29396

In the Privy Council.

No. 51 of 1894.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

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

RECORD OF PROCEEDINGS.

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["X"] "A"

RECORD.

In the Supreme Court of Canada.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF

CERTAIN STATUTES OF THE PROVINCE OF MANITOBA RELATING TO EDUCATION.

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 Victoria chapter 25, section 4.

[2103]

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

Canadian Order in Council, for reference of Case to Court dated 31st July 1893.

On a report dated 20th of July, 1893, from the Acting Minister of Justice, submitting with reference to his report of the 7th July, inst., which was approved on the 8th July, 1893, submitting 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, chapter 135, as amended by 54 and 55 Victoria, chapter 25, section 4.

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

JOHN J. McGEE,
Clerk of the Privy Council.

Canadian Order in Council, dated 8th July, 1893.

[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 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, 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.

OTTAWA, 7th July, 1893.

CASE submitted to the Supreme Court of Canada by His Excellency the Governor-General in Council, pursuant to the authority of the Revised Statutes of Canada, chapter 135, intituled: "An Act respecting the Supreme and Exchequer Courts," as amended by section 4 of chapter 25 of the Acts of Parliament of Canada, passed in the 54th and 55th year of Her Majesty's reign, intituled: "An Act to amend chapter 135 of the Revised Statutes, intituled: 'An Act respecting the Supreme and Exchequer Courts.'"

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 *vs.* The City of Winnipeg, and Logan *vs.* 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 *vs.* The City of Winnipeg, and Logan *vs.* The City of Winnipeg, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic ministry 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 sub-section 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 sub-section 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools "within the meaning of sub-section 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?

Canadian Order in Council dated 29th Dec. 1892.

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

Report of Sub-Committee of 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 Manitoba, relating to education, passed in the session of 1890, have the honour 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 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 Assemby 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 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 sub-sections 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 Saint Boniface, and by the President of the "National Congress," the Mayor of St. 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 a re-enactment may be ordered by Your Excellency, of the statutes in force in Manatoba, 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., 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 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 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 sub-section 2 is not identical with the restriction of sub-section 3 of the 93rd section of the British

North America Act, and questions are suggested, in view of this difference, as to whether sub-section 3 of section 93 of the British North America Act applies to Manitoba, and, if not, whether sub-section 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 sub-section before quoted from the British North 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 Canada, 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.

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 sub-section 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.

Memorial of National Congress and Letters forwarding same.

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.

(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 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,
Member for the E. Dist. of Provencher.

(Translation.)

OFFICE OF THE NATIONAL CONGRESS, ST. BONIFACE, 20th September, 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.

Memorial of National Congress dated 20th September, 1892.

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 :

Petition of Roman Catholics

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 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 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. The 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

Memorial of National Congress dated 20th September, 1892 —*continued*

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

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

Report of the Minister of Justice.

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.

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 school 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 Vict., 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 nor more than fourteen to be a Board of Education for the province, of whom 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 these 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 denominatienal (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 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 sub-sections 2 and 3 of section 22 of the "Manitoba Act" quoted in the early part of this report and which are analagous to the provisions made by the British North America Act, in relation to the other provinces.

Those sub-sections 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.

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 sub-sections 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

RECORD.

In the Supreme Court of Canada.

Case.

Memorial of National Congress dated 20th September, 1892 —*continued.*

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,
JAMES 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.

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 submission 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, Esq., M.P., St. Boniface, Man.

Memorial of Archbishop Taché, dated 22nd September 1892.

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., chaps. 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 Honourable the Secretary of State for Canada a petition, signed by eight members of the Legislative Assembly of Manitoba, to

RECORD.

In the Supreme Court of Canada.

Case.

Memorial of Archbishop Taché, dated 22nd September 1892 —*continued.*

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 passation of the two said Acts, respectively intituled: "An Act respecting the Department of Education," and "An Act respecting Public Schools," (53 Vic., cap. 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., cap. 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., cap. 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:—

RECORD.

In the Supreme Court of Canada.

Case.

Memorial of Archbishop Taché, dated 22nd September 1892 —continued.

"(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."

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, sheweth 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 Schools 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 sub-sections 2 and 3 of section 22 of the Manitoba Act, quoted in the early part of this report, and which are analagous to the provisions made by the British North America Act in relation to the other provinces.

"Those sub-sections 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.

RECORD.

In the Supreme Court of Canada.

Case.

Memorial of Archbishop Taché, dated 22nd September 1892 —*continued.*

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 sub-sections 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 RomanCatholics 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.

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, *Arch. of St. Boniface.*

St. Boniface, 22nd September, 1892.

Letter of Under Secretary of State, dated 26th September 1892

Department 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.

Letter forwarding Memorial, dated 31st October 1892.

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-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 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 of 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 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 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 Roman Catholics guaranteed and

RECORD,
In the Supreme Court of Canada.
Case.
Memorial on behalf of Roman Catholics of Manitoba —*continued.*

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.

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 Assemby 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 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 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

Case. Memorial on behalf of Roman Catholics of Manitoba —*continued.*

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.

Memorandum of the Conservative League, dated 3rd November 1892.

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 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 *paterfamilias*. 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 formerly 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 Canadian 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 citizen 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 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.

Letter from Under-Secretary of State, dated 5th Nov., 1893.

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.

Letter from Under-Secretary of State, dated 4th Jan., 1893.

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 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.

Letter from Lieutenant Governor, dated 7th Jan., 1893.

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. 4988, 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 enclosures mentioned to my Government.

I have, &c.,

JOHN SCHULTZ,
Lieutenant-Governor

RECORD.

In the Supreme Court of Canada.

Case.

Letter from Lieutenant-Governor, dated 18th Jan. 1893.

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 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 Honourable 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.

Letter from Under-Secretary of State, dated 21st Jan. 1893.

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-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.

List of Manitoba Statutes relating to Education.

The following are the Statutes of Manitoba 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."

BARRETT vs. CITY OF WINNIPEG.

Barrett v. City of Winnipeg.

AFFIDAVITS.

Affidavit of J. K. Barrett, sworn 8th October, 1890.

In the Queen's Bench.

In the matter of an application to quash By-laws 480 and 483 of the city of Winnipeg.

I, John Kelly Barrett, of the city of Winnipeg, in the county of Selkirk and province of Manitoba, gentleman, make oath and say :

1. That I am a ratepayer and resident of the city of Winnipeg aforesaid and have resided in the said city continuously for the past five years, and am a member of the Roman Catholic Church.

2. On and prior to the thirtieth day of April last a school district (having some years before been established) existed in the city of Winnipeg, and such school district was under the direction and management of the corporation known as "The School Trustees for the Catholic School District for Winnipeg, No. 1, in the province of Manitoba."

3. The said corporation has established and in operation a number of schools in Winnipeg, under the provisions of the various provincial statutes relating to schools, to one of which, namely, St. Mary's school, situate on Hargrave street, I have for three years past sent my children for instruction, which children are aged respectively ten, eight and five years.

4. That the said St. Mary's school is still in existence and the same teaching and religious exercises are continued as before the passing of the said Act, and my said children still attend said school.

5. The paper writing now shown to me marked with the letter "A" is a true copy of By-law No. 480, passed by the Council of the city of Winnipeg, on the fourteenth day of July last, and the same is certified under the hand of the clerk of the said city and under the corporate seal thereof.

6. The said paper writing so certified as aforesaid was received by me from said clerk.

7. The paper writing now shown to me marked with the letter "B" is a true copy of By-law No. 483, passed by the Council of the city of Winnipeg, on the twenty-eighth day of July last, and certified under the hand of the clerk of the said city and under the corporate seal thereof, and such paper writing was received by me from the said clerk.

8. I am interested in the said by-law by virtue of being a resident and ratepayer of said city.

9. The paper writing now shown to me marked with the letter "C" is a true copy of a requisition sent to the clerk of the said city by the school trustees for the Protestant school district of Winnipeg, No. 1, on the twenty-eighth day of April last.

10. The paper writing now shown to me marked with the letter "D" is a true copy of the requisition sent to the clerk of the said city by the school trustees for the Catholic school district of Winnipeg, No. 1, in the province of Manitoba, on the twenty-ninth day of April last.

11. That the estimate of all sums for the lawful purposes of the city of Winnipeg for the present year as required to be made by section 283 of the Municipal Act passed in the fifty-third year of the reign of Her Majesty, Queen Victoria, chapter 31, were based upon the two requisitions above referred to, copies of which are marked with the letters "C" and "D" as aforesaid, which requisitions were presented to the council of said city on the 5th day of May last.

12. That the amounts of $75,000 and $2,550, mentioned in the said exhibits "C" and "D," respectively, form part of the sum $377,744.43 mentioned in said exhibit "A."

13. The effect of the said by-laws is that one rate is levied upon all Protestants and Roman Catholic ratepayers in order to raise the amount mentioned in said exhibits "C" and "D," and the result to individual ratepayers is that each Protestant will have to pay less than if he were assessed for Protestant schools alone, and each Roman Catholic will have to pay more than if he were assessed for Roman Catholic schools alone.

14. I have read the affidavit sworn to in this matter on the third day of October instant, by the Most Reverend Alexander Taché, and I say that so far as the same lies within my personal knowledge the same is true; as to the rest, I believe the same to be true.

JOHN K. BARRETT.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this eighth day of October, A.D. 1890.

HORACE E. CRAWFORD,
A Commissioner in Q.B., &c.

By-law No. 480, dated 14th July 1890.

A

By-Law No. 480.

A By-Law to authorize an assessment for City and School Purposes in the City of Winnipeg for the current municipal year 1890.

Whereas it is expedient and necessary for the City purposes to raise the sum of three hundred and seventy thousand seven hundred and forty-four (43.100) dollars for interest on debentures and ordinary current municipal and school expenditure for the current year by a tax on all real and personal property appearing on the assessment rolls of the City of Winnipeg for the year 1890;

And whereas the amount of the whole of the rateable property of the City of Winnipeg, as shown by the last revised assessment rolls of the said City of Winnipeg, is eighteen millions six hundred and twelve thousand four hundred and ten dollars ($18,612,410), and it will require a rate of two cents on the dollar on the amount of the said rateable property to raise the sum so required as aforesaid for interest on debentures now accruing due, and for the ordinary current municipal and school expenditure for the year A.D. 1890;

Therefore, the Council of the City of Winnipeg in Council assembled enacts as follows:—

1. There shall be raised, levied, or collected, a tax of two cents on the dollar upon the whole assessed value of the real and personal property in the City of Winnipeg, according to the last revised assessment rolls for the year 1890, to provide for the payment of the interest on debentures now accruing due, and for the ordinary current municipal expenditure, and for the schools of the City for the year A.D. 1890.

2. The sum of two dollars ($2) poll tax shall be levied and collected from every person residing within the City of Winnipeg, and being of the age of 21 years and upwards, who has not been assessed upon the assessment rolls of the City of Winnipeg, or whose taxes do not amount to two dollars, in which latter case a total tax of two dollars only shall be levied, which taxes shall be collected in the same manner as other taxes.

The taxes and rates hereby imposed shall be considered to have been imposed, and to be due on and from the 1st day of October, A.D. 1890. Done and passed in Council assembled at the City of Winnipeg, this 14th day of July, A.D. 1890.

Alex Black, Ald.,
Acting Mayor.

C. J. Brown,
City Clerk.

I hereby certify that I have compared the above, consisting of two pages of writing, with the original By-law No. 480, of the City of Winnipeg, and that the same is a true and correct copy of such By-law No. 480 of the City of Winnipeg.

Dated this 18th September, A.D. 1890.

C. J. Brown,
City Clerk.

RECORD.

In the Supreme Court of Canada.

Case.

By-law No. 483, dated 28th July 1890.

B

BY-LAW No. 483.

A By-law to amend By-law No. 480, of the City of Winnipeg.

Whereas it has been deemed expedient and necessary to amend By-law No. 480, of the City of Winnipeg, being a by-law to authorize an assessment for city and school purposes in the City of Winnipeg, for the current municipal year A.D. 1890;

And whereas the property of certain corporations is exempt for a period of years from ordinary municipal taxation and liable only for school rates; and it is therefore desirable to distinguish the rates providing for the city schools but so that the total several rates shall not exceed two cents on the dollar.

Now, therefore, the mayor and council of the City of Winnipeg in council assembled, enacts as follows:

1. By-law No. 480, entitled a by-law to authorize an assessment for city and school purposes in the City of Winnipeg for the current municipal year, 1890, is hereby amended.

(*a*) By adding to the second or last recital the words following: "Whereo the rate of 15⅘ mills on the dollar shall be for interest on debentures now accruing due and for the ordinary current municipal expenditure, and the rate of 4⅕ mills on the dollar shall be for school expenditure for the year 1890."

(*b*) And by inserting after the figures "1890" in the fifth line of the first section of said By-law, the words following: "Of which the amount of 15⅘ mills on the dollar shall be."

(*c*) And by inserting after the word "and" in the seventh line of said first section the words following: "And 4⅕ mills on the dollar."

Done and passed in Council assembled at the City of Winnipeg, this 28th day of July, 1890."

ALEX. BLACK, Ald.,
Acting Mayor.

C. J. BROWN,
City Clerk.

I hereby certify that I have compared the above, consisting of two pages of writing, with the original By-law No. 483, of the City of Winnipeg, and that the same is a true and correct copy of such By-law No. 483 of the City of Winnipeg.

Dated this 18th September, A.D. 1890.

C. J. BROWN,
City Clerk.

I, Charles James Brown, of the City of Winnipeg, in the County of Selkirk and Province of Manitoba, City Clerk for Winnipeg aforesaid, do hereby certify:

That the estimate of all the sums required for the purposes of the City of Winnipeg for the fiscal year ending the 30th day of April, A.D. 1891, were duly submitted to, and approved by the Council of the said City.

