

**THE MAINTENANCE OF
DENOMINATIONAL TEACHING:
A NOTE UPON SECTION 7
(I) OF THE ACT, 1902**

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The Maintenance of Denominational Teaching: A Note Upon Section 7 (I) of the Act, 1902 by
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THE
MAINTENANCE OF
DENOMINATIONAL
TEACHING

A NOTE UPON SECTION 7 (1) OF
THE EDUCATION ACT, 1902

BY

HAKLUYT EGERTON

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GENERAL



PREFACE

OCCASIONAL opportunities in a quiet life have led me to devote the best attention that I have at my command to the Education Act, 1902, and the two important series of Statutes—the Education Acts and the Charitable Trusts Acts—with which it is connected. I commenced with an “open mind,” without any preconception, except a vague opinion that probably the Act did not deserve either every word of Mr. Balfour’s praise or every word of Dr. Clifford’s condemnation. It was not long, however, before I found myself compelled to conclude that in several cardinal particulars the much-debated legislation of three years ago had been widely misunderstood, and I so far gave reins to my ambition as to form the purpose of writing a short series of notes setting forth what I conceived to be the true meaning and legal effect of the new statute. I had no political object in view—my interest was that of the interpreter, not of the partisan—and I had no intention of appearing on either side of the confused controversy that

accompanied the passing of the Bill and attended upon the administration of the Act. I knew, of course, that some of the questions I proposed to discuss had occasioned perduring displays of rhetoric that could not always be called moderate or helpful, but I hoped to keep myself as free from party prepossessions as from partisan irrelevance. I had, in fact, no more extravagant wish than to do some small thing that might, if Fortune favoured it, lift the discussion of those questions out of the tumult of the hustings into that serene air of academic inquiry where thought is completely practical and reasoning unimpassioned—save by love of truth.

I did not work methodically through the Act, but followed the promptings of vagrant interest and the invitation of chance opportunities. Consequently, it was some time before I found myself face to face with Section 7 and with the primary question which that part of the Act suggests. I knew the ordinary interpretation of the Section, but my own inquiries led to a result so widely different, and which seemed, if true, to be so important, that I thought it best to lose no time in submitting my conclusion to the judgment of "those who know"—whose information might supplement my knowledge or correct my inferences.

This isolated note is, therefore, published in

advance of the others. I dare not hope to convince every one—indeed, it may be that the only conversion wrought will be in my own opinions, but, in the interests of clear thought and sound administration, I beg that those who read it and feel constrained to express dissent will do me this one favour—will point out *precisely* where the negative argument breaks down.

The result that seems so urgently to invite discussion is simply this:—

Local Education Authorities are not empowered by the Act of 1902 to “maintain” religious instruction in non-provided schools.

If this be true, several interesting conclusions follow.

(1) Expenditure by a Local Education Authority, for the maintenance of religious instruction in non-provided schools, is illegal expenditure.

(2) The maintenance of religious instruction in non-provided schools is not one of the duties that can be enforced by writ of mandamus under Section 16 of the Education Act, 1902.

(3) Refusal by a Local Education Authority to “maintain” religious instruction in a non-provided school would not be a “default” within the meaning of the Act of 1904.

(4) A Local Education Authority cannot infer

from Section 7 (1) (b) of the Act power to inspect the religious instruction in non-provided schools.

(5) It is not lawful for a Local Education Authority

(a) to pay the teachers in non-provided schools for their services (if any) in or towards the giving of religious instruction in those schools, or

(b) to prohibit the attendance of any of those teachers at Church whenever their children are lawfully at Church.

(6) Section 13 (1) of the Act of 1902 will not transfer to a Local Education Authority any charitable monies applicable in or towards religious instruction.

(7) Neither "Rome" or any other religious body is—in Dr. Clifford's sense—"on the rates."

(8) As the "Welsh Revolt" is primarily against the alleged obligation to spend "public money" in the maintenance of an unpopular creed, there may now—unless the "revolt" express a permanently intolerant intention—be hopeful prospect of a better peace in Wales than Mr. Lloyd George dreams of.

(9) As the Act of 1902 is, thus far, in undesigned and unconfirming coincidence with the political ideals that underlie "Passive Resistance," there should no longer be any occasion for that unedifying vindication of "law and order" which, by embittering our religious differences,

has widened the intolerable breach between those who ought to be at one.

(10) If, under Section (7) 1 (a) of the Act of 1902, Local Education Authorities can fix the hours for secular instruction in non-provided schools, *that* is the one remaining point of dangerous contact between those Authorities and denominational teaching.¹

One word more, I am a Conservative, and differ as widely as possible from the practical policy of Mr. Lloyd George and from the political philosophy of Dr. Clifford. In Utopia these particulars would be irrelevant to the note which these lines preface, but we are not in Utopia, and, in the world wherein we have actually to live, party allegiance so often depraves thought—even upon matters which are not what is ordinarily called political,—that I assume permission to mention them, lest silence should invite the conjecture that I have been illogically helped to my conclusions by sympathy with administrative injustice, or by symbolism with those scrupulous consciences that prove their loyalty to a perversion of the Gospel by eloquently submitting to the gratifying pleasures of a trivial martyrdom.

Yet another word as to the method of

¹ Fortunately, however, another interpretation of Section 71 (a) seems to be not improbable. See Appendix.