submit that the said Act of the Legislative Assembly of Manitoba is subversive of the rights of Roman Catholics guaranteed and confirmed to them by the statute creating the province of Manitoba, and prejudicially affects the rights and privileges with respect to Roman Catholic schools which Roman Catholics had in the province at the time of its union with the Dominion of Canada.

13. That Roman Catholics are in minority in said province.

14. The Roman Catholics of the province of Manitoba therefore appeal from the said Act of the Legislative Assembly of Manitoba.

The petitioners therefore prayed:—

1. That His Excellency the Governor General in Council may entertain the said appeal and may consider the same, and may make such provisions and give such directions for the hearing and consideration of the said appeal as might be thought proper.

2. That it might be declared that such provincial law does prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

3. That such directions might be given, and provisions made, for the relief of the Roman Catholics of the province as to His Excellency in Council might seem fit.

A report of the Minister of Justice dated 21st March 1891, upon the two acts of the legislature of the province of Manitoba 53 Vic. ch. 37 and 38 has also been made part of the case submitted to us, in which reference is made to the cases of *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* then proceeding in appeal to the Supreme Court of Canada and also to the said petition of His Grace the Archbishop of St. Boniface and others in the following terms:—

If the appeal should be successful these acts will be annulled by judicial decision. The Roman Catholic minority of Manitoba will receive protection and redress, the acts purporting to be repealed will remain in operation and those whose views have been represented by a majority of the legislature cannot but recognize that the matter had been disposed of with due regard to the constitutional rights of the province.

If the controversy should result in the decision of the Court of Queen's Bench (of Manitoba) being sustained the time will come for Your Excellency to consider the petitions which have been presented

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by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the Manitoba Act.

The petitions of September 1892 were two, the one of T. A. Bernier representing himself to be acting president of the body called the National Congress and of eleven others, members of the executive committee of the said body; and the other dated the 22nd September 1892 was the petition of His Grace the Archbishop of St. Boniface.

In the former the petitioners set out at large the above petition of April 1890 and the report of the Minister of Justice from which the above extract is taken and concluded as follows:—

That a recent decision of the judicial committee of the Privy Council in England having sustained the judgment of the Court of Queen's Bench of Manitoba upholding the validity of the act aforesaid, your petitioners most respectfully represent that, as intimated in the said report of the Minister of Justice, the time has now come for Your Excellency to consider the petitions which have been presented by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the Manitoba Act.

That your petitioners notwithstanding such decision of the judicial committee in England still believe that their rights and privileges in relation to education have been prejudicially affected by said acts of the provincial legislature.

Therefore your petitioners most respectfully and most earnestly pray that it may please Your Excellency in Council to take into consideration the petitions above referred to and to grant the conclusions of said petitions and the relief and protection sought by the same.

The petition of His Grace the Archbishop of St. Boniface sets forth the matter as alleged in the petition signed by him and others in the petition of April 1890, and certain extracts from the said report of the Minister of Justice, of March 1891 including that above extracted, and concluded as follows:—

8. That the judicial committee of Her Majesty's Privy Council has sustained the decision of the Queen's Bench.

9. That your petitioner believes that the time has now come for Your Excellency to consider the petitions which have been presented

by and on behalf of the Roman Catholics of Manitoba for redress under subsections 2 and 3 of section 22 of the Manitoba Act as it has become necessary that the federal power should be resorted to for the protection of the Roman Catholic minority.

And the petition prayed that His Excellency the Governor General in Council might entertain the appeal of the Roman Catholics of Manitoba and might consider the same and might make such provisions and give such directions for the hearing and consideration of the said appeal as might be thought proper and that such directions might be given and provisions made for the relief of the Roman Catholics of the province of Manitoba as to His Excellency in Council might seem fit.

These petitions are framed upon the contention and assumption that the facts as stated in the petitions as to the rights and privileges of Roman Catholics in Manitoba in relation to education at the time of the creation of the province entitled them to procure, by appeals to His Excellency in Council under section 22, of the Manitoba Act, the annulment and repeal of Provincial Acts 53 Vic. ch. 37 and 38, notwithstanding that these acts had been declared by the judgment of the Judicial Committee of the Privy Council in England to have been and to be acts quite within the jurisdiction of the Legislature of Manitoba to enact. The petition of October, 1892, is however framed with a further contention. It is signed by His Grace the Archbishop of St. Boniface, T. A. Bernier as president of the body called the National Congress, James E. P. Prendergast as mayor of St. Boniface, J. Allard O. M. I., V. G., John S. Ewart and 137 others. The petition sets out verbatim the matters alleged in the first twelve paragraphs of the above petition of April, 1890, and it then proceeds:—

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13. Your petitioners further submit that the said acts of the Legislative Assembly of Manitoba are subversive of the rights and privileges of Roman Catholics provided for by the various statutes of the said Legislative Assembly prior to the passing of the said acts and affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in the said province in relation to education, so provided for as aforesaid, thereby offending both against the British North America Act and the Manitoba Act.

And the petition prayed as follows:—

Your petitioners therefore pray:

1. That Your Excellency the Governor General in Council may entertain the said appeal and may consider the same and may make such provisions and give such directions for the hearing and consideration of the said appeal as may be thought proper.