That according to such estimates, the only amounts provided for school purposes were as follows:

The Winnipeg Protestant schools	$75,000
The Winnipeg Catholic schools	2,550

That such estimates for school purposes were based upon two requisitions which were received by me as clerk and were presented to the said Council on the 5th day of May, A.D. 1890, and which were respectively in the words and figures following to wit:

PROTESTANT SCHOOL BOARD OF THE CITY OF WINNIPEG,

OFFICES, CITY HALL, WINNIPEG, 28th April, 1890.

P. C. MCINTYRE, Chairman.
STEWART MULVEY, Secretary-Treasurer.

SIR,—I am directed by the Board of School Trustees for the Protestant School District of Winnipeg, No. 1, in the Province of Manitoba, to ask the Municipal Council of the City of Winnipeg, to levy and collect for school purposes a sum of seventy-five thousand dollars ($75,000) for the school year of 1890. Herewith please find a list of names with their respective assessments, liable to be assessed for support of Protestant schools.

Your obedient servant,
(Sd.) STEWART MULVEY,
Sec.-Treasurer.

C. J. BROWN, City Clerk, &c., &c.

BOARD OF CATHOLIC SCHOOL TRUSTEES,

WINNIPEG, 29th April, 1890.

To CHAS. BROWN, Esq., City Clerk, City.

SIR,—I am instructed by the school trustees of the Winnipeg Catholic School District to provide you, and I transmit herewith, their estimate for the sums required to be levied for the support of their schools by taxation for the year 1890, exclusive of the taxes on corporate bodies. I also transmit list of names of persons liable to be assessed for the same. I am to request that you will submit said estimate and list to the Mayor and Alderman in Council, of the City of Winnipeg, for levy and collection by them in compliance with subsection (*d*) of Section 17 of "The School Amendment Act, 1885."

I am, &c.,
(Sd.) GEO. E. FORTIN,
Sec.-Treasurer.

N.B.—Copies of these requisitions were Exhibits "C" and "D" respectively to the affidavit of John Kelly Barrett of October 8th, 1890.

Affidavit of Archbishop Taché, sworn 3rd October 1890.

In the Queen's Bench.

In the matter of an application to quash By-laws 480 and 483 of the city of Winnipeg.

I, Alexander Taché, of the town of St. Boniface, in the county of Selkirk and province of Manitoba, Archbishop of the Roman Catholic ecclesiastical province of St. Boniface, make oath and say:

1. That I have been a resident continuously of this county since eighteen hundred and forty-five as a priest in the Roman Catholic Church, and as Bishop thereof since the year eighteen hundred and fifty, and now am the Archbishop and Metropolitan of the said church, and I am personally aware of the truth of the matters herein alleged.

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

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

4. 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.

5. 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 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.

6. 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, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth.

7. Roman Catholic schools have always formed an integral part of the work of the Roman Catholic Church. That church has always considered the education of the children of Roman Catholic parents as coming peculiarly within its jurisdiction. The school in the view of the Roman Catholics is in a large measure the "children's church," and wholly incomplete and largely abortive if religious exercises be excluded from it. The church has always insisted upon its children receiving their education in schools conducted under the supervision of the church, and upon them being trained in the doctrines and faith of the church. In education the Roman Catholic Church attaches

RECORD.

In the Supreme Court of Canada.

Case.

Affidavit of Archbishop Taché, sworn 3rd October, 1890 —continued.

very great importance to the spiritual culture of the child, and regards all education unaccompanied by instruction in its religious aspects as possibly detrimental and not beneficial to children. With this regard the church requires that all teachers of children shall not only be members of the church, but shall be thoroughly imbued with its principles and faith; shall recognize its spiritual authority and conform to its directions. It also requires that such books be used in the schools, with regard to certain subjects as shall combine religious instruction with those subjects, and this applies peculiarly to all history and philosophy.

8. The church regards the schools provided for by "The Public Schools Act," and being chapter 38 of the statutes passed in the reign of Her Majesty Queen Victoria, in the fifty-third year of her reign, as unfit for the purpose of educating their children, and the children of Roman Catholic parents will not attend such schools. Rather than countenance such schools, Roman Catholics will revert to the system of operation previous to the Manitoba Act, and will establish, support and maintain schools in accordance with their principles and faith as aforementioned.

9. Protestants are satisfied with the system of education provided for by the said Act, "The Public Schools Act," and are perfectly willing to send their children to the schools established and provided for by the said Act. Such schools are in fact similar in all respects to the schools maintained by the Protestants under the legislation in force immediately prior to the passage of the said Act. The main and fundamental difference between Protestants and Catholics, with reference to education, is that while many Protestants would like education to be of a more distinctly religious character than that provided for by the said Act, yet they are content with that which is so provided and have no conscientious scruples against such a system; the Catholics, on the other hand, insist and have always insisted upon education being thoroughly permeated with religion and religious aspects; that causes and effects in science, history, philosophy and aught else should be constantly attributed to the Deity and not taught merely as causes and effects.

10. The effect of "The Public Schools Act" will be to establish public schools in every part of Manitoba where the population is sufficient for the purpose of a school and to supply in this manner education to children free of charge to them or their parents further than their share, in common with other members of the community, of the amounts levied under and by virtue of the provisions contained in the Act.

11. In case Roman Catholics revert to the system in operation previous to the Manitoba Act, they will be brought in direct competition with the said public schools. Owing to the fact that the public schools will be maintained at public expense, and the Roman Catholic schools by school fees and private subscription, the latter will labour under serious disadvantage. They will be unable to afford inducements and benefits to children to attend such schools equal to those afforded by public schools, although they would be perfectly able to compete with any or all schools unaided by law-enforced support.

RECORD.

In the Supreme Court of Canada.

Case.

Affidavit of Archbishop Taché, sworn 3rd October, 1890. *—continued.*

12. When in the foregoing paragraphs I speak of the faith or belief of the Roman Catholic Church, I speak not only for myself and the Church in its corporate capacity, but for its members.

ALEX. TACHÉ,
Archbishop of St. Boniface, O.M.I.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this third day of October, A.D. 1890.

EDMOND TRUDEL,
A Commissioner in B. R., &c.

In the Queen's Bench.

In the matter of an application to quash By-laws 480 and 483 of the city of Winnipeg.

Affidavit of George Bryce, sworn 22nd October, 1890.

I, George Bryce, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, professor in Manitoba College, make oath and say:

1. That I have been a resident of the province of Manitoba since the year 1871; that I am the minister of the Presbyterian Church longest resident in the province; that I have been in constant communication with the officers and councils of the church, having been the first Moderator of the Synod of Manitoba and the North-West Territories of the Presbyterian Church in Canada, and I am personally aware of the truth of the matters herein alleged.

2. That I am familiar with opinions of the Presbyterians of the province in the years immediately succeeding the entrance of Manitoba into Confederation in 1870, and am aware that the Presbyterians of this province did not claim to have the church schools, which had been previously voluntarily maintained by them or by the church for them, continued to them at cost to the general public.

3. That in founding Manitoba College, in November, 1881, I took over the highest class of Kildonan school as the beginning of the college, which had thus far continued a purely church institution, and for which I never heard the claim advanced that we were entitled to any consideration under the Manitoba Act; indeed, I always considered the Government schools as entirely different and, up to 1871, unknown in the country; and for several years we did take younger students into our church college who might have been educated in the Government schools alongside.

4. That about the year 1876 a strong agitation took place in the province to have one public school system established, but this agitation failed to obtain effect in legislation.

5. The Presbyterian Synod of Manitoba and the North-west Territories, which represents the largest religious body in Manitoba, passed in May, 1890, a resolution heartily approving of the Public School Act of this year, and I

believe that it is approved of by the great majority of the Presbyterians of Manitoba.

6. That the Presbyterian Church is most solicitous for the religious education of all its children. It takes great care in the vows required of parents at the baptism of their children, and in urging its ministers to teach from the pulpit the duty of giving moral and religious training in the family. It is most energetic in maintaining efficient Sunday schools, which have been called the "children's church," and in requiring the attendance of the children at the church services, which is made a great means of instruction. I think it is our firm belief that this system joined with the public school system has produced, and will produce a moral, religious and intelligent people.

7. That the Presbyterians are thus able to unite with their fellow Christians of other churches in having taught in the public schools (which they desire to be taught by Christian teachers) the subjects of a secular education, and I cannot see that there should be any conscientious objection on the part of the Roman Catholics to attend such schools, provided adequate means be provided of giving elsewhere such moral and religious training as may be desired; but on the other hand there should be many social and national advantages.

8. I believe all Presbyterians are anxious to have science, history and philosophy taught in such a manner as will intelligently recognize the divine purpose and influence in human affairs, but certainly I cannot desire to teach, as would be covered by the plea sometimes advanced that the instrumentality of evil and the deeds of bad men should be "constantly attributed to the Deity," nor do I believe the tendency of the public school as established in Manitoba at present to be toward any atheistic or irreligious goal, but that it will follow the current opinions of the settlers of Manitoba, a remarkably large number of whom are religious and intelligent.

9. That instead of it being a detriment that public schools will be "established in every part of Manitoba where the population is sufficient for the purpose of a school," it will be a benefit, as up to the present time large numbers of Roman Catholic children scattered through the general population have been able to get no education, and are in danger of growing up an illiterate class.

10. That when in the foregoing paragraphs I speak of the belief of Presbyterians, I speak simply of what I consider their belief to be, and I speak only for myself, as it is a privilege for every Presbyterian to think for himself, and to be directly responsible to God, and in my opinion the general feeling of what are known as the Protestant denominations is as I have indicated above.

GEORGE BRYCE.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 22nd day of October, A.D. 1890.

A. E. RICHARDS,

A Commissioner in B. R., &c.

In the Queen's Bench.

In the matter of an application to quash By-laws 480 and 483 of the city of Winnipeg.

Affidavit of Wm. Hespeler sworn 21st October, 1890.

I, Wm. Hespeler, of the county of Selkirk, in the province of Manitoba, financial agent, make oath and say:

1. That for the last seventeen years I have been a resident in the province of Manitoba.

2. That for upwards of seven years I was a member of the Board of Education for the said province.

3. To my knowledge, His Grace Archbishop Taché, Archbishop of the Roman Catholic ecclesiastical province of Manitoba, has been a member and chairman of the Catholic section of the late Board of Education for four years, and I believe for a great deal longer.

4. That priests and leading laymen of the Roman Catholic Church were members of the Catholic section of said board, and a number of priests of said Roman Catholic Church were inspectors of schools under said board.

5. I am satisfied that the School Acts in force in this province prior to the first day of May last, were acceptable to the Roman Catholic Church.

WM. HESPELER.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 21st day of October, 1890.

R. M. THOMPSON,

A Commissioner in B. R., &c.

In the Queen's Bench.

In the matter of an application to quash By-laws 480 and 483 of the city of Winnipeg.

Affidavit of Alexander Polson, sworn 22nd October, 1890.

I, Alexander Polson, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, health inspector, make oath and say:

1. That for a period of fifty years I have been a resident in the province of Manitoba.

2. That schools which existed prior to the province of Manitoba entering Confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support.

3. No school taxes were collected by any authority prior to the province of Manitoba entering Confederation, and there were no means by which any person could be forced by law to support any of said private schools. I think the only public revenue of any kind then collected was the customs duty, usually four per cent.

ALEXANDER POLSON.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 22nd day of October, A.D. 1890.

J. H. MUNSON,

A Commissioner in B. R., &c.

In the Queen's Bench.

Affidavit of John Sutherland, sworn 22nd October 1890.

In the matter of an application to quash By-laws 480 and 483 of the city of Winnipeg.

I, John Sutherland, of the parish of Kildonan, in the county of Selkirk, in the province of Manitoba, farmer, make oath and say:

1. That for the period of fifty-three years I have been a resident in the province of Manitoba.

2. That schools which existed prior to the province of Manitoba entering Confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support.

3. No school taxes were collected by any authority prior to the province of Manitoba entering Confederation, and there were no means by which any person could be forced by law to support any of said private schools. I think the only public revenue of any kind then collected was the customs duty, usually four per cent.

JOHN SUTHERLAND.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 22nd day of October, A.D. 1890.

T. H. GILMOUR

A Commissioner in B. R., &c,

JUDGMENT OF MR. JUSTICE KILLAM DISMISSING SUMMONS.

November 24th, 1890.

This is an application to quash two by-laws of the Municipal Corporation of the city of Winnipeg, numbered 480 and 483. The application is made under the 258th section of the Municipal Act, 53 Vic., c. 51, M.

By-law No. 480 is that passed for levying a rate for municipal and school purposes in the city of Winnipeg for the year 1890. It recites the aggregate amount necessary to be raised to meet interest on debentures and ordinary current municipal and school purposes without distinction, and the total value of the rateable property in the city as shown by last revised assessment roll, and enacts that there shall be raised, collected and levied, a rate of two cents on the dollar upon the whole assessed value of the real and personal property in the city of Winnipeg according to such rolls for meeting the expenditures mentioned.

By-law No. 483 simply amends the former by-law. It recites that the property of certain corporations is exempt from ordinary municipal taxation and liable only for school rates and that it is desirable to distinguish the rates provided for city schools, but so that the total several rates shall not exceed two cents on the dollar, and proceeds to amend the other by-law so as to make the rate 15⅘ mills on the dollar for interest on debentures and the ordinary current municipal expenditure for the year; and 4⅕ mills for school purposes for the year.

