By chapter 55, "The Adolescent School Attendance Act" (1919), ch. 78), is amended so as to exempt an adolescent residing in a rural section from obligatory school attendance whose services are required in the household or on the farm of his parents or guardians.

Toronto. B. BLOOMFIELD JORDAN.

THE STATUS OF THE FRENCH LANGUAGE IN CANADA.

NEW FRANCE—A NATION.

Before and at the time of the cession of Canada to the Crown of England, the French language was the only polished language spoken and written, over the territory, with much larger area, out of which have been carved the nine provinces of the Dominion.

The population of New France, not counting the Indians, was then about 60,000, all French with the exception of about 1,000 English-speaking people.

New France possessed in 1760 all the essential elements and attributes of a nation, its people having institutions, administrative, judicial, civil and educational, a religion, customs and usages of its own. All over this territory, extending from Hudson Bay to the Gulf of Mexico, and from the Atlantic to the Pacific, the French language alone held constant dominion for nearly two centuries. Outside of the territorial limits of the original thirteen American colonies, the whole of the North American continent had been traversed in every direction by the French pioneers and missionaries, bringing with them and implanting the civilization of France and the Gospel of Christ. They had founded towns and other establishments, such as Port Royal, Louisbourg, Quebec, Three Rivers, Montreal, Kingston, Detroit and many others, erected military defences, trading posts and missions along the St. Lawrence and the Ottawa and many other rivers, the Great Lakes, in the North-West, along the Mississippi as far as New Orleans. The colony was equipped industrially and commercially so as to meet all the needs of its inhabitants.

The people of New France constituted a separate and distinct nationality, inasmuch as they had community of origin, ambition and destiny, of territory, of race, of religion, of law, of customs and traditions, as well as an incipient literature of their own. They composed a natural society of men brought and clinging together by unity of territory, origin, customs, religion and language, worked into a community of political, religious, civil, social, industrial and com-

mercial life, able and determined to live, develop and prosper, the whole in the light and with the means of the highest form of civilization then attained, and in accordance with the characteristics and traditions of the ethnical group from which they had come, and of which they still formed a part.

The absence of sovereignty was immaterial, since the existence of nationalities does not depend upon the degree of autonomy they enjoy, and is not affected even by the want of any autonomy. Such, for instance, are the three distinct ethnical groups or nationalities, none of which has any political autonomy, and which together constitute the sovereign State: The Republic of Switzerland.

At the time of the cession, New France had the French language as its unique expression. It was in that language that the laws were written, that its tribunals administered justice, that its jurisprudence, already ancient, had recorded the decisions of its Courts; it was French that the children were being taught in the schools, that the religious exercises were carried on, that business and social intercourse were conducted, that, in a word, the life of the whole colony and of its members found expression.

From the moment an ethnical group has implanted itself on some part of the globe and has brought or created for itself and has established a language of its own, the right to that language exists and persists, superior to all the decrees of man, and its exercise thereby becomes a legitimate, legal, imprescriptible and fundamental right, which is not in any way affected by cession or conquest.

In giving New France political and civil organs, France had brought this people to the complete enjoyment of national life. New France was to all intents and purposes a nation. The people were recognized in France and in the colony as, and were called, *"Canadiens."*

Linguistic Right is a Fundamental Right.

The right of the French language to exist and to persist in Canada, both for the individual and the collectivity, needs no other, no better basis than the very fact that it has existed and still persists, and is still in common use by the whole ethnical group, now fifty times more numerous; its permanence is limited only by its ability to survive. The birth of the human offspring gives it the complete, unquestionable, primordial and imprescriptible right to live and to seek happiness. And so it is with one's speech, with the speech of every organized community or ethnical group.

Like the individual, like the collectivity, it is bound by and sub-

ject to but one law as to its existence—that of the survival of the fittest.

Like the right to breathe, to enjoy one's share of the sun, to liberty, to seek happiness—the right to one's speech is one of those primordial and fundamental rights which do not depend on the consent or the will of any man, any body of men, any state or any number of states. It is a right not dependent upon, but superior to all decrees of man or State.

Any attempt to proscribe the use or teaching of the language of any man or nationality should anywhere throughout the civilized world be considered as a violent and unbearable abuse of power.

Abuse of Power by Certain Provincial Legislatures.

Yet such an abuse of power has been committed in some of the provinces of the Dominion, where the use or teaching of the French language in certain schools under provincial control has been, in certain cases, unduly limited and in certain other cases immediately and completely proscribed. The exercise of this power has been defended on the ground that the Act of Confederation (B. N. A. Act, 1867, sec. 93) has assigned to the provinces the exclusive power to *legislate* on educational matters, and, since the constitutional Act contains no express provision or specific text recognizing the use or teaching of the French language in such schools, the Legislatures have the right to abolish such use or teaching.