2. That it may be declared that the said acts 53 Vic. chap. 37 and 38, do prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had by law or practice in the province at the union.

3. That it may be declared that the said last mentioned acts do affect the rights and privileges of the Roman Catholic minority of the Queen's subjects in relation to education.

4. That it may be declared that to Your Excellency the Governor General in Council it seems requisite that the provisions of the statutes in force in the Province of Manitoba prior to the passage of the said acts should be re-enacted in so far at least as may be necessary to secure to the Roman Catholics in the said province the right to build, maintain, equip, manage, and conduct these schools in the manner provided for by the said statutes, to secure to them their proportionate share of any grant made out of the public funds for the purposes of education, and to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from all payments or contribution to the support of any other schools, or that the said acts of 1890 should be so modified or amended as to effect such purpose.

5. And that such further or other declaration or order may be made as to Your Excellency the Governor-General in Council shall, under the circumstances, seem proper, and that such directions may be given, provisions made and all things done in the premises for the purpose of affording relief to the said Roman Catholic minority in the said province, as to Your Excellency in Council may seem meet.

And your petitioners will ever pray, etc.

The pretension of the petitioners therefore appears to be that the 22nd section of the Manitoba Act entitled

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the petitioners, notwithstanding the judgment of the Privy Council in England in *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1), to invoke and to obtain the interference of His Excellency the Governor General in Council to compel, in effect, a repeal by the provincial legislature of the said acts of 53rd Vic., and the re-enactment of the statutes in force in the province in relation to education at the time of the passing of the acts 53rd Vic., upon the grounds following:—

1. That the acts of 53rd Vic. prejudicially affect the rights and privileges with regard to denominational schools which Roman Catholics had enjoyed previous to the erection of the province; and

2. That the said acts 53rd Vic. prejudicially affect the rights and privileges of Roman Catholics in the province, provided for by various statutes of the provincial legislature enacted prior to the passing of the acts of 53rd Vic. Under these circumstances, the case which has been submitted to us has been framed in the shape in which it has been for the purpose of presenting to us purely abstract questions of law.

The learned members of the judicial committee of the Privy Council who advised Her Majesty upon the appeals in the cases of *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1) adopting the evidence of the Archbishop of St. Boniface as to the rights and privileges in relation to denominational schools enjoyed by Roman Catholics before the passing of the Manitoba Act in the territory by that act erected into the province of Manitoba, say in their report:—

> Now, if the state of things which the Archbishop describes as existing before the union had been a system established by law, what would have been the rights and privileges or the Roman Catholics with respect to denominational schools? They would have had by law the right to establish schools at their own expense, to maintain their schools by

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school fees or voluntary contributions, and to conduct them in accordance with their own religious tenets. Every other religious body which was engaged in a similar work at the time of the union would have had precisely the same right with respect to their denominational schools. Possibly the right, if it had been defined or recognized by positive enactment, might have had attached to it, as a necessary or appropriate incident, the right of exemption from any contribution, under any circumstances, to a school of a different denomination. But in their Lordships' opinion it would be going much too far to hold that the establishment of a national system of education upon a non-sectarian basis is so inconsistent with the right to set up and maintain denominational schools, that the two things cannot exist together, or that the existence of one necessarily implies or involves immunity from taxation for the purpose of the other.

They then minutely review the provisions of the provincial statutes enacted prior to the passing of the acts of 1890, and of the acts of 1890 themselves, and proceed as follows :—

Notwithstanding the Public School Acts, 1890, Roman Catholics and members of every other religious body in Manitoba are free to establish schools throughout the province ; they are free to maintain their schools by school fees or voluntary contributions ; they are free to conduct their schools according to their own religious tenets, without molestation or interference. No child is compelled to attend a public school, no special advantage, other than the advantage of a free education in schools conducted under public management, is held out to those who do attend.

To this it may be added, that Roman Catholics are not excluded from the advisory board erected by the acts. They are equally eligible as Protestants to such board, and as members thereof can equally with Protestants exert their influence upon the board with regard to religious exercises in the public schools, and in short Roman Catholics and Protestants of every denomination are in every respect placed, by the acts, in precisely the same position. The judgment of the Privy Council then proceeds as follows :—

But then it is said that it is impossible for Roman Catholics or for members of the Church of England (if their views are correctly repre-

sented by the Bishop of Rupert's Land, who has given evidence in Logan's case) to send their children to public schools where the education is not superintended and directed by the authorities of their church, and that therefore Roman Catholics and members of the Church of England who are taxed for public schools, and at the same time feel themselves compelled to support their own schools, are in a less favourable position than those who can take advantage of the free education provided by the Act of 1890 ; that may be so, but what right or privilege is violated or prejudicially affected by the law? It is not the law that is in fault, it is owing to religious convictions which everybody must respect, and to the teaching of their church that Roman Catholics and the members of the Church of England find themselves unable to partake of advantages which the law offers to all alike.

The judgment then summarily rejects the contention that the public schools created by the acts of 1890 are in reality Protestant schools and concludes in declaring and adjudging that those acts do not prejudicially affect the rights and privileges enjoyed by Roman Catholics in the territory now constituting the province of Manitoba, prior to the passing of the Manitoba Act, taking those rights and privileges to have been as represented by the Archbishop of St. Boniface, and even assuming them to have been secured or conferred by positive law, and so that they are not enacted in violation of section 22 of the Manitoba Act, but are within the exclusive jurisdiction of the provincial legislature to enact.