The summons asks that these by-laws be quashed "for illegality and that for the following among other grounds: That because by the said by-laws the amounts to be levied for school purposes for the Protestant and Roman Catholic schools are united, and one rate levied upon Protestants and Roman Catholics alike for the whole sum." No other ground is specifically taken in the summons.

The applicant shows that he is a ratepayer and a resident of the city of Winnipeg, and a member of the Roman Catholic Church, and that the effect of these by-laws is that one rate is levied upon all Protestant and Roman Catholic ratepayers in order to raise the amount required for school purposes, and the result to individual ratepayers is "that each Protestant will have to pay less than if he were assessed for Protestant schools alone, and each Roman Catholic will have to pay more than if he were assessed for Roman Catholic schools alone."

By the Manitoba School Act passed in 1881, 44 Vic., 3rd sess., c. 4, and the previous statutes of this province, the public schools were under the control of a body known as the Board of Education, divided into two sections, composed respectively of the Protestant and Roman Catholic members of the board, and two superintendents, one being taken from each section of the board. Under the various statutes enacted from time to time, provisions were made for the formation in different ways of school districts under the control of the different sections of the board and the corresponding superintendents. The system which finally prevailed was first adopted in 1875 by the Act, 38 Vic., c. 27, M., but various amendments in details were made from time to time. The last complete Act was that of 44 Vic., of which amendments are found in the statutes of nearly every year previous to 1890. Under this legislation the school districts were directly governed by school trustees elected respectively by Protestant and Roman Catholic ratepayers who constituted in each district a body corporate known finally as "The School Trustees for the Protestant—or Catholic, as the case might be—School District of No. in the Province of Manitoba." See 38 Vic., c. 27; 42 Vic., c. 2; C. S. M., c. 62; 44 Vic., 3rd sess., c. 4; 48 Vic., c. 27, s. 23. These school districts, Protestant and Catholic respectively, were wholly independent of each other, and might cover the territory wholly or partially. In cases of incorporated cities and towns, the respective districts of each denomination were usually co-terminous with the cities or towns themselves. See 44 Vic., c. 4, s. 15; 47 Vic., c. 37, s. 4; 47 Vic., c. 54, s. 2.

With the exception of some limited rates charged to non-residents having children attending the schools, the moneys for the support of schools were derived partly from grants by the legislature of provincial moneys, and partly by direct taxation levied by the trustees themselves or by the municipal officers, or partly by each.

The sums granted by the legislature were apportioned between the two sections of the Board of Education for distribution by them among their respective schools. Provision was made to secure the levying of the taxes for the support of the schools in the Protestant school districts upon the property of Protestants alone, and in Roman Catholic districts, upon that of Roman Catholics alone, with an apportionment between them of taxes upon the property of corporations and of those persons who could not be considered to belong to either body. See 44 Vic., 3rd sess., c. 4, ss. 28, 30, 31, 32; 47 Vic., c. 37, s. 11.

One method of realizing by assessment was the submission by the trustees of a school district to the council of the municipality in which the district was situate, of an estimate of the sums required by such trustees for school purposes, during the current school year, the municipal council being required to levy and collect the sums by assessment upon the real and personal property, in the district of the Protestants and Roman Catholics respectively. See 44 Vic., c. 4, ss. 25, 27, 28, 30, 31, 32; 46 & 47 Vic., c. 4, s. 8; 47 Vic., c. 37, ss. 8, 10, 11; 48 Vic., c. 27, s. 9, s-ss. (a), (f), s. 10, s-s. (d), s. 17, s-s. (d); 50 Vic., c. 18, ss. 7, 8.

By the 182nd section of the Public Schools Act, 53 Vic., c. 38, M., all of these former statutes were repealed, and by that and the next preceding Act, c. 37, the legislature assumed to establish an entirely different system. A Department of Education is created to consist of the Executive Council or a committee thereof, with certain prescribed powers in reference to education, and provision was also made for the election and appointment of an advisory board with certain defined functions. Approximately it may be said that these bodies took the place of the old Board of Education.

By section 3 of the Public Schools Act, "all Protestant and Catholic school districts, together with all elections and appointments to office, all agreements, contracts, assessments and rate bills heretofore duly made in relation to Protestant or Catholic schools, and existing when this Act comes into force, shall be subject to the provisions of this Act."

By section 4 the term for which each school trustee held office was to continue as if created under the Act. By section 86, sub-section 5, the board of school trustees in cities, towns and villages is " to prepare, from time to time, and lay before the municipal council of the city, town, or village on or before the first day of August, an estimate of the sums which they think requisite for all necessary expenses of the schools under their charge."

By the 90th section the council of every rural municipality is to levy on the taxable property in each school district the sum required by such district in addition to the legislative grant and a general municipal levy provided for by the 89th section.

By the 92nd section the municipal council of every city, town and village is to "levy and collect upon the taxable property within the municipality in the manner provided in this Act and in the Municipal and Assessment Act, such sums as may be required by the public school trustees for school purposes."

By section 93 the taxable property in a municipality for school purposes is to include all property liable to municipal taxation and also all property exempted by the council from municipal and not from school taxation.

By the 179th section, in cases where, before the coming into force of the Act, Catholic school districts had been established, covering the same territory as any Protestant school districts, such Catholic school districts were, upon the coming into force of the Act, to cease to exist. By the 183rd section, the Act was to come into force on the first day of May, 1890.

By the 5th section " all public schools shall be free schools." By the 6th section, " religious exercises in the public schools shall be conducted according to the regulations of the advisory board," with provisions for excusing the attendance upon such exercises of any child whose parent or guardian may so desire. By the 8th section, "the public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

It is shown that on and prior to the 30th April last, a school district which had some years before been established, existed in the city of Winnipeg, and that such district was under the direction and management of the corporation known as " The School Trustees for the Catholic School District for Winnipeg, No. 1, in the province of Manitoba," that this corporation had established and in operation a number of schools in Winnipeg under the provisions of the various provincial statutes relating to schools to one of which the applicant has been in the habit of sending his children for instruction ; that this latter school is still continued with the same teaching and religious exercises as previously, and the applicant's children still attend it.

While it is to be noted in this connection that it does not appear under what authority this particular school is now conducted, or whether the teaching and religious exercises referred to are warranted by the regulations, if any, of the advisory board, I do not think that anything turns upon these points. It also appears that on the 28th of April last, there were presented to the clerk of the city of Winnipeg an estimate and requisition in writing, of "The Board of School Trustees for the Protestant School District of Winnipeg, No. 1, in the province of Manitoba," for the levy and collection by the city council of $75,000 for the school year 1890, accompanied by the list of the names of those liable to be assessed for the support of Protestant schools; and that on the 29th of April last a similar estimate and requisition were submitted on behalf of the "School Trustees of the Winnipeg Catholic School District," for the levy of $2,550 for the support of their schools for the year 1890, with a list of names of persons liable to assessment for the same. It is shown that these estimates and requisitions were submitted to and approved by the city council, and are those on which the by-laws, in so far as they impose a rate for school purposes, are based. It is not contended that if the Public Schools Act is valid and in force it was improper to levy a rate based on these estimates alone.

The contention of the applicant is, that the old law is still in force, and that the amount of these estimates should have been levied separately upon Protestant and Roman Catholic ratepayers. The argument for this view is based upon a claim that the Public Schools Act of 1890 is *ultra vires* of the Provincial Legislature, and that the repeal of the former statutes was intended to operate only for the purpose of substituting the one system for the other, and should be deemed inoperative. It is sufficient, however, for present purposes to consider whether it was *intra vires* of the legislature to establish such a system of schools as is provided by the new Act, and to authorize the raising of money for their support by general assessment upon the property of all irrespective of religious belief and without providing for the support of separate schools for any class.

I have referred to the old Acts as shortly as possible, rather in order to explain the form of the objection taken in the summons and as illustrative of one system which the applicant contends to have been within the powers of the legislature to establish, than because I can conceive that the adoption at one time of such a system could limit the authority of the legislature thereafter.

By the second section of the statute, usually known as the Manitoba Act, 33 Vic., c. 3, D., confirmed by the Imperial Act, 34 and 35 Vic., c. 28, the provisions of the British North America Act, 1867, "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," then composing the Dominion, and except so far as the same might be varied by the Manitoba Act itself, were to "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."

By the British North America Act, 1867, section 92, "In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say" ....

"(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes"........................ "(8) Municipal institutions in the province." And by section 93, "In and for each province, the legislature may exclusively make laws in relation to education, subject and according to the following resolutions: (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; (2) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be 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 hereafter 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." A fourth sub-section provides for the enactment, by the Parliament of Canada, so far as may be necessary, of laws requisite to the carrying out of the decision on such appeal.

By the 22nd section of the Manitoba Act, "In and for the province the said legislature" (*i.e.*, the Provincial 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." A third sub-section is added similar to sub-section 4 of the 93rd section of the British North America Act.

Now, it is obvious that if there were merely the authority to legislate in relation to education without the limitations imposed by these sub-sections, it would be quite competent for the Provincial Legislature to enact such a statute as the Public Schools Act. It is in the sub-sections that the difficulty lies. It appears to me that these sub-sections can only be properly understood by a comparison of them with the corresponding limiting sub-sections of the British North America Act, 1867, and by a consideration of the laws of the four original provinces of the Dominion, at the time of their union, as well as that of the law and practice with reference to education in this portion of British North America, at the time of its union with Canada. In each of the provinces originally united to form the Dominion of Canada, there existed at the union a system of public schools supported partly by grants of money by the Provincial Legislature out of the general funds of the province, and partly by direct taxation through municipal bodies or boards of school trustees or commissioners, with, in Lower Canada and New Brunswick, an option to localities to substitute voluntary subscriptions for compulsory taxation. There was, however, this difference, that in Nova Scotia and New Brunswick there was no provision for the support of separate schools for any class in a similar way or for the exemption of any class from liability to be taxed for the support of the general system, as there was in the old province of Canada.

Of the latter province there were, as is well known, two great political divisions, at one time forming separate provinces for which the law in some respects differed. In Upper Canada, now the province of Ontario, the public schools were regulated by the acts C. S. U. C., cc. 64, 65, with some amendments, the most important of which were contained in the Act 26 Vic., c. 5. By the second of these Acts, Protestants could establish separate schools in school sections in which the teachers of what were called the common schools were Roman Catholics, and were then exempted from contributing to the support of the common schools, by sending their children to, or contributing to a certain extent to the support of such separate schools. And by the same Act as amended by the third one mentioned, similar provision was made for enabling the Roman Catholics in any school section to establish separate schools for themselves, and to become exempt from contributing to the support of the common schools, as long as they should continue to be supporters of such separate schools. For the purposes of these separate schools, Protestant or Roman Catholic, it was requisite that there should be a certain number of the particular religious faith to initiate the proceedings necessary to the establishment of such separate schools.

In Lower Canada, now the province of Quebec, the public schools were regulated by the Act C. S. L. C., c. 15, with some amendments. If the rules and regulations for the government of a common school were not satisfactory to any number of the inhabitants of a municipality professing a religious belief different from that of the majority, these inhabitants could establish dissentient schools under the government of their own trustees and become exempt from taxation for school purposes by any but these trustees where there were such.

Both in Upper and Lower Canada, the supporters of the separate or dissentient schools were by express enactments entitled to have proportionate shares of provincial moneys granted for the support of common schools, applied in aid of such separate or dissentient schools, and to have rates levied for the support of the latter upon those of the appropriate classes respectively.

In Nova Scotia the schools were regulated by the Acts R. S. N. S. [3rd series] c. 58; 28 Vic., cc. 28, 29; 29 Vic., c. 30; and in New Brunswick by the Act 21 Vic., c. 9; in each case with some subsequent unimportant amendments. Upon the face of the statutes, it is clear that in Nova Scotia these schools were not in any respect denominational in the usual sense of that term. For New Brunswick, any possibility of contention that they were denominational in the sense in which that term is used in the British North America Act, 1867, is precluded by the decision of the Supreme Court of New Brunswick, in *Ex parte Renaud*, 1 Pugs. N. B. R., 273; 2 Cartwr. Cas. 445, affirmed on appeal by the Judicial Committee of the Privy Council. The reasoning in this case would also seem to apply to the common schools of Upper Canada. In Lower Canada, an element of a denominational character not found in the other provinces, was attached to the common schools in a requirement that the text books relating to religion and morals, were to be chosen by the officiating priest or clergyman of each school section, for use in the schools by children of his religious belief. See C. S. L. C., c. 15, s. 65, ss. 2.

From the judgments in the New Brunswick case referred to, it appears also that at the union there existed in that province, distinctively denominational schools, to which the Provincial Legislature had from time to time made grants of public moneys. The same was also to some extent the case in Nova Scotia, and I believe in the old province of Canada.

There were then two wholly different sets of circumstances existing in Canada and the Maritime Provinces when they were united, to which the limitations in the sub-sections of the 93rd section of the Confederation Act became applicable. In the former there were what I conceive to have been denominational schools recognized by law, the supporters of which could invoke the authority of the law to maintain them by compulsory assessments upon their co-religionists, and could, by so doing, relieve themselves, from liability to assessment for the support of the common schools, and were by law entitled to have apportioned to them a share of the provincial funds granted in aid of common schools. Thus there were distinct classes of persons having distinct rights and privileges in respect of denominational schools, among which was that of obtaining immunity from taxation for the support of the common schools. This immunity could well be said to be a right or privilege in respect of denominational schools as being dependent upon the establishment and support of such schools.

In the Maritime Provinces all could be compelled to contribute to the support of the public schools by direct taxation without reference to religious beliefs or the existence of denominational schools, and there was no recognizable right to have the latter maintained in any way at the public expense or by any system of taxation.

