

THE DAILY EXAMINER.

APRIL 24, 1896.

AN OPPOSITION AUTHORITY.

Mr. L. H. DAVIES will be here in a few days, and he will, of course, try to show that the Government is all wrong in respect to the Remedial Bill, the passage of which the Opposition obstructed and prevented. We shall, in the meantime, ask the people of this Province to read and ponder some extracts from the speech of a Liberal who dictum Mr. Davies is wont to receive with respect. Sir John Macdonald, admittedly a good judge of men, held the opinion that the Hon. David Mills was the most reliable constitutional authority on the Opposition side of the House of Commons. We ask the attention of the Guardian, which says this morning that the question is "whether separate schools will be enforced upon Canada or not," to the following:

"The policy of the country in respect to separate schools is already decided. That decision is incorporated in the constitution; as much so as the principle of representation between the provinces in the House of Commons. It is only because of this that the question can come before Parliament at all. The law grants to the minority their rights and privileges can be affected, an appeal to the Governor-General-Council, not to decide whether it is good or bad policy to have separate schools—the constitution settles that—but for the purpose of ascertaining whether a right or privilege is a Protestant or Roman Catholic minority of the Queen's subjects in relation to education, has been affected by any provincial law, or any provincial authority. Parliament is not called upon to decide whether as a matter of policy separate schools ought or ought not to exist. If they have not been created in the province, no matter how favorable the opinion of this House might be to them, it cannot create them; and if they do exist, no matter how hostile its opinion may be, it cannot abolish them. These two facts stand like walls of adamant, on either side of the narrow way which is open to us, of that narrow field of jurisdiction under our control."

Neither the Parliament nor the people of Canada "are called upon to decide whether as a matter of policy separate schools ought or ought not to exist." That question is, as THE EXAMINER has all along contended, settled already. Mr. Mills says so, and Mr. Mills is the Opposition's highest and best authority.

But are they called upon to decide any question in respect to the schools of Manitoba? We quote further from Mr. Mills: "Now, Mr. Speaker, let me say that it is also a well settled rule that, where there is a right by law in a subject to seek for relief, there is a corresponding duty to hear his complaint, and, if a substantial right or privilege be injuriously affected, destroyed, to redress the grievance and restore the privilege taken away. This is a legal and constitutional obligation resting upon every state functionary, from the sovereign down to the humblest officer to whom any portion of state authority is entrusted."

Mr. Mills then refers to the decision of the Lords of the Privy Council, quoting their words "and it is in the light of this that the 22nd section of the Manitoba Act of 1870, which was in truth a Parliamentary compact, must be read," and says:

"Here the expression 'compact' is used in that specific and technical sense which it has acquired in English constitutional law. Now, the rule to be observed in respect to compacts between peoples is a very ancient one. We are told in the story of the conquest of Canaan that Joshua made peace with the Gibeonites, and made a league with them, to let them live. And that the ancient Hebrews made a compact; we may not touch them, we are bound to its observance. And from that day to this compacts between peoples and compacts between states, whether weak or powerful, are held in the eye of the law, and in the moral sense of mankind, to be inviolable, according to their true intent and meaning. Sir, it was argued in this House a year ago that there is no constitutional duty imposed upon Parliament in the last resort to grant redress. It is said that the power vested in Parliament was a mere enabling power to be employed, not for the benefit of the minority, but, if at all, in the general interest of the whole public. I shall examine the contention later, but I will say at this point that where an enabling power is bestowed for a specific and named purpose, the constitutional duty imposed upon Parliament in the last resort to grant redress, and this judgment as to the public welfare was exercised under all ordinary circumstances, once for all, when the system of separate schools was introduced by the province under the provisions of the constitution.

Mr. Mills here plainly intimates that it is the duty of Parliament to "grant redress," in view of the breach of the Manitoba compact. He explained the force and meaning of the word "may" in the Manitoba Act in such a way that even the editor of the Guardian must, we feel sure, be satisfied that THE EXAMINER is right in this regard. He said: "The hon. member for Albert, said last year: 'It is clear that we have the power. But the statute does not use any word that indicates compulsion; it does not say we must or shall make remedial laws, and I base a great deal on this clear word "may" of the Act, seeing we have no choice as to it.' Now, these words show, I think, that the hon. member has misunderstood and misapprehended a very important rule of construction. Words of compulsion are never applied, either to the sovereign or to a sovereign body. 'The sovereign,' says Sir George Bowyer, 'cannot be commanded, and so, words of command are not respectful, as they are, in effect, a denial of sovereignty.' In our constitution, like that of England, the intention both to the sovereign and to parliament to keep faith and to perform all the duties falling within their respective jurisdictions. The law does not impose to either, in any event, a duty of faith. There is no authority over either to enforce the performance of any duty which the law imposes either upon the

PROVINCIAL LEGISLATURE.

THURSDAY, April 23.

House met at 11 a. m. Mr. Shaw presented a petition from certain inhabitants of Three Rivers asking for an act of incorporation for the Three Rivers Cemetery Company. A bill in accordance with the petition was introduced and referred to the private bills committee.

Mr. Bell asked the Commissioner of Public Work if a petition had been received last year from certain inhabitants and marsh owners of Lots 25 and 36, near the construction of a bridge across Duck River with an abutment therein, and if the said petition has been received what action the Government proposed to take therein.

Mr. H. C. Macdonald moved the third reading of the Act amending the Act incorporating the Central Manitoba Electric Railway Company. The motion carried, and the bill passed.

On motion of Mr. A. J. Peter, the bill to amend the act incorporating the Manitoba & Co. Ltd., was read a third time and passed.

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