Their Lordships of the Privy Council, in *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1) put a construction upon this section 22 which, independently, is to my mind sufficiently apparent, but which I quote as a judicial enunciation of their Lordships' opinion. They say :—

> Their Lordships are convinced that it must have been the intention of the legislature to preserve every legal right or privilege with respect to denominational schools which any class of persons practically enjoyed at the time of the union.

The language of the section is, I think, sufficiently clear upon that point, and all its subsections are enacted

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for the purpose of securing the single object, namely, the preservation of existing rights. The section enacts:—

22. In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

2. 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.

3. In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council, or any appeal under this section, is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section.

If any law should be passed in violation of the qualification contained in the first subsection upon the general jurisdiction conferred by the section, to make laws in relation to education, that is to say, in case any act should be passed by the provincial legislature prejudicially affecting any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union, such an act would be *ultra vires* of the provincial legislature to enact, and would therefore have no force; and as it was to preserve these rights and privileges with respect to denominational schools, whatsoever they were, which existed at the time of the union, that the 22nd section was enacted. It is obvious, I think, that it is against such an act of the legislature and against any decision of any provincial authority, acting in an ad-

ministrative capacity, prejudicially affecting any such right that the appeal is given by the 2nd subsection, and so likewise the remedies provided in the 3rd subsection relate to the same rights and privileges, and to the better securing the enjoyment of them. The 2nd and 3rd subsections are designed as means to redress any violation of the rights preserved by the section. To subject any act of the legislature to the appeal provided in the 2nd subsection, and to the remedies provided in the third subsection, it is obvious that such an act must be passed in violation of the condition subject to which any jurisdiction is conferred upon the provincial legislature to make laws in relation to education, and must therefore be *ultra vires* of the provincial legislature, for the language of the section expressly excludes from the provincial legislature all jurisdiction to pass such an act. The jurisdiction, whatever its extent may be, which the provincial legislature has over education being declared to be exclusive, there can be no appeal to any other authority against an act passed by the legislature under such jurisdiction, and any act of the legislature passed in violation of any of the provisions in section 22, subject to which the jurisdiction of the legislature is restricted, is not within their jurisdiction and is therefore *ultra vires*. The appeal, therefore, which is given by the 2nd subsection must be only concurrent with the right of all persons injuriously affected by such an act to raise in the ordinary courts of justice the question of its constitutionality. If any doubt could be entertained upon this point it is concluded, in my opinion, by their Lordships of the Privy Council in *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1), in the following language:

> At the commencement of the argument a doubt was suggested as to the competency of the present appeal, in consequence of the so-called

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appeal to the Governor in Council provided by the act, but their Lordships are satisfied that the provisions of subsections 2 and 3 do not operate to withdraw such a question as that involved in the present case from the jurisdiction of the ordinary tribunals of the country.

If an act of the provincial legislature which is impeached upon the suggestion of its prejudicially affecting such rights and privileges as aforesaid is not made by the 2nd section of the Manitoba Act *ultra vires* of the provincial legislature it cannot be open to appeal under subsection 2 of that section. The section does not profess to confer, upon the executive of the Dominion or the Dominion Parliament, any power of interference whatever with any act in relation to education passed by the provincial legislature of Manitoba which is not open to the objection of prejudicially affecting some right or privilege with respect to denominational schools, which some class of persons had by law or practice in the province at the union; all acts of the provincial legislature not open to such objection are declared by the section to be within the exclusive jurisdiction of the provincial legislature; and as the acts of 1890 are declared by their Lordships not to be open to such objection, and to have therefore been within the jurisdiction of the provincial legislature to pass, those acts cannot, nor can either of them, be open to any appeal under the 2nd subsection of this section.

It has been suggested however that the rights and privileges, whether conferred or recognized by the acts of the legislature of Manitoba in force prior to and at the time of the passing of the acts of 1890 and which were thereby repealed, were within the protection of the 22nd section and that this was a matter not under consideration in *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1); and that therefore the right of appeal under subsection 2 of section 22 against such repeal does exist notwithstanding the decision of the Privy Council

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in *Barrett* v. *Winnipeg* and *Logan* v. *Winnipeg* (1). This contention appears to have been first raised expressly in the petition presented in October 1892 although it is impliedly comprehended in the paragraphs of the petition of April 1890 which is repeated verbatim in that of October 1892, wherein the act of the provincial legislature of 1871 is relied upon as having had—

> the effect to continue to the Roman Catholics that separate condition with reference to education which they had enjoyed previous to the creation of the province, and in so far as Roman Catholics were concerned merely to organize the efforts which the Roman Catholics had previously voluntarily made for the education of their own children and for the continuance of schools under the sole control and management of Roman Catholics, and of the education of their children according to the methods by which alone they believe children should be instructed.