When, however, we come to Manitoba, we are met at the outset by the difficulty that there was no public school system supported by public funds or by any mode of taxation. The existence of such in the other provinces served to determine whether there was a right to immunity from such taxation or not. Here, that indication is wholly wanting.

The position of affairs with reference to education in the territory constituting the province of Manitoba at the time of its union with Canada is distinctly stated by His Grace the Archbishop of St. Boniface, in an affidavit filed in support of the motion as follows: "2. 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 issued in pursuance thereof, there existed in the territory now constituting the province of Manitoba, a number of effective schools for children. 3. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations. 4. 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. 5. 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. 6. 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, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth.

And in two affidavits filed in opposition to the motion it is stated, "That schools which existed prior to the province of Manitoba entering Confederation, were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority prior to Manitoba entering Confederation, and there were no means by which any person could be forced by law to support any of said private schools."

While, then, these supplement to some extent the affidavit of His Grace, they are in no way inconsistent with it, and taken altogether the affidavits show with sufficient clearness the state of affairs with reference to which the 22nd section of the Manitoba Act must be construed.

Now, that section differs from the corresponding section of the original Confederation Act in four particulars: First, in the insertion in the first sub-section of the words "or practice," to which so much importance has been attached in argument; secondly, in the omission of any clause corresponding to the second sub-section of the orignal Act; thirdly, in the extension of the right to appeal to the Governor-General in Council to Acts or decisions of the Provincial Legislature; and fourthly, in the right of appeal being given absolutely and not conditionally upon the previous existence or subsequent establishment of a system of separate or dissentient schools.

And here, I must say with reference to an argument that the third sub-section of the 93rd section of the original Act is one applicable to the whole of the provinces of the Dominion, and therefore, by the terms of the second section of the Manitoba Act to be read into the latter Act, in addition to the 22nd section of the latter, that this 22nd section gives power to the Legislature to make laws in relation to education, subject and according to certain provisions, and that if the reading into the Act of any portion of the original 93rd section, would involve either an extension or a limitation of the powers of the Provincial Legislature beyond those fixed by the terms of this 22nd section, there would be an inconsistency with the Manitoba Act, which is excluded by the express terms of its second section. The course of the legislation and the meaning of the first statute, are of the greatest importance in interpreting the second, but I cannot consider any portion of the 93rd section of the former to be incorporated into the second Act.

The first question naturally arising is, as to whether the Public Schools Act itself creates a system of denominational schools, or assumes to compel any class to support denominational schools other than their own? Upon the face of the statute it does not. The affidavit of His Grace the Archbishop, however, appears to be intended to lay a foundation for an argument, that what are called in this Act "public schools," are really schools of a Protestant denominational character, although the Act upon its face declares that they are to be unsectarian.

After setting forth the importance which Roman Catholics attach to the combination of religious with secular instruction; the use of religious exercises in schools; the supervision of the church over the schools; training of their children in the doctrines and faith of their church; the appointment of teachers who are not only members of that church, but also thoroughly imbued with its principles and faith, and who recognize its spiritual authority and conform to its direction, and the use of a certain class of text books, he goes on to say, that the church regards the schools provided for by "The Public Schools Act" "as unfit for the purpose of educating their children, and the children of Roman Catholic parents will not attend such schools, but that Protestants are satisfied with the system of education provided for by the said Act," and "are perfectly willing to send their children to the schools established and provided for by the said Act," that "such schools are in fact similar in all respects to the schools maintained by the Protestants under the legislation in force immediately prior to the passage of the said Act." He then proceeds: "The main and fundamental difference between Protestants and Roman Catholics with reference to education is, that while many Protestants would like education to be of a more distinctly religious character than that provided for by the said Act, yet they are content with that which is so provided and have no conscientious scruples against such a system; the Catholics, on the other hand, insist upon education being thoroughly permeated with religion and religious aspects."

In so far as there is any material in reply to this affidavit, it does not appear to be contradicted. Indeed, it seems rather to be supported upon material points, as regards the adherents of the Presbyterian Church, by the affidavit of the Rev. Dr. Bryce.

Here, however, I cannot conceive myself to be bound by, or confined to affidavit evidence. I am interpreting statutes, and in so doing I am at liberty to take judicial notice of the circumstances with respect to which they are to be construed. I do not say this because I conceive that there is anything really untrue or intended to mislead or to give a false colouring to beliefs in any of the affidavits. Indeed they appear to me to offer in most respects a very fair view of the relative attitudes of most Protestants on the one side, and most Roman Catholics and the Roman Catholic Church as a body on the other side. I am not, however, convinced that there is any such distinctive difference between Protestants generally and Roman Catholics generally upon this question, as to constitute a mark of denominational division, and to make what would ordinarily be termed non-denominational schools, really "denominational" within the meaning of the Manitoba Act, as between Protestants and Roman Catholics.

From my experience, I would say that very many Protestants have as strong opinions upon the importance of combining religious with secular instruction as any Roman Catholics. In support of this view, I need only refer to the report of the Royal Commission, appointed in 1886, to inquire into the working of the Elementary Education Act in England and Wales.

The difficulty lies in arriving at any agreement upon the nature and extent of the religious training and in securing that it shall be satisfactorily conducted.

To ensure the latter, most Roman Catholics, and very many Protestants, desire to have the education of the young conducted in denominational schools under the control of those connected with their respective churches. The evidence of this is found in the existence and maintenance of just such denominational schools wholly apart from institutions of a collegiate character to which reference was made in *Ex parte Renaud*, and which are maintained by Protestants and attended by children of Protestants in all parts of Canada as elsewhere.

The question whether wholly, or how far the public schools should be devoted to secular training, is a grave one, upon which I have not now to express an opinion, but it is impossible not to see that there is much reason to believe that the non-sectarian system tends to the exclusion from the schools of the religious instruction to which so many naturally attach the greatest importance; or to make the religious exercises and training conform to the views of the majority in the state. But if the school authorities act improperly, or without proper judgment, religious exercises and training as offensive to many Protestants as to any Roman Catholics, may find their way into the schools.

The controversy is an old one, and its whole history appears to show that it is one between denominational and non-denominational schools, and that those established under the Public Schools Act, are not denominational in the sense of that controversy, or of the Manitoba Act, or the British North America Act, 1867, which must be deemed to speak with reference to that controversy.

These views are supported by the judgment in the New Brunswick case before referred to, the arguments in which I shall not now delay to repeat. I am not aware of the existence of any extended report of the opinions of the Judicial Committee of the Privy Council in that case. The only reference to the appeal that I have seen, is that found in 2 Cartwr. Cas. on the B. N. A. Act at page 486, which purports to have been taken from the *London Times*, of the 18th of July, 1874, and which states merely that "Lord Justice James, after conferring with the other members of the Committee, gave judgment without calling upon the respondents," and that "Their Lordships concurred in the opinions of the court below, and would advise Her Majesty that the appeal be dismissed with costs."

Now, the rights and privileges protected by the first sub-section are those with respect to denominational schools which some class or classes of persons had before the union.

I have shown how it may be said that the right to obtain immunity from taxation for the support of the common schools, in the old province of Canada, could be said to be a right or privilege with respect to denominational schools, and to have been possessed by classes of persons. It is to be noticed that it was enjoyed, not as directly dependent upon belief in denominational schools as the only proper system, or upon support of any but the State system of separate or dissentient schools, and only if such should be established and kept up, which if there were not sufficient of the requisite religious views or desirous of maintaining them could not by law be done in Upper Canada or in practice in either portion of the province.

But under the state of affairs existing here before the union with Canada, there was simply an absence of any law requiring any person to contribute to the support of schools. It was not dependent upon or connected with denominational schools, and cannot be said to have been either by law or practice a right or privilege with respect to denominational schools.

But it is necessary to consider whether the Public Schools Act, in consequence of its effect upon denominational schools themselves or the practice of establishing, maintaining and having their children educated in denominational schools which is shown to have been exercised by certain classes before the union, prejudicially affects any right or privilege in respect of such schools which these classes had at the union.

The Act in no way prohibits attendance upon, or the maintenance of, denominational schools or attempts to make attendance upon the public schools compulsory; it is, however, suggested that the Act prejudicially affects such rights or privileges in two ways. First, by establishing in competition with the denominational schools, a system of free schools supported by the public funds, and thereby placing the denominational schools at a great disadvantage, and secondly, by withdrawing from the hands of those who would be desirous of supporting denominational schools, funds which they would otherwise devote to that purpose.

While in practice the denominational schools existing before the union were not subject to the competition referred to, it was quite competent for any person or persons desirous of doing so, to establish and maintain non-denominational schools free or otherwise. By right or privilege, I cannot conceive that mere absence, in fact, of something which would render another thing less valuable is meant. The argument is really a plea for the monopoly of educational privileges by certain institutions or bodies or by institutions or bodies of a certain character. To such a monopoly there was no recognised right or privilege, either by law or practice. If there was no right to be free from competition there was none such to be free from the competition of free schools or of those supported by the State. The circumstances existing in the older provinces, and the general nature of the school systems in America, suggest at once that it must have been contemplated in the enactment of the Manitoba Act that the Legislature of Manitoba should be at liberty to establish a system of free non-denominational public schools, and provide for their support by grants of provincial funds or direct taxation, or by both methods. Under the powers given, it would be open to the legislature to make laws to encourage or to restrict education, provided the protected rights and privileges were not prejudicially affected, but we may well assume that encouragement rather than restriction would be anticipated. Certainly it was intended to be open to the legislature to determine in its wisdom that popular ignorance is an evil, and to seek to guard against such by providing for all, at the public expense, free secular education of such character as to it should seem proper. It may be that the opportunities thus offered would naturally draw to the public schools, pupils who would otherwise attend denominational schools, and contribute to the support of the latter and thus enable those in charge of the latter to maintain them at a higher degree of efficiency. It may be, on the other hand, that the competition would only stimulate the supporters of denominational schools to greater exertions and ensure a higher standard in such schools; in either view, however, the effect would be an indirect one, and it would rather be an effect upon the schools themselves and their supporters than upon any right or privilege with respect to such schools. It does not appear to me that in the non-existence before the union of competition of that character there can be recognised a right or privilege with respect to denominational schools, existing either by law or by practice.

It was, as I think, beyond question that it was intended that the legislature should be able to make laws for providing against popular ignorance as being an evil, and to authorize the incurring of the expense for the purpose, and the levying of taxes to meet such expense, as upon any other subject within its powers. I am unable, therefore, to regard the circumstance that in some cases the expense thus occasioned to individuals may render them less able or less willing to contribute to the support of denominational schools, as showing that the legislation prejudicially affects a right or privilege in respect of such schools. The effect is so indirect and remote that I cannot take it to be within the Act, and it is precisely the same effect that would be produced by taxation for other purposes within the powers of the legislature.

It is, however, urged that even though the natural meaning of the language of the statutes would lead to such conclusions as these, the history of the controversy respecting separate or denominational schools in the other provinces and elsewhere, and the mode in which it was settled for the other provinces by the original Confederation Act, and the changes made in the wording of the Manitoba Act, show that it was intended that a more enlarged view of the protected rights and privileges should be taken.

Now, in the first place, it is not correct as claimed, that the original Act assumed to settle the question for Canada; it merely guarded rights and privileges already given in each province. In Nova Scotia and New Brunswick the question still remains an open one. There was, then, no intention under the original Act, that the question should be settled for Canada generally in favour

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of the immunity of any class from taxation for the support of non-denominational public schools, excepting so far as such immunity had previously existed by law.

Counsel for the applicant forget that the question has two sides, and that there are many who deem it more for the interest of the State to encourage only one system of schools, and that the definite settlement of such an important question ought naturally to be expressed in clear language. It was evidently considered that the rights of minorities in Lower Canada should be extended or at any rate more distinctly preserved so as to be securely placed upon the same basis in Ontario and Quebec. When, therefore, Parliament intended to settle what had not previously been settled, or which it feared had not previously been settled, it did so.

While the older provinces had had before the union, their own legislatures, representative of popular opinion, to settle this question for them, none such had existed here, and it is difficult to believe without clear evidence that Parliament had considered and settled the matter, that Parliament would have desired to preclude this portion of Canada from considering this question for itself. The language of the British North America Act was sufficiently definite, having reference to the express legislation of the previous provinces, but with no express law here to which reference could be made, it was certainly as important as in the case of Quebec, to make the position clear if it was to be as the applicant contends.

I attach very much importance to the words "or practice" as definitely showing any such intention. The position of affairs here before the union was anomalous. Both the extent of the territorial jurisdiction of the Hudson's Bay Company and the nature of its authority has been regarded as very doubtful. Its government was recognized, however, as being the *de facto* one, and the Manitoba Act shows in other parts the intention to recognize what has been regarded as rights under the old *regime* irrespective of strict law. Under such circumstances, the introduction of the words was quite natural, and I cannot take them as adding to the ordinary sense of the whole enactment. The change in the second sub-section from the language of the third sub-section of the 93rd section of the original Act, appears to me infinitely more important. In the original Act the appeal to the Governor-General in Council was given only in provinces in which there had existed, prior to the union, a system of separate or dissentient schools, or in which such should afterwards be established. In the case of Manitoba it was given absolutely, which may be claimed to show that Parliament contemplated that practically such a system had existed here before the union, or was at any rate secured by the first sub-section in connection with any system of public schools which might be established by the legislature. It would be natural, too, if this were the idea existing, that an appeal should have been given from an act of the legislature as well as from an act or decision of a provincial authority.