It must be a source of equal astonishment and regret that during the whole of the controversy which the legislation referred to has provoked and even now, on the platform and in the English press, and even before all the Courts which have dealt with the litigation arising out of the legislation, a strange misapprehension has been constant and general, and still persists.

Unconsciously by some and designedly by others the terms "power" (another name for *force*) and "right" have been given a similar meaning. They have been treated as synonymous, when every one knows or ought to know that they are not, and that their meaning is entirely different and frequently contrary. *Power* is one thing and *right* quite another. Every one has the power, for instance, by process of Court, to compel the attendance of his neighbor before a court of justice to answer a claim based on neither justice nor right. This would be a violation of right and an abuse of power.

Any Provincial Legislature of the Dominion, because it has the exclusive power to legislate, for instance, on "property and civil rights," has the *power*, in violation of all the rules of law, or the principles of justice or equity, to confiscate my property, in the province,

declare it the property of another, and vest it absolutely in him; and that without providing any compensation or remedy of any kind. And what is more, the province can enforce such legislation by setting in motion the machinery of its own Courts. True, such legislation may be disallowed by the Cabinet at Ottawa. But if the Dominion Cabinet refuses disallowance, the party aggrieved would be deprived of all remedy. And we have had such cases in Canada.

Evidently power is one thing and right quite another.

To the misapprehension or denial of this all important difference must be ascribed the miscarriage of justice complained of with regard to the use of the French language in the schools of several provinces of the Dominion.

Power of Legislatures Concerning Education is to Regulate, Not to Prohibit.

The power to legislate in every part of the civilized world is subordinated always to the fundamental principles and the human rights briefly above referred to.

When the power to legislate on educational matters was delegated by the Imperial Parliament, in the B. N. A. Act, to the Provincial Legislatures, it was so conferred upon the assumption that its exercise would always be predicated upon a complete respect of such fundamental principles and human rights.

The power, though exclusive, given to the Provincial Legislatures to legislate on educational matters, is not without limits, and its exercise must always be subordinated to all fundamental and essential principles and human rights.

Is it conceivable that, when delegating to the Provincial Legislatures the powers of sec. 93 of the B. N. A. Act, the Imperial Parliament for one moment contemplated that such a provision would or could be invoked for the purpose of justifying the abolition anywhere in Canada of the right to the use or the teaching of the French language, one of the official languages of the Dominion, a right which the Imperial authorities have at all times fully recognized and protected? Nor is it conceivable that the French-speaking population of Canada, one-third of the whole, would not have at once and indignantly refused to join Confederation with such a power allotted to the provinces.

Is a Text of Law Necessary?

The two grounds upon which the validity of the legislation or regulation in Ontario is sought to be supported are the one which has already been canvassed, and the other that the French language

has no legal standing in the provinces, there being no *specific text of law* granting such a standing.

Such a text is wholly unnecessary, because, as already stated, the right arises out of and is amply supported on the demands of individual liberty, on fundamental and primordial human rights, which have received the sanction of every civilized community and of constant international law. The most recent and solemn of such sanctions is to be found in the treaties of peace with Germany, Austria and Bulgaria. In the latter it is provided:—

"Article 54. Bulgarian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Bulgarian nationals. In particular they shall have an equal right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments, *with the right to use their own language and to exercise their religion freely therein.*

"Article 55. Bulgaria will provide, in the public educational system in towns and districts in which a considerable proportion of Bulgarian nationals of other than Bulgarian speech are resident, *adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Bulgarian nationals through the medium of their own language.* This provision shall not prevent the Bulgarian Government from making the teaching of the Bulgarian language obligatory in the said schools.

"In towns and districts where there is a considerable proportion of Bulgarian nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured *an equitable share* in the enjoyment and application of sums which may be *provided out of public funds under the State, municipal or other budgets, for educational, religious or charitable purposes.*"

The laws of England will be searched in vain for a specific text guaranteeing in so many words to its subjects, whether in the Realm itself or any of the Dominions or Colonies, the use of the English language; or of any one of the 150 different languages of India, or of the many other languages recognized and protected throughout the British Empire.

And yet at no time within the Empire, outside of certain parts of Canada, has the natural, fundamental and imprescriptible right of a minority to speak, teach and seek to perpetuate its language been violated or even questioned.