But this statute of 1871, and all the statutes passed by the legislature of Manitoba in relation to education prior to 1890, were specially brought under the notice of their Lordships of the Privy Council and were fully considered by them in their judgment as already pointed out, and if the repeal by the act of 1890 of the acts of the provincial legislature then in force in relation to education constituted a violation of the condition contained in section 22, subject to which alone the jurisdiction of the provincial legislature to make laws in relation to education was restricted, it is inconceivable to my mind that their lordships, having all these statutes before them, could have pronounced the acts of 1890 to be within the jurisdiction of the provincial legislature to pass. But however this may be there is nothing, in my opinion, in the Manitoba Act which imposed any obligation upon the legislature of Manitoba to pass the acts, which are repealed by the acts of 1890, or which placed those acts when passed in any different position from that of all acts of a legislature, which con-

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stitute the will of the legislature for the time being, and only until repealed,—and nothing which warrants the contention that the repeal of those acts by the acts of 1890 constituted a violation of the condition in the 22nd section subject to which the jurisdiction of the legislature was restricted; and nothing, therefore, which gives any appeal against such repeal.

Whether or not the 3rd subsection of section 93 of the British North America Act of 1867, assuming that section to apply to the Province of Manitoba, would have the effect of restraining the powers of the provincial legislature in such manner as to deprive them of jurisdiction to repeal the said acts it is unnecessary to inquire, for that section does not, in my opinion, apply to the Province of Manitoba, special provision upon the subject of education being made by the 22nd section of the Manitoba Act. For the above reasons, therefore, the questions submitted in the case must, in my opinion, be answered as follows:—

The 1st, 2nd, 4th and 5th in the negative; the 3rd in the affirmative, and the 6th, which is a complex question, as follows:—

The acts of 1890 do not, nor does either of them, affect any right or privilege of a minority in relation to education within the meaning of subsection 2 of section 22 of the Manitoba Act in such manner that an appeal will lie thereunder to the Governor General in Council. The residue of the question is answered by the answer to question no. 4.

KING J.—It may be convenient first to regard the constitutional provisions respecting education as they affect the original provinces of the confederation. By section 93 of the British North America Act it is provided that in and for such province the legislature may exclusively make laws in relation to education,

subject and according to the provisions of four subsections. The first subsection provides that nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons had by law in the province at the union.

The second subsection extends to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec all the powers, privileges and duties which were at the union conferred and imposed by law in Upper Canada (Ontario) on the separate school trustees of the Queen's Roman Catholic subjects there.

The third subsection gives to the Governor General in Council the right on appeal to decide whether or not an act or decision of any provincial authority affects any right or privilege of the Protestant or Roman Catholic minority in relation to education enjoyed by them under a system of separate or dissentient schools in the province, whether such system of separate or dissentient schools shall have existed by law at the union or shall have been thereafter established by the legislature of the province.

The fourth subsection provides that if upon appeal the Governor General in Council shall decide that the educational right or privilege of the Protestant or Roman Catholic minority has been so affected, and if the provincial legislature shall not pass such laws as from time to time seem to the Governor General in Council requisite for the due execution of the provisions of the section, or if the proper provincial authority shall not duly execute the decision of the Governor General in Council on the appeal, then in every such case, but only so far as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council

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under the section. In other words, if the requisite remedy, either by act of the legislature or act or decision of the proper provincial authority in that behalf, is not applied then concurrent legislative authority to the requisite extent is given to the Dominion Parliament; and to this extent the legislative authority of the provincial legislature ceases to be exclusive.

The terms "separate" and "dissentient" schools used in the above subsections were derived from the school systems of Upper and Lower Canada. At the union the two larger confederating provinces, Upper Canada (Ontario) and Lower Canada (Quebec) had each a system of separate or dissentient schools, the Canadian method of dealing with the question of religion (as between Protestants and Roman Catholics) in the public school system.

In Upper Canada the Roman Catholics were in the minority, and in Lower Canada the Protestants were in a still smaller minority. In Upper Canada there was a non-denominational public system, with a right in the Roman Catholics to a separate denominational system In Lower Canada the general public system was markedly Roman Catholic with a right to the Protestant minority to schools of their own. In Upper Canada the minority schools were called "separate" schools; in Lower Canada "dissentient" schools. It was because the powers and privileges of the Upper Canada minority in relation to their schools were greater than those of the Lower Canada minority that by the terms of union these were agreed to be assimilated by adopting for Quebec the more enlarged liberties of the Upper Canada law; and this was given effect to by subsection 2 of section 93 already cited.

In the case of the two other of the original confederating provinces, Nova Scotia and New Brunswick, there

was not in either a system of separate or dissentient schools.

The bounds of the Dominion have been since enlarged; in 1870, by the admission of the North-west Territory and Rupert's Land; in 1871, by the admission of British Columbia, and in 1872, by the admission of Prince Edward Island. In the case of British Columbia and Prince Edward Island (these being established and independent provinces) the terms of union were agreed upon by the governments and legislatures of Canada and the provinces respectively. In each case the above recited provisions of the British North America Act respecting education were adopted and made applicable without change. In neither of these newly added provinces was there a system of separate or dissentient schools.

With regard to the North-west Territories and Rupert's Land there was no established government and legislature representing the people, and after the acquisition of the North-west Territories and Rupert's Land the Parliament of Canada, after listening to representations of representative bodies of people, passed an act for the creation and establishment of the new Province of Manitoba out of and over a portion of the newly acquired territory; and it is with regard to this act, (33 Vict. c. 3) that the present questions arise.