Now I must confess that I have not accounted satisfactorily to my own mind for this change of language. Little attention was paid to this sub-section upon the argument, and no suggestion was distinctly made upon it. Probably before the main question can be considered finally settled, or upon some appeal under the sub-section, a view may be suggested which will at once appear to be the true one. At present I can only suggest the alternative one, that it came about for much the same considerations as the introduction of the words "or practice." It may well have been felt that in view of the undetermined position of affairs, and of the absence of clear and express legislation to which reference could be made, it was advisable that the right of appeal should be more extended than in the case of the other provinces, and this appears to me to be the more reasonable and probable explanation. Now, before the union, several classes of persons exercised the privilege of maintaining denominational schools in the territory now forming this province, of having their children educated in them, and of having inculcated therein the peculiar doctrines of their respective denominations. History teaches us that bigotry has frequently denied to minorities the exercise of some or all of these privileges. The right to continue their exercise is no unimportant one. Nay, if these privileges were attacked, they would soon appear of infinitely greater importance than the liability to pay taxes for the support of free non-sectarian public schools for the benefit of those choosing to take advantage of them. Taking, then, the language of the union Acts in its natural sense, important rights and privileges are guarded. It is not necessary to go beyond their natural meaning in order to give effect to any of the language used. I take the question here raised to be merely that of the liability of all property holders to be subjected to equal taxation for the support of free non-sectarian public schools which may be used by such as choose. The right to immunity from such taxation was not, under the original Confederation Act, generally established throughout Canada in favour of any class or classes; and if intended to be established here, one would have expected this to be indicated by more distinct language than is found in the Manitoba Act. Such immunity was general here before the union and not in any way existing in respect of denominational schools, or in favour of any class or classes: the denominational schools did not, by law or practice, enjoy any recognized right or privilege to be kept free from any kind of competition.

The burden is naturally upon those who seek to limit the power of the legislature to choose from time to time, as circumstances change, between a sectarian and a non-sectarian system of public school education, or its exercise of the sovereign power of taxation in order to afford education free, if it thinks it necessary or advisable in the interests of the province, to any greater extent than is naturally involved in the language of the constitution. I am unable, therefore, to hold that the Public Schools Act, if enacted at the outset of the union, would have been *ultra vires* in establishing this new system of schools and in authorizing the taxation complained of, without establishing or providing for the support of separate schools for any class. I think that it was quite competent for the legislature to abolish the system of separate schools, which it had established, and leave parties to recur to their voluntary denominational schools if they saw fit. That they will do so, His Grace the Archbishop states. In so doing, he practically admits that they are at liberty to revert to the system

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existing before the union, though he claims that they will do so under certain disadvantages, the indirect causing of which, by the adoption of the new system, I cannot consider to be within the saving clauses of the constitution.

Whether this be done, or whether Roman Catholics submit wholly or partially, with heart-burnings and dissatisfaction, to the new system of public schools, it is for the legislature and not for the courts to determine whether there can be such grave reasons of state as to warrant a disregard of the complaints of the minority. On the one hand it has the example of other legislatures to show that it is not alone in deeming the reasons sufficient. On the other, many will doubt whether human wisdom is so far infallible as to warrant absolute reliance upon the sufficiency of these reasons.

I can merely repeat the language of the learned Chief Justice of New Brunswick, now the Chief Justice of Canada: "It may be a very great hardship that a large class of persons should be compelled to contribute to the support of schools to which they are conscientiously opposed or be shut out from what they have hitherto under certain circumstances enjoyed, and be without remedy, but, by any such considerations courts of justice ought not to be influenced; hard cases, it has been repeatedly said, make bad law, and it has also been justly remarked that if there is a general hardship affecting a general class of persons, it is a consideration for the legislature, not for a court of justice."

The summons must be dismissed with costs.

Judgment of Taylor, C. J.

JUDGMENTS OF THE COURT OF QUEEN'S BENCH OF MANITOBA IN TERM.

Delivered 2nd February, 1891.

TAYLOR, *C. J.*

The application to quash these by-laws raises the important question, whether the Public Schools Act, 53 Vic., c. 38 (M., 1890), is one within the power of the legislature of this province to pass. It came in the first instance before my brother Killam, who in a considered judgment upheld the validity of the Act, and dismissed the summons. From his decision an appeal was taken, which has now to be disposed of.

The by-law No. 480, dated 14th July, 1890, provides for levying by assessment the amount required for the municipal and school purposes of the city of Winnipeg, for the current municipal year 1890. By-law No. 483, dated 28th July, 1890, amends the former by-law in several respects. Under these two by-laws a rate of two cents on the dollar is to be raised, levied and collected on the whole assessed value of the real and personal property in the city of Winnipeg, the proportion required for school purposes being four and one-fifth mills on the dollar.

The only ground specifically stated in the original summons as that on which it is sought to quash these by-laws is, "Because by the said by-laws the amounts to be levied for school purposes for the Protestant and Catholic schools are united, and one rate levied upon Protestants and Roman Catholics alike for the whole sum." There is no question raised that the assessment in the manner provided for by these by-laws is not in accordance with the provisions of the Public Schools Act.

It is claimed that the school law in force in the province before the passing of that Act, and which it professes to repeal, is still in force. Under that earlier law there was one Board of Education, which for certain purposes acted as a united board, but which was also divided into two sections, a Protestant section consisting of all the Protestant members, and a Roman Catholic section, consisting of the Roman Catholic members. The school districts throughout the province were divided into Protestant and Catholic. The Protestant schools were under the control of the Protestant section of the board, and the trustees of these schools were elected by the Protestant ratepayers. The Roman Catholic section of the board had in like manner entire control of the Catholic schools, and the Catholic ratepayers elected the trustees. There was also one superintendent of education for the Protestants schools, and another for the Catholic schools. The law also provided for levying the taxes for the support of schools in Protestant school districts, upon the property of Protestants alone, and in Roman Catholic school districts upon Roman Catholics only. Provision was also made for apportioning taxes derived from the property of corporations, or of persons who could not be considered to belong to either body. The grant made annually by the legislature for educational purposes was apportioned between the two sections of the board, for distribution among the schools, under the charge of each respectively.

The objection to the Public Schools Act is, that it is not one within the power of the Provincial Legislature to pass, having regard to the limitations upon their power of legislating on the subject of education, imposed by sec. 22 of the Manitoba Act, 33 Vic., c. 3 (D., 1890).

That section 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 Catholic minority of the Queen's subjects in relation to education; (3) In case any 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 the provisions of this section, or of any decision of the Governor-General in Council under this section."

A section similar in character is found in the British North America Act, as section 93. There are differences between the two sections, and when Parliament, in the Manitoba Act, used different language, it must be assumed that there was some definite intention in doing so. The differences between the two sections are the following :—Sub-section 1 of section 93, speaks of any right or privilege as to denominational schools which "any class of persons have by law in the province at the union," while in sub-section 1 of section 22, the right or privilege is spoken of as that which "any class of persons have by law or practice." Section 93 has as sub-section 2, a clause relating solely to the provinces of Ontario and Quebec which does not appear in section 22. In sub-section 3 of section 93, the 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," are found immediately before what appears in section 22 as sub-section 4. Then sub-section 3 of section 93 provides for an appeal to the Governor-General in Council only from any act or decision of any provincial authority, while sub-section 2 of section 22 says that an appeal shall lie "from any act or decision of the legislature of the province or of any provincial authority." Sub-section 4, section 93 is the same as sub-section 3 of section 22, there being no change in the language.

Possibly, there is no practical difference in the effect of the changed language in sub-section 2, as to an appeal from an Act or decision of the legislature as well as from an Act or decision of any provincial authority. At all events in *Board of Trustees of the Separate Schools of Belleville* v. *Grainger*, 25 Gr. 570, Blake, V.C., seems to have been of opinion that "Act of any provincial authority" used in section 93 would include an Act of the Provincial Legislature.

It is under section 22 of the Manitoba Act that the question raised in the present case must be considered, and the decision of it must be governed by the provisions of that section. By section 2 of the Manitoba Act the provisions of the British North America Act are made applicable to the province of Manitoba, "except those parts thereof which are in terms made, or by reasonable intendment may be held to be, specially applicable to, or to affect only 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." As section 93 does not profess to settle the question of education, and of separate or denominational schools for the whole Dominion, but only for the provinces of Ontario and Quebec, and the question of education in the newly-formed province of Manitoba is dealt with specially and in somewhat varied language, there can be no doubt that section 93 is not the one which must govern the decision in this case. As, however, section 22 was undoubtedly based on section 93, the terms of the latter are material, but only in so far as they may afford assistance in arriving at the true construction to be placed on the section of the Manitoba Act.

It was argued that when considering the meaning and intent of section 22, and applying its language, regard must be had to the condition of things existing in Upper Canada as to separate schools before Confederation, and which led to section 93 finding a place in the British North America Act. It is said that in construing an Act, its history must be considered, and that statutes *in pari materia*, must be construed together, the construction of one applied to the other. Now, there is no doubt that the history of an Act may be inquired into and considered by the court, where difficulty is found in construing it. The court must look not only at the words of the statute, but to the cause of making it, to ascertain the intent. *The King* v. *East Teignmouth*, 1 B. & Ad., 249. Or, as it was expressed by Sir George Jessel in *Holme* v. *Guy*, 5 Ch. D. 905, "The Court is not to be oblivious * * * of the history of law or legislation. Although the court is not at liberty to construe an Act of Parliament by the motives which influenced the legislature, yet when the history of law and legislation tells the court, and prior judgments tell this present court, what the object of the legislature was, the court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view of finding out what it means, and not with a view of extending it to something that was not intended." As Bramwell, B., said in *Attorney-General* v. *Sillem*, 2 H. & C., 531, "so, perhaps, history may be referred to, to show what facts existed, bringing about a statute, and what matters influenced men's minds when it was made."

Previous statutes, *in pari materia*, may and ought to be looked at, where there are earlier Acts relating to the same subject, the survey must extend to them, for all are for the purpose of construction considered as forming one homogeneous and consistent body of law, and each of them may explain and elucidate every other part of the common system to which it belongs. *Rex* v. *Loxdale*, 1 Burr. 445; *Duck* v. *Addington*, 4 T. R. 447; *Mosley* v. *Stonehouse*, 7 East, 174.

In many cases the courts have taken great liberties with the wording of statutes in order to effect what they believed to be the intention of Parliament. In *Caledonian Rail. Co.*, v. *North British Rail. Co.*, 6 App. Ca., 122, Lord Selbourne said, "The more literal construction ought not to prevail if it is opposed to the intention of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effected." And the Court of Appeal held in *Ex parte Walton*, 17 Ch. D. 746, that a statute may be construed contrary to its literal meaning when a literal construction would result in an absurdity or inconsistency, and the words are susceptible of another construction which will carry out the manifest intention.

All this is old law and was stated more than three hundred years ago in *Stradling* v. *Morgan*, Plowd. 199. "The judges of the law in all times past have so far pursued the intent of the makers of statutes, that they have expounded Acts which were general in words to be but particular, where the intent was particular." Then, after referring to several cases, the report proceeds: "From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance; and those statutes which comprehend all things in the letter they have expounded to extend to but some things; and those which generally prohibit people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach some persons only; which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the legislature which they have always taken according to the necessity of the matter, and that which is consonant to reason and good discretion."

The eminent American jurist Chancellor Kent has said in his Commentaries at p. 462, "The reason and intention of the lawgiver will control the strict letter of the law, when the letter would lead to palpable injustice, contradiction and absurdity." The intention of the legislature is what ought to govern, and the object of the court must always be to ascertain what that intention is.

But after all, how is the intention of the legislature, the true meaning of a statute, to be ascertained? The eminent jurist whose words have just been quoted says: "The true meaning of the statute is generally and properly to be sought from the body of the Act itself." These extraneous helps in construing a statute seem resorted to when there is something doubtful in the wording of it; where the words are susceptible of more than one meaning, or where the language used is such as to raise difficulties in its grammatical construction. Thus in *Hollingworth* v. *Palmer*, 4 Ex. 282, Parke, B., dealing with a particular section of an Act, said: "This section is certainly most incorrectly worded, and it is, therefore, necessary to modify its language in order to give it a reasonable construction. The rule we have always followed of late years is to construe statutes, like all other written instruments, according to the ordinary grammatical sense of the words used, and if they appear contrary to or irreconcilable with the expressed intention of the legislature, or involve any absurdity or inconsistency in their provision they must be modified so as to obviate that inconvenience, but no further." And Bramwell, B. when using the language already quoted in *Attorney-General* v. *Sillem*, was speaking of statutes of doubtful meaning, for he said: "In this, as in other cases of doubtful meaning, it is legitimate to solve that doubt by ascertaining the general scope and object of the enactment. * * * It may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it." So Lord Wensleydale said in *Philpott* v. *St. George's Hospital*, 6 H. L. 366, "We ought to look to the words of the statute, and to give these words their natural and ordinary meaning." The proper mode of construing an important statute was considered by all the common law judges of England when called in to advise the House of Lords in the *Sussex Peerage Case*, 11 Cl. & F. 143. Their unanimous opinion was delivered by C. J. Tindale, "The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground or cause of making the statute, and to have recourse to the preamble which, according to C. J. Dyer, is a key to open the mind of the makers of the Act, and the mischiefs which they intended to redress."

I have spoken of how the intention and meaning of the legislature is to be ascertained, but the question for an interpreter of a statute is not, properly, what the legislature meant, but what its language means. *Palmer* v. *Thatcher*, 3 Q.B.D. 353. Or, as the present Lord Chief Justice of England said, his course always is to suppose that Parliament meant, what Parliament has clearly said, and not to limit plain words in an Act of Parliament by considerations of policy. *Coxhead* v. *Mullis*, 3 C. P. D. 442.