True, the suggestion to abolish French was made shortly after the Conquest, but the proposal was peremptorily rejected and the French population was confirmed in a full and ample manner in the

enjoyment of its fundamental rights, usages and customs; and no one thought it necessary or even opportune to enact any text to ensure to the new subjects of the Crown the permanent use of the French language, since it was the only language spoken and written in the newly-acquired territory.

The right of the French language to exist and persevere in Canada had the soundest and most indestructible basis, a basis more ancient, and better and stronger than a mere governmental or legislative title and not subject to the whims, vicissitudes and uncertainties of man or time.

It was as if implanted in the soil, in every phase of the spiritual and temporal activities of the people—a living, robust, healthy and beautiful thing it was; the only medium through which the colony could be governed, made to develop and prosper and could be held for the Crown of England.

Thus the right to the use, teaching and permanence of the French language became and has ever since remained a part of the Common Law of Great Britain, the unwritten law of the British Empire, and of the French Colonies which were ceded to Great Britain by the Treaty of Paris, the unwritten law of the Empire upon which is founded and depends the exercise of so many of the most fundamental and precious rights, privileges and immunities of the King's subjects at home, in the Dominion and British possessions.

When was it that this right, so universally and constantly recognized, respected and sanctioned by the British Crown and Parliament, and by British pro-Consuls in Canada, was altered, or destroyed or even questioned?

When was it that the King of England, who owes to all his subjects equal treatment and equal justice, or the Parliament at Westminster withdrew or restricted this right?

Never at any time or in any part of the British Empire, outside of certain provinces of the Dominion, has the right of the established language of any British community or group been taken away or denied. The Imperial Act, known as the Union Act (1841) did put a restriction on the use of the French language in the parliamentary debates, but the restriction was very soon repealed.

Statutory Texts Exist.

If the right to use and teach the French language in the schools of any of the Provinces of Canada needs the support of a specific text embodied in a statutory law of England, applicable to the Dominion and its provinces, then such text is readily available, and from several of the most important and far-reaching British enactments.

Firstly: In Magna Charta, the most important and comprehensive of all British legislative enactments:—

"No man shall be taken or imprisoned nor prejudged of life or limb, nor be disseized or put out of his freehold, *franchises or liberties or free customs,* nor be outlawed or exiled, or any otherwise destroyed unless he be brought in to answer and prejudged of the same by due course of law; nor shall the King pass upon him, nor condemn him but by lawful judgment or his peers or by the law of the land; and the King shall sell to no man, nor deny or defer to any man, either justice or right." 25 Ed. 1, c. 29; 5 Ed. 3, c. 9; 25 Ed. 3, St. 5, c. 4; and 28 Ed. 3, c. 3.

Secondly: The Legislature of the Province of Ontario has, by a special provision, incorporated the very text of Magna Charta just quoted—and it is found in Ch. 322 of the Revised Statutes of Ontario, 1897, sec. 2.

Thirdly: By the Act 14, Geo. III., ch. 83, known as the Quebec Act, 1774, sec. 8:—

"8. And be it further enacted by the authority aforesaid, that all His Majesty's Canadian subjects within the Province of Quebec [which contained all the territory now comprised in the Dominion] the religious orders and communities only excepted, may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, ample, and beneficial manner, as if the said proclamations, commissions, ordinances, and other acts and instruments had not been made, and as may consist with their allegiance to His Majesty, and subjection to the Crown and Parliament of Great Britain, and that in all matters of controversy relative to property and civil rights resort shall be had to the laws of Canada as the rule for the decision of the same; and all causes that shall hereafter be instituted in any of the Courts of justice to be appointed within and for the said Province by his Majesty, his heirs and successors, shall, with respect to such property and rights be determined agreeably to the said laws and customs of Canada, until they shall be varied or altered by any ordinances that shall from time to time be passed in the said Province by the Governor, Lieutenant-Governor or Commander in Chief, for the time, by and with the advice and consent of the Legislative Council of the same, to be appointed in manner hereinafter mentioned."

Fourthly: The Legislature of Ontario has incorporated the whole of this section in and made it a part of the statutory law of that province. Revised Statutes of Ontario, 1897.

To justify its right to exist and persist anywhere in Canada, if a text of law be required on behalf of the French language, there exist the two ancient and solemn texts of English Statutory Law above

quoted and both of which have by the Province of Ontario been made part of its statutory law.

The provisions of Magna Charta, binding on the British Empire as a whole and of the Quebec Act, 1774, as well as the enactments of the Legislature of Ontario, above quoted, have not at any time since been repealed or in any way amended. They are now in full force and effect.

Recent Decision of the Supreme Court of the United States of America.

The soundness of the propositions herein discussed has recently received the full and definite approval and sanction of the Supreme Court of the United States of America.