By section 2 it is declared that:

> The provisions of the British North America Act shall, except those parts thereof which are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more, but not the whole, of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way and to the like extent as they apply to the several provinces of Canada, and as if the Province of Manitoba had been one of the provinces originally united by the said Act.

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The act then deals specially with a number of matters, as for instance the constitution of the executive and legislative authority, the use of both the English and French languages in legislative and judicial proceedings, financial arrangements and territorial revenue, etc., and by section 22 makes the following provision respecting education:—

22. In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice at the union.

(2.) 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 of privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(3.) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section.

Subsection 1 of section 22 of the Manitoba Act differs from subsection 1 of section 93 of the British North America Act of 1867, in the addition of the words "or practice" after the words "which any class of persons have by law."

In *Winnipeg* v. *Barrett* (1) the Judicial Committee of the Privy Council held that the Manitoba Education Act of 1890 did not prejudicially affect any right or privilege with respect to denominational schools which the Roman Catholics practically enjoyed at the time of the establishment of the province.

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The 2nd subsection of section 93, British North America Act, has, of course, no counterpart in any of the subsections of section 22, Manitoba Act, because subsection 2, section 93, British North America Act, is a clause specially applicable to and affecting only the Province of Quebec.

The 3rd subsection of section 93, British North America Act, and the 2nd subsection of section 22, Manitoba Act, deal with the like subject, viz.: the right of the religious minority to appeal to the Governor-General in Council in case of their educational rights or privileges being affected; but here again there are differences.

One difference is, that whereas by the clause in the British North America Act the appeal lies from an "act or decision of any provincial authority" affecting any right or privilege of the Protestant or Roman Catholic minority in relation to education, in the Manitoba Act the appeal lies from "any act or decision of the legislature of the province" as well as from that of any provincial authority. This was either an extension of the right of appeal or the getting rid of an ambiguity, according as the words "any provincial authority" as used in the British North America Act did not or did extend to cover "acts of the provincial legislature."

The addition in the 1st subsection of the Manitoba Act of the words "or practice" and the addition in subsection 2 of the words "of the legislature of the province," would (so far as the context of these words is concerned) seem to show an intention on the part of Parliament to extend the constitutional protection accorded to minorities by the British North America Act, or at all events to make no abatement therein.

Then there is another difference between the language of the 3rd subsection of the British North America Act and that of the 2nd subsection of the

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Manitoba Act. The former begins as follows: "Where in any province a system of separate and dissentient schools exists by law at the union or is thereafter established by the legislature of the province, an appeal shall lie," etc., while in the Manitoba Act the introductory part is omitted, and the clause begins with the words "an appeal shall lie," &c., the two clauses being thereafter identical, with the exception that in the Manitoba Act (as already mentioned) the appeal in terms extends to complaints against the effect of acts of the legislature as well as of acts or decisions of any provincial authority.

After this reference to points of distinction I cite subsection 2 of the Manitoba Act again in full, for sake of clearness:

> 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.

On the one side it is contended that in order to give the appeal, the rights or privileges of the religious minority need to have been acquired and to have existed prior to and at the time of the passage of the act. On the other side it is contended that it is sufficient if the rights and privileges exist at the time of their alleged violation irrespective of the time when they were acquired.

In the argument before the judicial committee of *Winnipeg* v. *Barrett*, a shorthand report of which was submitted to parliament last session (No. 11 Sessional Papers), Sir Horace Davey, counsel for the city of Winnipeg, argued that subsection 2 does not relate to anything but what is *ultra vires* under subsection 1. He says (p. 43).

> I cannot for myself frame the proposition which would lead to the inference that subsection 2 was intended to deal with cases which were

intra vires, and I beg leave to observe that it would be contrary to the whole scope and spirit of this legislation to provide for parliament intervening, not where the provincial parliament has acted beyond its powers, that I could conceive, but to allow the Dominion parliament to intervene, not to correct mistakes where the provincial legislature had gone wrong and exceeded their power.

In an interruption at this point by their lordships, Lord Macnaghten asks:

Supposing some rights were created after the union, and then legislation had taken those rights away?

This question is not directly answered, but afterwards (p. 44) Sir Horace thus continues:

It all comes back to the same point, that the Protestant and Roman Catholic minority have a right to come with a grievance to the Governor General. What is that grievance? Why, that they are deprived of some right or privilege which they ought to have and are entitled to enjoy. If they are not entitled by law to enjoy it they are not deprived of anything, and it would be an extraordinary system of legislation, having regard to the nature of this act, to say that the Dominion parliament has in certain cases to sit by way of a court of appeal from the provincial parliament, not to correct mistakes where the provincial parliament has erroneously legislated on matters not within its jurisdiction, but on matters of policy. If that be the effect to be given to these subsections, I venture to submit to your lordships that it will have rather startling consequences, and it will for the first time make the legislature of the Dominion parliament a court of appeal or give them an appeal from the exercise of the discretion of the provincial parliament, or in other words, it will place the provincial parliament in the position that it will be liable to have its decisions overruled by the Dominion parliament, and therefore in a position of inferiority.