In the present case I do not see what assistance in answering the questions which arise here is to be got from an inquiry into the history of section 93 of the British North America Act, or of the corresponding clause in the Manitoba Act. Before Confederation there were in Ontario separate or dissentient schools in existence under an Act of the Parliament of Canada. The legislature which established these schools could at any time have put an end to them, and there can be no doubt the statesmen who framed the scheme of Confederation intended by the provision in the British North America Act, to secure that the Provincial Legislature, the body thereafter to deal with educational matters in Ontario, should not change the then existing state of things, but that it should be for ever continued. They also provided that all the powers, privileges and duties which were then conferred and imposed by law in Upper Canada on the separate schools and school trustees of Roman Catholics should be extended to the dissentient schools of Protestants or Roman Catholics in Quebec. No provision was made for the provinces of Nova Scotia and New Brunswick, in which at that time no separate schools existed by law. It cannot, therefore, be said that by this section 93, it was intended to settle for ever the question of separate schools in the Dominion, for, if so, why was all mention of these two provinces omitted ?

The argument was pressed that, by section 22 of the Manitoba Act, Parliament, in view of the controversy over separate schools in Ontario, could only have intended to secure for the Roman Catholics of Manitoba the same rights and privileges as to separate schools which were by the British North America Act secured for Ontario and Quebec. I cannot, however, see that Parliament intended more than is expressed by the language used. It must be assumed that when the Act came to be passed, Parliament knew there were not at that time in the territory being organized as the province of Manitoba any separate or denominational schools existing by law. The Act therefore says that rights or privileges with respect to denominational schools which any class of persons had by law or practice, should not be prejudicially affected by future provincial legislation. The intention of Parliament is plain : no future provincial legislation is to prejudicially affect any right or privilege as to denominational schools, if any such right or privilege exists, and whatever it may be. What the Parliament intended is not at all doubtful, although, perhaps, it is not so easy to say what exact meaning should be attached to the language used. Surely had it been intended to secure to Roman Catholics, or to any other class of persons in Manitoba, the same right of having separate schools, as is provided for in the province of Ontario, Parliament would have said so. Parliament had before it the express provisions of the British North America Act, on this subject, and would, I think, most certainly have followed that Act had the intention been to settle the matter as that Act settled it for Ontario and Quebec. The inference which it seems to me should be drawn from the altered form of the section rather is, that Parliament intended that as the people of the older provinces had settled this question for themselves, so it should be left for the people of the province, then being formed, to settle it for themselves. While so leaving it Parliament naturally inserted a provision to secure that existing rights and privileges, whatever these might be, should not be disturbed by the settlement they might make.

What the court has to deal with is, did any such right or privilege exist, and, if so, has such right or privilege been prejudicially affected by the Public Schools Act?

The parts of section 22 which are of importance are, the section and first sub-section: "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 may have by law or practice in the province at the union."

It may be remarked here that when the court in New Brunswick dealt in *re Renaud*, 1 Pugs. N. B. R. 273, with the same words in section 93 of the British North America Act, they held that they were not intended to distinguish between Protestants and Roman Catholics. It was held in the judgment delivered by the learned Chief Justice, now Chief Justice of the Supreme Court of Canada, that sub-section 1 meant just what it expresses, that "any," that is every "class of persons" having any right or privilege with respect to denominational schools, whether such class should be one of the numerous denominations of Protestants or Roman Catholics, should be protected in such rights. As the judgment of the court in New Brunswick was affirmed on Appeal by the Judicial Committee of the Privy Council, approving of the reasons given in the Court below, it must be assumed that this was regarded by the ultimate court of appeal as the true construction of the sub-section.

Are then the members of the Roman Catholic Church in Manitoba a class of persons who had at the time of the union, by law or practice, any right or privilege with respect to denominational schools? And if so, does the Public Schools Act prejudicially affect any such right or privilege?

Happily there is no dispute as to the facts, as to the state of affairs with reference to education, existing at the time of the union and upon which the claim to possess certain rights and privileges is based.

In an affidavit made by the Archbishop of St. Boniface, and filed in support of the application, His Grace says that, prior to the passing of the Manitoba Act, "There existed in the territory now constituting the province of Manitoba a number of effective schools for children; (3) These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, others by various Protestant denominations; (4) 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; (5) 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 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; (6) 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, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth." In answer to the application, two affidavits were filed, made by Alexander Polson and John Sutherland, residents of the province for fifty years, and these are in no way inconsistent with the affidavit of His Grace the Archbishop. In each of them it is stated, "That schools which existed prior to the province of Manitoba entering Confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority prior to the province of Manitoba entering Confederation, and there were no means by which any person could be forced by law to support any of said private schools. I think the only public revenue of any kind then collected was the Customs duty, usually four per cent."

Had Roman Catholics, as a class of persons, what can be considered or called rights and privileges within the ordinary meaning of these words as used in the Act? There were schools established and carried on, the expense of which were defrayed by Roman Catholics. Episcopalians and Presbyterians had the same right and also carried on and defrayed the expense of schools. Every other Protestant denomination had the same right, and so had every private individual. Any man could establish and carry on a school at his own expense if he chose to do so.

It seems to me the utmost the Roman Catholics can be said to have had, was what may be called a moral right. Had the words "right or privilege" stood alone in the Act, it could not, I think, be said they had any which is prejudicially affected by the Public Schools Act.

"A right" is in the *Imperial Dictionary* defined to be "A just claim, or that to which one has a just claim; that which may be lawfully claimed of any other person. * * * In law, that which the law directs, a liberty of doing or possessing something consistently with law." In *Bouvier's Law Dictionary* it is said to be "The correlative of duty, for whenever one has a right due to him, some other must owe him a duty." And in *Browne's Law Dictionary* it is said to be "A lawful title or claim to anything." *Wharton's Law Lexicon* defines "Right" as a "liberty of doing or possessing something consistently with law."

In the *Imperial Dictionary* "privilege" is defined as "a right, immunity, benefit, or advantage enjoyed by a person or body of persons beyond the common advantages of other individuals, the enjoyment of some desirable right, or an exemption from some evil or burden; a private or personal favour enjoyed; a peculiar advantage." It is defined by *Webster* as "A right or immunity not enjoyed by others or by all." In *Bacon's Abr.*, vol. 8, p. 158, "privilege" is said to be "An exemption from some duty, burden, or attendance with which certain persons are indulged. * * * A particular disposition of the law which grants special prerogatives to some persons contrary to common right." *Comyn's Dig.* says "*Privilegium est jus singulare, seu lex privata, quæ uni homini vel loco conceditur.*" So, in *Mackeldy's Roman Law*, section 189, it is said, "Privilege in its general sense, denotes every peculiar right or favour granted by the law contrary to the common rule," and in section 190, "The privileged party may exercise it to its full extent and nobody is allowed to disturb him in doing so, hence he has a right to prohibit any other person who is not in the enjoyment of a similar privilege from assuming the same right."

In *Campbell* v. *Spottiswoode*, 3 B. & S. 769, the court had before it a case of newspaper libel, which it was claimed for the defence was a privileged communication. Crompton, J., dealing with this, spoke of what is a privileged communication in this way: "That is where from the particular circumstances or position in which a person is placed there is a legal or social duty in the nature of a privilege or peculiar right, as opposed to the rights possessed by the community at large." And Blackburn, J., said, "The meaning of the word is, that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be slanderous or libellous in any one else."

It seems then that rights and privileges, as used in the statute, must mean something special and peculiar, something not common to all the community. To be protected, they must be such as the class of persons seeking protection had, apart from the rest of the community, must be such as they possessed and others did not. That is the construction put upon the words by the Court of Queen's Bench in England, in *Fearon* v. *Mitchell*, L. R., 7 Q. B. 690. Mitchell put up a building on plans submitted to, and approved by the local board, in which, for a number of years, he carried on an extensive business, selling cattle and sheep by auction. The board then set up a public market in the town, and laid an information against him to recover a penalty for selling at his own place and not in the public market, articles on which a toll was by the Act authorized to be levied. The justice stated a case for the opinion of the court. On the argument, one ground of defence relied on was a proviso in the Act: "No market shall be established in pursuance of this section, so as to interfere with any rights, powers or privileges enjoyed within the district by any person, without his consent." The argument was, that Mitchell's premises were built under the express sanction of the local board, with a knowledge of the purpose for which they were to be used, and that by carrying on his business there for years, he had acquired rights, powers and privileges which were protected by that proviso. Cockburn, C.J., dealt with that argument thus: "This right which the respondent was enjoying at the time when this market-place was built was not, I think, a right within the meaning of the section. It was a right which he enjoyed only in common with the rest of Her Majesty's subjects. He had no exclusive right to carry on this business, and he had no greater right than anybody else with suitable premises, for setting up and carrying on a similar business. The word "right," especially when taken in connection with the words "powers or privileges," must mean rights acquired adversely to the rest of the world, and peculiar to the individual. Such a right having been acquired it is but just that the statute should say that any powers exercised by the local authority, under the section, in setting up a market should not interfere with it; but it could never have been meant that the powers given for the benefit of the inhabitants of the particular district in setting up a market should not be exercised in consequence of some private individual or company having a business of the same description." And Blackburn, J., said: "The respondent had no right, power or privilege to keep it up against any rival that chose to start, and consequently the local authority had power to set up this market, although it interfered with the respondent's business, which was simply an exercise of the same right as any one of the public had."

In the light of these authorities, I think Roman Catholics had no rights or privileges, within the meaning of these words, had they stood alone. But when Parliament introduced the term, "by practice," there can, I think, be little doubt, that it intended the words to be used in a wider sense, and had in view what I spoke of as "moral rights." Parliament intended, in fact, that whenever any class of persons was, at the time of the union, with the assent of, or at least without objection from the other members of the community, in the habit or custom of doing, in reference to denominational schools, should continue and should not be prejudicially affected by provincial legislation.

How then did things stand at the time of the union? All the schools were, His Grace says, denominational schools, some of them being regulated and controlled by the Catholic Church and others by various Protestant denominations. 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. There can be no doubt that these schools were, in the strict sense of the word, denominational schools, in which the distinctive doctrines and principles of the Roman Catholic Church were taught, and naturally Roman Catholic parents would send their children to these schools. From there being no other schools, as is placed beyond doubt by the affidavits on both sides, than denominational schools, no schools established by law, it is plain that the general public acquiesced in this state of things. They acquiesced in the Roman Catholics being, in matters of education, as His Grace says : "As a matter of custom and practice separate from the rest of the community." From the circumstance that as education was then carried on they had, in common with every other denomination, a right to establish and maintain schools, and in consequence of their doing so, they were, in fact, separate from the rest of the community, but that was not because they had a positive right to be so—it was merely an incident to their right to have schools.

Now, any right the Roman Catholics had, at the time of the union, to establish and maintain schools in which the distinctive doctrines and principles of their church should be taught, exists still. It is in no way interfered with by the Public Schools Act. Any right they had, by custom or practice, to be separate from the rest of the community, in the matter of education they have unimpaired to-day. The Public Schools Act does not prevent them from having their own denominational schools now, if they desire to have them. It does not require all the children of the province to attend the schools provided for by the Act. The Roman Catholic Church can have schools, and Roman Catholic parents can send their children to these schools as fully and as freely as they did at the time of the union. In these respects, therefore, any rights or privileges the Roman Catholics, as a class of persons had, with respect to denominational schools, have not been prejudicially affected.

It is said, however, that Roman Catholics were not, at the time of the union, compelled to support public schools, they were not taxed for the support of these. True, they were not, but there was then no law which required any person in the country to contribute for school purposes. And, as pointed out by my brother Killam, even this right or privilege, if it can be called one, was not dependent on, or connected with, the existence of denominational schools. It cannot be said to have been, either by law or practice, a right or privilege with respect to denominational schools. If the Roman Catholics had had no schools, they would have been equally as free from taxation for educational purposes. As stated in the affidavits of Polson and Sutherland, no school taxes were collected by any authority prior to the province entering Confederation. The being free from taxation for schools was a right or privilege which they enjoyed only in common with every one else in the province. It was not a right which they enjoyed adversely to the rest of the community, something which they enjoyed beyond the common advantage of other individuals. They are not now, under the Public Schools Act, subjected to any exceptional tax. They are only subject to the same taxation as the other ratepayers of the country, so how can it be said that in this respect they are prejudicially affected?

It is, however, argued that by the Public Schools Act, a system of free schools supported by public funds, is set up, and by reason of these Roman Catholic denominational schools are placed at a disadvantage. They are, it is said, exposed to unfair competition, while at the same time by the taxation for the public schools funds, which would have been available for, and appropriated by Roman Catholic ratepayers to the support of their own schools, are diverted from them. But, before the union, any person or persons, or any class of persons, might at any time, have established and maintained schools, denominational or non-denominational, which would have entered into competition with the Roman Catholic schools, and if possessed of the means, might have endowed and maintained the schools so begun as free schools. The Roman Catholics had no such right or privilege, as to schools, as would have given them the right to prohibit the establishment and maintenance of such schools. If the argument that, by taxation under the Public Schools Act, the ability of the Roman Catholics to maintain their own denominational schools is lessened, and so they are prejudicially affected, is used, the same argument may be urged in connection with all taxation for provincial and municipal purposes. By the British North America Act the province has the power of taxation for provincial purposes. At the time of the union no taxes of any kind were imposed, the only public revenue of any kind then collected was the Customs duty, usually four per cent. All provincial legislation under which taxes are imposed for provincial or municipal purposes, for making and repairing roads and bridges, or any improvements, is equally open to the objection that by reason of it, the ability of Roman Catholics to maintain their schools has been lessened. Such taxes are all burdens, to which they, in common with the other people of the province, were not subject at the time of the union, but to which they, in common with all other ratepayers, are subjected now. This objection, as indeed all the objections urged in favour of the applicant, seems based on the assumption that the schools under the Public Schools Act are denominational schools. Now, they are nothing of the kind, they are in the strictest sense public non-sectarian schools. The Act provides in the 8th section that they shall be entirely non-sectarian, and no religious exercises shall be allowed in them, except as provided in the 6th and 7th sections. By the 7th section religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and upon receiving written authority from the trustees it is to be the duty of the teacher to hold such exercises. The religious exercises permitted in any public school are, by section 6, to be conducted according to the regulations of the advisory board. The time for them is to be just before the closing hour in the afternoon, and to guard against any possible ground of complaint, it is provided in explicit terms, that, "In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place." That the advisory board will act according to the provisions of the Act and see to it that any religious exercises prescribed are strictly non-sectarian, must be presumed. If it should, in this matter, fail in its duty, its transgression might be cause of complaint, but its acting directly contrary to the plain provisions of the Act could never be used as an argument against the Act itself. Such non-sectarian religious exercises, or the total absence of all such exercises, can never make the schools denominational in their character.