In the Constitution of the Republic the disposition of Magna Charta quoted above has been incorporated.

By the 14th Amendment it is provided that "*no state shall deprive any person of life, liberty or property without due process of law.*"

In *Meyer* v. *State of Nebraska,* the Supreme Court of the United States in June last, in a very definite and conclusive way, upheld the contentions submitted in this article, as a perusal of its judgment will convincingly demonstrate. (See 43 S. C. Reporter, 625). The case may be summarized as follows:—

1. The liberty guaranteed by the 14th Amendment to the Federal Constitution denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, *and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.*

2. *The liberty protected by the 14th Amendment to "the Federal Constitution may not be interfered with, under the guise of protecting the public interests, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.*

3. Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts.

4. *It is the natural duty of a parent to give his children education suitable to their station in life.*

5. *Forbidding the teaching in school of any other than the English language until the pupil has passed the eighth grade violates the guaranty of liberty in the 14th Amendment to the Federal Con-*

stitution, in the absence of sudden emergency rendering knowledge of the foreign language clearly harmful.

6. *The protection of the Federal Constitution extends to those who speak other languages as well as to those who speak English.*

Mr. Justice McReynolds in delivering the opinion of the Court said in part:—

"Plaintiff in error was tried and convicted in the District Court for Hamilton County, Nebraska, under an information which charged that on May 25, 1920, while an instructor in Zion Parochial School, he unlawfully taught the subject of reading in the German language to Raymond Parpart, a child of ten years, who had not attained and successfully passed the eighth grade. The information is based upon "An Act Relating to the Teaching of Foreign Languages in the State of Nebraska," approved April 9, 1919, which follows:—

'Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

'Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

'Section 3. Any person who violates any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than twenty-five ($25) dollars, nor more than one hundred ($100) dollars or to be confined in the county jail for any period not exceeding thirty days for each offence."

'Section 4. Whereas, an emergency exists, this Act shall be in force from and after its passage and approval.' (Laws, 1919, ch. 249.)

"The Supreme Court of the State affirmed the judgment of conviction (107 Neb. 657, 187 N. W. 100). *It declared the offence charged and established was "the direct and intentional teaching of the German language as a distinct subject to a child who had not passed the eighth grade," in the parochial school maintained by Zion Evangelical Lutheran Congregation, a collection of Biblical stories being used therefor. And it held that the statute forbidding this did not conflict with the 14th Amendment, but was a valid exercise of the police power. The following excerpts from the opinion sufficiently indicate the reasons advanced to support the conclusion:—*

"The statute, therefore, was intended not only to require that the education of all children be conducted in the English language, but that, until they had grown into that language, and until it had become a part of them, they should not in the schools be taught any

other language. The obvious purpose of this statute was that the English language should be and become the mother tongue of all children reared in this state."

* * * * * * *

"The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment. "No state . . . . shall deprive any person of life, liberty or property without due process of law.

" While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of "the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, *and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free man."*

* * * * * * *

"The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts."

* * * * * * *

"Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws."

* * * * * * *

"Plaintiff in error taught this language in school as part of his occupation. *His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the limits of the Amendment."*

* * * * * * *

"Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

* * * * * * *

"That the state may do much, go very far, indeed, in order to im-

prove the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all—to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means."

* * * * * * *

"The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instruction in English, is not questioned. Nor has challenge been made of the state's power to prescribe a curriculum for institutions which it supports. Those matters are not within the present controversy. Our concern is with the prohibition approved by the Supreme Court.

* * * * * * *

"We are constrained to conclude that the statute as applied is arbitrary, and without reasonable relation to any end within the competency of the state."

* * * * * * *

How very much stronger is the case of the French language in Canada, where it is the language of the pioneers and of *one-third of the whole population, as well as one of the official languages of the country!*

If the prohibition of a foreign language, like the German language, in a state of the American Union, constitutes a violation of liberty and of fundamental rights and of the provisions of Magna Charta, must it not *a fortiori* be a much more grave violation of liberty when resorted to in one of the provinces of the Dominion with regard to one of its official languages?

It has often been said that in the Province of Ontario it was not the intention of the Legislature or of the Educational Authorities to prohibit the use or teaching of the French language in any of the schools of that province. If such is the case, since the regulation complained of *does so prohibit, and is in violation of fundamental and essential* rights and of liberty, may not the aggrieved minority of that province and of certain other provinces of Canada be permitted to entertain the hope that a proper and sufficient remedy will be forthcoming at an early date to remove the injustice caused to such minorities?

N. A. Belcourt.

Ottawa.