I have quoted at great length because of the strong presentation by eminent counsel of that view, and to show that the attention of their lordships was powerfully drawn to the provisions of subsection 2. The full report shows that all the subsections of the two sections of the two acts were exhaustively discussed.

In the judgment their lordships say that:

Subsections 1, 2, and 3 of section 22 of the Manitoba Act, 1870, differ but slightly from the corresponding sections of section 93 of the

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British North America Act, 1867. The only important difference is that in the Manitoba Act in subsection 1 the words "by law" are followed by the words "or practice" which do not occur in the corresponding passage in the British North America Act, 1867.

There would be a marked and very considerable difference between the corresponding clauses, if in the one case rights and privileges of the religious minority were recognized as subjects of protection whenever acquired, while in the other case they were not recognized as subjects of protection unless they existed at the time of the passing of the constitutional act.

Not wanting to put undue stress upon this, let us look at the clauses for ourselves. In subsection 1, Manitoba Act, there is an express limitation as to time; the rights and privileges in denominational schools that are saved are such as existed, by law or practice, at the union. But in subsection 2 nothing is said about time at all; and the natural conclusion upon a reading of the two clauses together is that, with regard to the rights and privileges referred to in the latter clause, the time of their origin is immaterial. Such also is the ordinary and natural meaning of subsection 2, regarded by itself. Read by itself it extends to cover rights and privileges existent at the time of the act or thing complained of. The existence of the right, and not the time of its creation, is the operative and material fact. And this agrees with the corresponding provisions of the British North America Act, where subsection 1 refers to rights, etc., acquired before or at union, while subsection 3, in terms, covers rights, etc., acquired at any time. In any other view there was clearly no necessity to add the words "or any act of the legislature" in the remedial provision of the Manitoba Act, for such act would be wholly null and void under subsection 1.

There is, indeed, an undeniable objection to treating as an appealable thing the repeal by a legislature of an act passed by itself. Ordinarily all rights and privileges given by act of Parliament are to be enjoyed *sub modo*, and are subject to the implied right of the same legislature to repeal or alter if it chooses to do so. But the fundamental law may make it otherwise. An illustration of this is afforded by the constitution of the United States, which prohibits the States, but not Congress, from passing any law impairing the obligation of contract, and this has been held to prevent the state legislatures from repealing or materially altering their own acts conferring private rights, when such rights have been accepted. It does not extend to acts relating to government, as, for instance, to public officers, municipal incorporations, etc., but it extends to private and other corporations, educational or otherwise, and also to acts exempting incorporated bodies, by special act, from rates or taxes. These are irrepealable, and the constitutional provision has been found onerous.

It is certainly anomalous, under our system and theory of parliamentary power, that a legislature may not repeal or alter in any way an act passed by itself.

Still, weighty as this consideration is, I can give no other reasonable interpretation to the act in question than that, under the constitution of Manitoba, as under the constitution of the Dominion, the exercise by the provincial legislature of its undoubted powers in a way so as to give rights and privileges by law to the minority in respect of education, lets in the Dominion Parliament to concurrent legislative authority for the purpose of preserving and continuing such rights and privileges, if it sees fit to do so.

By the British North America Act it was not clear whether the words "act or decision of any provincial authority," covered the case of an act of the provincial

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legislature, or was confined to administrative acts, but in the Manitoba Act the words explicitly extend to an act of that legislature.

Any ambiguity in subsection 2 of the Manitoba Act is, I conceive, to be resolved in the light of the corresponding provisions of the British North America Act. As the provisions of the British North America Act are to be applicable, unless varied, I think it reasonable that ambiguous provisions in the special act should be construed in conformity with the general act.

Passing, however, from it as a matter of construction, it does not seem reasonable that Parliament, in forming, in 1870, a constitution for Manitoba, intended to disregard entirely constitutional limitations such as were three years before established as binding upon the original members of the confederation. On the contrary, by the addition of the words "or by practice" in 1st subsection, and of the words "or any act of the legislature" in 2nd subsection, and by the provision of section 23 providing for the use of the French and English languages in the courts and legislature, there is manifested a greater tenderness for racial and denominational differences. Further, unless subsection 2 has the meaning suggested, the entire series of limitations imposed by subsections 1, 2 and 3 are entirely inoperative. For the Judicial Committee has in effect declared that no right or privilege in respect of denominational schools existed prior to the union, either by law or practice, and therefore there was nothing on which subsection 1 could practically operate; and as there was clearly no system of separate or dissentient schools established in Manitoba by law prior to the union, the provisions of subsections 2 and 3 are inoperative if the rights and privileges in relation to education are to be limited to rights and privileges before the union.

There is no doubt that this construction limits the powers of the legislature and restrains the exercise of its discretion, but the same thing may be said of the effect of an appeal against "any act or decision of any provincial authority" in Nova Scotia or New Brunswick, in case either of such provinces were to adopt a system of separate schools. The legislature might not choose to pass the remedial legislation necessary to execute the decision of the Governor General in Council, and the Dominion Parliament could then exercise its concurrent power of legislation in effect overriding the legislative determination of the provincial legislature. The provision may be weak, one-sided, as giving finality to a chance legislative vote in favour of separate schools, inconsistent with a proper autonomy, and without elements of permanence, but if it is in the constitutional system it must receive recognition in a court of law.