In New Brunswick, at the time of Confederation, there was no system of separate schools established by law. But the Parish Schools Act then in force declared that the Board of Education should secure to all children whose parents

RECORD.

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Case.

Judgment of Taylor, C. J. —*continued.*

did not object, the reading of the Bible in the schools, and that when read by Roman Catholic children, it should, if required by their parents, be in the Douay version, without note or comment. By that enactment there was secured what many consider a great right and privilege, and Roman Catholics had secured to them the right, if they required it, that when the Bible was read by their children it should be in a particular version. The Common Schools Act, passed after Confederation, had no provision on the subject. Then the Board of Education made a regulation, that, "It should be the privilege of every teacher to open and close the daily exercises of the school by reading a portion of Scripture (out of the common or Douay version as he may prefer) and by offering the Lord's prayer. Any other prayer may be used by permission of the board of trustees, but no teacher may compel any pupil to be present at those exercises against the wishes of his parents or guardian, expressed in writing to the board of trustees." This was a great change from the provision in the Parish Schools Act, for the right Roman Catholics had under it, that a particular version of the Bible should be read by their children, if they so desired, was taken away, and the reading of that version or not, made optional with the teacher. It was urged in *re Renaud*, 1 Pugs. N.B.R. 273, that on this as well as the other grounds, the Common School Act was *ultra vires*, but the court held it was not so. If it was a right or privilege that existed at the union, certainly the legislature had not protected it by any express enactment, but had it been taken away? If it was a right or privilege, then it would be the duty of the Board of Education instead of making the regulation they had made, to make one securing just what had been provided for by the Parish Schools Act. The court held that, if this was a right or privilege in respect of denominational schools within the protection of subsection 1 of section 93 of the British North America Act, though not protected by the Common Schools Act, it was not taken away, so it could not be said that the right was prejudicially affected.

In this province, at the time of the union, Roman Catholics had the right to establish and maintain denominational schools in which the distinctive doctrines and principles of the Roman Catholic Church were taught. To these schools they had the right to send their children.

As incident to the existence of these denominational schools, they were in the matter of education separate from the rest of the community. They maintained these schools at their own expense. Parents who sent children to them paid fees. But no Roman Catholic, as no other person in the province, could be compelled to contribute to the support of denominational schools.

Which of these possible rights or privileges has been interfered with or affected by the Public Schools Act? It does not enact that there shall be no schools in the province, except those under the Act, nor does it provide that the distinctive doctrines and principles of the Roman Catholic Church shall not be taught in any schools in this province. The Roman Catholics may carry on schools since the passing of the Act, just as they did at the time of the union. The Act does not say that no school fees shall be paid or collected in schools, other than those under this Act. The Roman Catholics can, just as they did at the union, collect fees from parents sending children to their schools, and maintain their schools in any way they please. There is no provision in the Public Schools Act by which any man in the province, Roman Catholic or Protestant, can be compelled to support denominational schools.

The only change in the situation is, that while at the union no one could be compelled to contribute for the support of schools—not for the support of public non-sectarian schools, for there were none in existence, nor for the denominational which did exist, for there was no law requiring them to be supported—now, all the property owners in the province, Protestants and Roman Catholics alike, are compelled to contribute for the support of the public non-sectarian schools.

It is surely a matter of importance for every state that its citizens should be intelligent and educated. Is it not the duty of every state to see there is brought within the reach of all the children in it, the means of acquiring at least an elementary education, such an education as will fit them, when they grow up, to exercise intelligently the duties of citizenship ? If it is the duty of the state to do this, and I do not see how it can be doubted, then it is the duty of the state to provide the funds necessary for the purpose. Providing these funds must be a provincial purpose, for which it is, by sub-section 2 of section 92 of the British North America Act, in the power of a province to impose taxation within the province. That providing for the education of the people is a provincial duty is also plainly shown by the provision, both in the British North America Act and in the Manitoba Act, that it shall be exclusively within the jurisdiction of the province to make laws on the subject of education. The only limitation on their powers is, that existing rights or privileges by law or practice as to denominational schools shall not be prejudicially affected.

Speaking of the provisions of section 93 of the British North America Act, in his report on the New Brunswick Common Schools Act, dated 20th January, 1872, Sir John A. Macdonald, then Minister of Justice, expressed it as his opinion, that they applied exclusively to the denominational, separate or dissentient schools, and did not in any way affect or lessen the powers of provincial legislatures to pass laws respecting the general educational system of the province. The 22nd section of the Manitoba Act must receive the same construction. The Public Schools Act, the validity of which is impeached, is an Act dealing with the general educational system of this province.

It does not deal with denominational, separate or dissentient schools. Its object is to provide for the general education of the people, to provide public, non-sectarian schools, open to all the people of the province who choose to take advantage of them for the education of their children. I cannot see that any rights or privileges that Roman Catholics enjoyed at the time of the union as to denominational schools are dealt with or in any way prejudicially affected by the Act.

It must, in my opinion, be held that the appeal fails, and that it should be dismissed with costs.

DUBUC, J.

This matter comes before the court by way of motion to reverse the order or decision of my brother Killam, dismissing the summons taken out to quash by-laws Nos. 480 and 483, of the city of Winnipeg.

These by-laws were passed by the City Council, to levy for municipal and school purposes, a rate of two cents on the dollar, on all rateable property in the said city, being 15$\frac{5}{8}$ mills on the dollar for general municipal purposes, and 4$\frac{3}{8}$ mills on the dollar for school purposes.

The applicant, John Kelly Barrett, asks in his summons to have the said by-laws quashed for illegality, upon the following among other grounds: "Because by the said by-laws the amounts to be levied for school purposes for the Protestant and Catholic schools are united, and one rate levied upon Protestants and Roman Catholics alike for the whole sum."

The by-laws in question were made in compliance with the provisions of the Act respecting public schools, passed at the last session of the Provincial Legislature, 53 Vic., c. 38, and under the provisions of the Municipal Act.

The said applicant states in his affidavit that the effect of the said by-laws is that one rate is levied upon all Protestant and Roman Catholic ratepayers in order to raise the amount required for school purposes, and the result to individual ratepayers is, that each Protestant will have to pay less than if he were assessed for Protestant schools alone, and each Roman Catholic will have to pay more than if he were assessed for Roman Catholic schools alone.

This involves the constitutional question, whether the said Act respecting public schools is, or is not, *intra vires* of the Provincial Legislature.

To determine that serious question, it is important to consider what schools were in existence in this country when this province was admitted into the Canadian confederation, and what provisions were made at the time of the union in regard to the matter. It may also be proper to give a brief outline of the laws which, under the provisions of the constitutional Acts, were enacted by the legislature, were put in operation, and were in force in this province until repealed and replaced by the statute respecting public schools of last session, and to examine the features of the said last mentioned statute.

As stated in the affidavit of His Grace the Archbishop of St. Boniface, filed on behalf of the applicant, and not denied by the other side, the following state of facts is shown: "2. 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, c. 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. 3. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations. 4. The means necessary for the support of 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 were paid out of the funds of the church, contributed by its members. 5. 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 the Roman Catholic children, and were not under obligation to, and did not contribute to the support of any other schools. 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, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth."

In the following paragraph of his said affidavit, His Grace states that the church regards the schools provided for by the Public Schools Act, as unfit for the purpose of educating their children, and the children of Roman Catholic parents will not attend such schools; that rather than countenance such schools, Roman Catholics will revert to the system in operation previous to the Manitoba Act, and will establish, support and maintain schools in accordance with their principles and faith; that Protestants are satisfied with the system of education provided for by the said the Public Schools Act, and are perfectly willing to send their children to the schools established and provided for by the said Act; such schools are, in fact, similar in all respects to the schools maintained by the Protestants under the legislation in force immediately prior to the passage of the said Act, &c., &c.

The affidavits filed in opposition to the motion state that schools which existed prior to the province of Manitoba entering Confederation, were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority, and there were no means by which any persons could be forced by law to support any of the said private schools.

As stated by my brother Killam, these affidavits are in no way contradictory to or inconsistent with the statements made by His Grace.

In his affidavit, also filed herein, Reverend Professor Bryce gives his views as to what were the opinions of the Presbyterians of this province in the years immediately succeeding the entrance of Manitoba into Confederation; but as he only came into this country in 1871, one year after, he does not pretend to contradict any of the statements made by the Archbishop of St. Boniface on what was the position of affairs in regard to the denominational schools, either Roman Catholic or Protestant, then existing.

So it remains established that the schools then in operation, although there was no law to give them legal sanction, were *de facto*, *i.e.*, in practice, denominational schools.

The provisions of law in regard to schools, made applicable to Manitoba at the union, were the 93rd section of the British North America Act, and the 22nd section of the Manitoba Act.

Under the said provisions of our constitution, the Provincial Legislature, at its first session, in 1871, passed an "Act to establish a system of education in this province." By the said Act, the Lieutenant-Governor in Council was empowered to appoint not less than ten, nor more than fourteen persons, to be a Board of Education for the province, of whom one-half were to be Protestants, and the other half Catholics; also one Superintendent of Protestant schools and one Superintendent of Catholic schools, who were joint secretaries of the board.

The duties of the board were described as follows: "1st. To make from time to time such regulations as they may think fit for the general organization of the common schools; 2nd. To select books, maps and globes to be used in the common schools, due regard being had in such selection to the choice of English books, maps and globes for the English schools, and French for the French schools, but the authority hereby given is not to extend to the selection of books having reference to religion or morals, the selection of such being regulated by a subsequent clause of this Act; 3rd. To alter and subdivide, with the sanction of the Lieutenant-Governor in Council, any school district established by this Act."

The general board was divided into two sections, and among the duties of each section we find the following: "Each section shall have under its control and management the discipline of the schools of the section; it shall make rules and regulations for the examination, grading and licensing of teachers, and for the withdrawal of licenses on sufficient cause; it shall prescribe such of the books to be used in the schools of the section as have reference to religion or morals."

By section 13, the moneys appropriated to education by the legislature were to be divided equally, one moiety thereof to the support of Protestant schools, the other moiety to the support of Catholic schools.

The first board appointed by the Lieutenant-Governor in Council, was composed of the Bishop of St. Boniface, the Bishop of Rupert's Land, several Catholic priests, several Protestant clergymen of various denominations, and a couple of laymen for each section.

The said statute was amended from time to time, as the country was becoming more settled, and new exigencies arose. But the same system prevailed until the Act of last session; the only substantial amendments were that, in 1875, the board was increased to twenty-one, twelve Protestants and nine Roman Catholics, and the moneys voted by the legislature were to be divided between Protestants and Catholics in proportion to the number of children of school age in the respective Protestant and Catholic districts.

The more noticeable change in the system was that the denominational distinction between the Catholics and Protestants, and the independent working of the two sections, became more and more pronounced under the different statutes afterwards passed. Section 27 of the Act of 1875, c. 27, says, that the establishment of a school district of one denomination shall not prevent the establishment of a school district of the other denomination in the same place.

The same principle is carried out and somewhat extended by sections 39, 40, and 41 of the Act of 1876, c. 1.

In 1877, by c. 12, s. 10, it was enacted that in "no case a Protestant ratepayer shall be obliged to pay for a Catholic school, and a Catholic ratepayer for a Protestant school."

So it is manifest that, until the Act of last session, the school system created by the Provincial Legislature, under the provisions of the constitutional Act, was entirely based and carried on, on denomination principle, as divided between Protestant and Roman Catholic schools.

At the last session of the legislature, two Acts were passed in respect to education. The first one, c. 37, abolished the Board of Education heretofore existing, and the office of Superintendent of Education, and creates a Department of Education which is to consist of the Executive Council or a committee thereof, appointed by the Lieutenant-Governor in Council, and also an advisory board composed of seven members, four of whom are to be appointed by the Department of Education, two by the teachers of the province, and one by the University Council. Among the duties of the advisory board is the power "To examine and authorize text books and books of reference for the use of the pupils and school libraries; to determine the qualification of teachers and inspectors for high and public schools; to appoint examiners for the purpose of preparing examination papers; to prescribe the form of religious exercises to be used in schools."

The next Act is, the Public Schools Act, c. 38. It repeals all former statutes relating to education. It enacts, amongst other things, as follows: Section 3, "All Protestant and Catholic school districts, together with all elections and appointments to office, all agreements, contracts, assessments and rate bills heretofore duly made in relation to Protestant or Catholic schools, and existing when this Act comes into force, shall be subject to the provisions of this Act." Section 4, "The term for which each school trustee holds office at the time this Act takes effect shall continue as if such term had been created by virtue of an election under this Act." Section 5, "All public schools shall be free schools, and every person in rural municipalities between the age of five and sixteen years, and in cities, towns and villages between the age of six and sixteen shall have the right to attend some school." Section 6, "Religious exercises in public schools shall be conducted according to the regulations of the advisory board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place." Section 7, "Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and upon receiving written authority from the trustees, it shall be the duty of the teacher to hold such religious exercises." Section 8, "The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

It provides for the formation, alteration and union of school districts in rural municipalities and in cities, towns and villages, the election of school trustees and for levying a rate on the taxable property in each school district for school purposes.