Assuming then that clause 2 covers rights and privileges whensoever acquired, the next question is as to the meaning of the words "rights and privileges of the Protestant or Roman Catholic minority in relation to education?" Here again, I think, we are to go to clause 3 of section 93, British North America Act. I think that the reference is to minority rights under a system of separate schools, and that it is essential that the complaining minority should have had rights or privileges under a system of separate or dissentient schools existing by law at the union or thereafter established by the legislature of the province. The generality of the words under clause 2 of the Manitoba Act is to be explained by clause 3, section 93, British North America Act, and to have the same meaning as the corresponding words in it.

The two remaining questions then, are: Was a system of separate or dissentient schools established in Mani-

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toba prior to the passage of the Manitoba Education Act of 1890? And, have any rights or privileges of the Roman Catholic minority in relation thereto been prejudicially affected?

One of the learned judges of the Queen's Bench of Manitoba thus succinctly summarizes the school legislation of Manitoba in force at the time of the passing of the act of 1890:

> Under the school acts in force in the province previous to the passing of the Public School Act of 1890, there were two distinct sets of public or common schools, the one set Protestant and the other Roman Catholic. The board of education, which had the general management of the public schools, was divided into two sections, one composed of the Protestant members and one of the Roman Catholic members, and each section had its own superintendent. The school districts were designated Protestant or Roman Catholic, as the case might be. The Protestant schools were under the immediate control of trustees elected by the Protestant ratepayers of the district, and the Catholic schools in the same way were under the control of trustees elected by the Roman Catholic ratepayers; and it was provided that the ratepayers of a district should pay the assessments that were required to supplement the legislative grant to the schools of their own denomination, and that in no case should Protestant ratepayers be obliged to pay for a Roman Catholic school, or a Catholic ratepayer for a Protestant school.

I would only add that assessments were to be ordered by the ratepayers (Catholic or Protestant, as the case might be) of the school district, and that the trustees were empowered in many cases to collect the rates themselves, instead of making use of the public collectors. The trustees were empowered to employ teachers exclusively who should hold certificates from the section of the board of education of their own faith. By the act of 1871 the board of education was composed equally of Protestants and Roman Catholics, but by the act of 1881 the proportion was 12 Protestants to 9 Roman Catholics.

Now, the system of education established by the act of 1881 was not in terms and *eo nomine* a system of

separate or dissentient schools, and if the constitutional provision requires that they should be such in order to come within the act, then the minority did not have the requisite rights and privileges in respect of education. As to this, I have had doubts arising from the opinion that, where rights and privileges have no other foundation than the legislative authority whose subsequent acts in affecting them is impeached, the restraint upon the general grant of legislative authority should be applied only where the case is brought closely within the limitation. At the same time, we are to give a fair and reasonable construction to a remedial provision of the constitution, and are to regard the substance of the thing. Now the Roman Catholics were in the minority in 1881, and are still, and a system of schools was established by law, under which they had the right to their own schools—Catholic in name and fact—under the control of trustees selected by themselves, taught by teachers of their own faith, and supported, in part, by an assessment ordered by themselves upon the persons and property of Roman Catholics, and imposed, levied and collected as a portion of the public rates, the persons and property liable to such rate being at the same time exempt from contribution to the schools of the majority, *i.e.*, Protestant schools. This, although not such in name, seems to me to have been essentially a system of separate or dissentient schools, of the same general type as the separate school system of Ontario. and giving therefore to the minority rights and privileges in relation to education in the sense of subsection 2, section 22, Manitoba Act, and subsection 3, section 93, British North America Act.

It is true that the schools of the majority were Protestant schools, and that the majority had the same right as the minority, but I do not think that this ren-

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ders the minority schools any the less essentially separate schools of the Roman Catholics. In Quebec the majority schools are distinctly denominational.

Then, was the right and privilege of the Roman Catholic minority in this system of separate schools prejudicially affected by the act of 1890? And if so, to what extent?

In the judgment of the judicial committee in the *City of Winnipeg* v. *Barrett* (1), speaking of the right there claimed on behalf of the Roman Catholics that the act of 1890 had prejudicially affected the rights and privileges which they had by practice at the time of the union, their Lordships say:—

> Now if the state of things which the Archbishop describes as existing before the union had been established by law, what would have been the rights and privileges of the Roman Catholics with respect to denominational schools? They would have had by law the right to establish schools at their own expense, to maintain their schools by school fees or voluntary contributions, and to conduct them in accordance with their own religious tenets. Every other religious body which was engaged in a similar work at the time of the union would have had precisely the same right with respect to their denominational schools. Possibly this right, if it had been defined or recognised by positive enactment, might have had attached to it, as a necessary or appropriate incident, the right of exemption from any contribution under any circumstances to schools of a different denomination. But, in their Lordship's opinion, it would be going much too far to hold that the establishment of a national system of education upon an unsectarian basis is so inconsistent with the right to set up and maintain denominational schools that the two things cannot exist together, or that the existence of one necessarily implies or involves immunity from taxation for the purpose of the other.

The rights and privileges of the denominational minority under the act of 1881 and amending acts, were different from the assumed rights in denominational schools which the same class had by practice at the time of union. It could not be said to be merely "the right to establish schools at their own expense,

(1) [1892] A. C. 445.

to maintain their schools by school fees or voluntary contributions and to conduct them in accordance with their own religious tenets"; it was a right as Roman Catholics by law, to establish schools and to maintain them through the exercise by them of the state power of taxation, by the imposition, levying and collecting of rates upon the persons and property of all Roman Catholics, such persons and property being at the same time exempted from liability to be rated for the support of the public schools of the majority, then denominated and being Protestant schools. By the act of 1890 the Protestant schools are abolished equally with the Roman Catholic schools, and a system of public schools set up which is neither Protestant nor Roman Catholic, but unsectarian. The question then is whether the language of their Lordships is applicable to this state of things, and whether or not it can be said (changing their Lordships' language to suit the facts) that the establishment of the national system of education upon an unsectarian basis is so inconsistent with the right to set up and maintain by the aid of public taxation upon the denominational minority, a system of denominational schools, that the two cannot co-exist; or that the existence of the system of denominational minority schools (supposing it still in existence) necessarily implies or involves immunity from taxation for the purpose of the other. It rather seems to me that no reasonable system of legislation could consistently seek to embrace these two things, viz: 1st, the support of a system of denominational schools for the minority, maintainable through compulsory rating of the persons and property of the minority; and 2nd, the support of a general system of unsectarian schools, through the compulsory rating of all persons and property, both of the majority and the minority. The effect of such a scheme would be to impose a double rate upon a part

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of the community for educational purposes. The logical result of this view would be that by the establishment of a general non-sectarian system (as well as by the abrogation of the separate school system) the rights and privileges as previously given by law to the denominational minority in respect of education were necessarily affected. Of course the minority would obtain equality by giving up their schools; but the present inquiry at this point is whether a right acquired by law to maintain a system of separate schools has been affected by an act which takes away the legal organization and status of such schools, and their means of maintenance, by the repeal of the law giving these things, and which subjects the persons and property of the denominational minority to an educational rate for general non-sectarian schools, instead of leaving them subjected to an educational rate for the support of the separate and denominational schools. It is true that by the act of 1881 and amending acts, the exemption was an exemption from contribution to the Protestant schools, and the schools under the act of 1890 are not Protestant schools; but the substantial thing involved in the exemption under the acts of 1881 and amending acts was, that the ratepayer to the support of the Catholic schools should not have to pay rates for the support of the schools established by the rest of the community, but should have their educational rates appropriated solely to the support of their own schools. This was an educational right or privilege accorded to them in relation to education under a system of separate schools established by law, which the legislature, if possessing absolute or exclusive authority to legislate on the subject of education, without limitation or restraint, might very well withdraw, abrogate or materially alter, but which, under the constitutional limitations of the Manitoba Act, can be done

only subject to the rights of the minority to seek the intervention of the Dominion parliament, through the exercise of the concurrent legislative authority that thereupon becomes vested in such parliament upon resort being first had to the tribunal of the Governor General in Council. Although there are points of difference between this case and what would have been the case if the prior legislation of Manitoba had established a system of separate schools following precisely the Ontario system, I cannot regard the difference as other than nominal, and I treat this case as though the act of 1881 and amending acts distinctly established a system of separate schools, giving for the general public a system of undenominational public schools, and to the Catholic minority the right to a system of separate schools. In such case I do not see how the passing of such an act as the act of 1890 could fail to be said (by abolishing the separate schools) to affect the rights and privileges of the minority in respect of education. With some change of phraseology, and some change of method, I think that what has been done in the case before us is essentially the same. If the clauses of the Manitoba Act are to have any meaning at all, they must apply to save rights and privileges which have no other foundation originally than a statute of the Manitoba legislature. The constitutional provision protects the separate educational status given by an act of the legislature to the denominational minority. The view that the effect of this is to restrain the proper exercise by the legislature of its power to alter its own legislation, is met by the opposite view that there is no improper restraint if it is a constitutional provision, and that in establishing a system of separate schools the legislature may well have borne in mind the possibly irrepealable character of its legislation in thereby creating rights and privileges in

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relation to education. I therefore answer the questions of the case as follows:—

1. Is the appeal referred to in the said memorials and petitions, and asserted thereby, such an appeal as is admissible by subsection 3 of section 93 of the British North America Act, 1867, or by subsection 2 of section 22 of the Manitoba Act, 33 Vic. (1870), chapter 3, Canada?—Yes.

2. Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?—Yes.

3. Does the decision of the judicial committee of the Privy Council in the cases of *Barrett* v. *The City of Winnipeg* and *Logan* v. *The City of Winnipeg*, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union, under the statutes of the province, have been interfered with by the two statutes of 1890, complained of in the said petitions and memorials?—No.

4. Does subsection 3 of section 93 of the British North America Act, 1867, apply to Manitoba?—Yes, to the extent as explained by the above reasons for my opinion.

5. Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, assuming the material facts to be as stated therein, or has His Excellency the Governor General in Council any other jurisdiction in the premises?—Yes.

6. 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, or establish a system

of separate or dissentient schools, within the meaning of subsection 3 of section 93 of the British North America Act, 1867, if said section 93 be found applicable to Manitoba; and if so, did the two acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?—Yes.