Section 92 enacts that "the municipal council of every city, town and village shall levy and collect upon the taxable property within the municipality in the manner provided in this Act and in the Municipal and Assessment Acts, such sums as may be required by the public school trustees for school purposes."

Section 108, which provides for the legislative grant to schools, has the following sub-section: "(3) Any school not conducted according to all the provisions of this or any Act in force for the time being, or the regulations of the Department of Education, or the advisory board, shall not be deemed a public school within the meaning of the law, and shall not participate in the legislative grant." By section 143, "No teacher shall use or permit to be used as text books, any books in a model or public school, except such as are authorized by the advisory board, and no portion of the legislative grant shall be paid to any school in which unauthorized books are used." By section 179, "In cases where, before the coming into force of this Act, Catholic school districts have been established as in the next preceding section mentioned (*that is, covering the same territory as any Protestant district*), such Catholic school district shall, upon the coming into force of this Act, cease to exist, and all the assets of such Catholic school district shall belong to, and all the liabilities thereof be paid by the public school district."

It is easy to see from the above that the new Act makes a complete change in the system. The denominational division of Catholics and Protestants is entirely done away with, and by section 179, where, as in this case, a Catholic school district is supposed to cover the same territory as any Protestant school district, the said Catholic school district is not only wiped out, but its property and assets are vested in, and belong to the other school district, which under the Act becomes the public school district.

Let us see now what are the provisions of the British North America Act and of the Manitoba Act applying to the case. Section 93 of the British North America Act enacts, that, "In and for each province the 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."

The first sub-section of section 22 of the Manitoba Act is substantially the same, the only difference being in the addition of the words, "or practice," which makes it read thus: (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."

The whole question to be determined in this case turns upon the construction of the words "or practice" added to the provisions of the Manitoba Act.

The rules of construction of statutes as laid down by the authorities are well known. Though all based on the strict principles of justice, they, in their application, offer some distinction and some apparent differences, in order to meet the numerous exigencies of the various cases under consideration. One rule, perfectly sound as applicable to a particular case, under a particular set of circumstances, might be unjust and unfair if applied to another case with different circumstances. Per Lord Blackburn in *Edinburgh Street Tramways Co.* v. *Torbain*, 3 App. Cases 68.

One of the first elementary rules is, that when the words of the statute admit of but one meaning, a court is not at liberty to speculate on the intention of the legislature so as to construe an Act according to its own notions of what ought to have been enacted. *Maxwell on Statutes*, 6; *R.* v. *York and North Midland Railway Co.*, 1 E. & B. 858.

When the language is precise and unambiguous, but at the same time incapable of reasonable meaning, and the Act is consequently inoperative, a court is not at liberty to give the words, on mere conjectural grounds, a meaning which does not belong to them. *Maxwell on Statutes*, 23.

But the above rule is confined to cases where the language is precise and capable of but one construction.

If the words "or practice" inserted in the Manitoba Act were as clear and unambiguous as to admit of but one construction, the above rule would have to be applied, and there would be no use for prosecuting the inquiry any further. But such is not the case. They are said to mean that the Roman Catholics, while compelled to contribute to the support of public schools, are, by said words, allowed to have and maintain their denominational schools as private schools; this is the narrower construction. They are also alleged to secure to Catholics the privilege of being exempted from compulsory attendance at the public schools; another and more liberal construction is that the denominational schools, existing as a matter of fact at the time of the union, were given by these words, a legal *status*, so that they could not afterwards be interfered with by the Provincial Legislature.

As seen by these different interpretations, the words "or practice" are susceptible of more than one construction; another rule then has to be applied.

An old rule of construction says that a thing which is within the letter of the statute is not within the statute, unless it be also within the meaning of the legislature. *Maxwell*, 24; *Bacon's Abrid.*, *Statute*, (1), 5.

As stated by *Maxwell* at p. 27, "to arrive at the real meaning it is always necessary to take a broad general view of the Act, so as to get an exact conception of its aim, scope and object. It is necessary, according to Lord Coke, to consider: 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy." That rule was laid down in *Heydon's Case*, 3 Rep. 7, decided as far back as during the reign of Elizabeth, and has been followed ever since.

In order to find out the exact and true meaning of certain words contained in a statute, it becomes sometimes important to go into the history of the matter and examine the external circumstances which led to the enactment in question.

In *River Wear Commissioners* v. *Adamson*, 2 App. Cas. Lord Blackburn says at p. 756: "I shall state as precisely as I can what I understand from the decided cases, to be the principles on which the courts of law act in construing instruments in writing, and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But from the interpretation of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from the circumstances, which the person using them had in view, for the meaning of words varies according to the circumstances with respect to which they were used."

"In the interpretation of statutes," says Maxwell, at p. 30, citing *Graham* v. *Bishop of Exeter*, rep. by Moore, 462, "the interpreter, in order to understand the subject-matter, and the scope and object of the enactment, must, in Coke's words, ascertain what was the mischief or defect for which the law had not provided, that is, he must call to his aid all those external or historical facts which are necessary for this purpose, and which led to the enactment, and for these he may consult contemporary or other authentic works and writings."

In *Attorney-General* v. *Sillem*, 2 H. & C., Lord Bramwell expressed the same view when he said at p. 529: "It may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it, and so, perhaps, history may be referred to to show what facts existed bringing about a statute, and what matters influenced men's minds when it was made."

Similar language was used by L. J. Turner in *Hawkins* v. *Gathercole*, 6 De G., M. & G. 1. He says at pp. 20 and 21: "In construing Acts of Parliament, the words which are used are not alone to be regarded. Regard must also be had to the intent and meaning of the legislature. The rule upon the subject is well expressed in the case of *Stradling* v. *Morgan*, Plowd. 204; and also in *Eyston* v. *Studd*, Plowd. 467: In determining the question before us, we have, therefore, to consider not merely the words of the Act of Parliament, but the intent of the legislature to be collected from the cause and necessity of the Act being made from a comparison of its several parts, and from foreign (meaning extraneous) circumstances, so far as they can justly be considered to throw light upon the subject."

In *Holme* v. *Guy*, 5 Ch. D. 905, Jessel, M.R., said: "The court is not oblivious of the history of law and legislation. Although the court is not at liberty to construe an Act of Parliament by the motives which influenced the legislature, yet, when the history of law and legislation tells the court what the object of the legislature was, the court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view of extending it to something that was not intended."

In the light of those authorities, it becomes necessary in trying to determine the true meaning of the words, "or practice," in the Manitoba Act, to examine under what circumstances these words were introduced into the statute, and the grounds, if they can be ascertained, on which they were inserted.

The 93rd section of the British North America Act gives to the legislature of each province the exclusive power to make laws in relation to education, subject, however, to certain restrictions, the first of which says that nothing in any such law shall prejudicially affect any right or privilege which any class of persons have by law, &c. The first sub-section of the 22nd section of the Manitoba Act says: "............which any class of persons have by law or practice," &c.

Why were these words "or practice" introduced? What was intended by said words? The true meaning intended by the legislature can only be ascertained by examining the historical facts and circumstances connected with the school question, which led to the provisions of the 93rd section of the British North America Act and the 22nd section of the Manitoba Act being enacted.

When the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick joined in the Confederation scheme, each of these provinces was already fully organized and had a system of public schools, established by law. In Ontario and Quebec, the law authorized dissentient or separate schools of a denominational character, in localities where the minority had a religious belief different from the creed of the majority. The minorities, in establishing separate or dissentient schools, were exempt from taxation for the support of public schools, and were allowed a proportionate share of the legislative grant. The systems in Ontario and in Quebec were not exactly the same, but they had some common features embodying the principle of denominational schools.

In Upper Canada the question of separate schools had been the subject of a long and bitter struggle between Protestants and Catholics, but the matter had been finally settled by the School Act of 1863.

In Nova Scotia and New Brunswick, it appears that the Roman Catholic minorities had in practice their own schools under the common or parish school laws; but the said schools were not recognized by law as such denominational schools, and the Catholics had no right or privilege by law in respect of denominational schools.

In framing the British North America Act, the fathers of Confederation, in order to guard the populations of the different provinces againt the agitation and turmoil which had been raised on that question between Catholics and Protestants in the old Province of Canada, while conceding and asserting the principle that each of the provinces might exclusively make laws in relation to education, thought proper to protect the religious feelings, and secure the right

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and privilege of the minorities on that subject, by enacting the limitations found in the sub-sections of the 93rd section. These limitations were to apply to new provinces entering Confederation as well as to the four original provinces.

The extent of the limitations imposed on provincial legislatures by the said provisions, was first raised and questioned in New Brunswick. The law relating to the subject, at the time of the union, was the Parish Schools Act of 1858. In 1871, the legislature of New Brunswick passed an Act relating to common schools, to which the Roman Catholics of the province had very strong objections. Petitions were sent to the Provincial Legislature, and afterwards to the Dominion authorities, against the coming into effect of the Act. The matter was taken before the Supreme Court of New Brunswick in *Ex parte Renaud*, reported in 2 Cartwr. Cas. 465, and an elaborate judgment was pronounced in the case by the court. The court decided in effect, that the Catholics of New Brunswick had not *by law* at the union, any right or privilege in respect to denominational or separate schools. In dealing with the question, the court insists on the fact that the Catholics had no rights or privileges by law, which were the only rights or privileges contemplated and secured by the first subsection of the 93rd section of the Act. The expression "legal right or privilege" is almost constantly used. In the course of the judgment, Chief Justice Ritchie, now Chief Justice of the Supreme Court of Canada, speaking for the majority of the court said: "Where is there anything that can, with propriety, be termed a legal right? Surely the legislature must have intended to deal with legal rights and privileges. How is it to be defined? How enforced?" And elsewhere: "If the Roman Catholics had no legal rights, as a class, to claim any control over, or to insist that the doctrines of their church should be taught in all or any schools under the Parish Schools Act, how can it be said (though as a matter of fact such doctrines may have been taught in numbers of such schools) that, as a class of persons they have been prejudicially affected in any legal right or privilege with respect to 'denominational schools' construing those words in their ordinary meaning, because under the Common Schools Act, 1871, it is provided that the schools shall be non-sectarian?"

From the above quotations, where *legal* rights only are considered and dealt with, and from the other arguments advanced and expressions used, it may fairly be inferred that, if the Roman Catholics of New Brunswick, instead of having only their right and privilege *by law* secured by the statute, they had had their right and privilege *by practice* equally secured, the judgment of the court might have been different.

As to the point raised on the argument by Mr. Ewart, of counsel for the applicant, that the words "or practice" were likely inserted in the Manitoba Act to remedy the defect which caused the difficulties in New Brunswick, which point was answered by the Attorney-General, that such could not be the case, because the New Brunswick Common Schools Act was passed only in 1871, one year after the Manitoba Act, this, at least, may be said: It appears from the journals of the Legislative Assembly of New Brunswick that the bill relating to common schools was introduced and put through the House of Assembly by the Hon. Geo. A. King, Attorney-General of the province, in 1871; that the same Hon. Geo. A. King had, in 1869, introduced in the Legislative Assembly a similar bill, which had been read a first time; that the same Hon. Geo. A. King did, on the 24th of February, 1870, introduce a similar bill which was read a first and second time, referred to the Committee of the Whole, and considered and discussed in four distinct sittings of the said Committee of the Whole, on the 17th March, 22nd March, 31st March, and 1st April. That bill provided that it was not to come into operation for one year after the passage thereof.

The Manitoba Act passed by the Dominion Parliament did not become law until the 12th of May of the same year. It was not introduced into the House until the second day of May more than a month after the discussion in the Legislature of New Brunswick of the Common Schools Bill in question. Is it not therefore reasonable to infer and presume that the discussion which took place in the Legislative Assembly of New Brunswick at the different sittings held on said School Bill in question were, as usual, reported and criticised in the public press, and that such reports and criticisms came to the knowledge of members of the Dominion Government and other persons who had something to do with the framing of the Manitoba Act? This most natural inference becomes, under the circumstances, such a presumption as not to be neglected in the construction of the words in question. Presumptions are constantly used in determining the real intent and meaning of statutes.

We have the fact that, when the Manitoba Act was passed, there were denominational schools in this country, and the further fact that there was no law to protect in their privilege the minorities of the future, either Catholic or Protestant, who might wish the continuance of said denominational schools. These facts, we must assume were well known to the legislators. If the province had entered Confederation with no other protection to minorities, with respect to denominational schools, than the first sub-section of the 93rd section of the British North America Act, as there was no law in the country with respect to denominational schools, or even to any kind of schools, the first sub-section of the 93rd section, or its re-enactment without modification in the Manitoba Act, would have remained a dead letter. As there was no law, there was no right or privilege by law to be protected. The Roman Catholics of this province were even in a worse position than those of New Brunswick, because there, as seen by the judgment of the Supreme Court of that province already referred to, the Catholics had, under the Parish Schools Act of 1858, numbers of schools in which, as a matter of fact, the doctrines of their church were taught, though the Parish Schools Act did not confer on them, as a class, any right or privilege with respect to denominational schools. This position of affairs must have impressed the men who framed the Manitoba Act, and shows conclusively to my mind that the words "or practice" were inserted in the Manitoba Act for only one and very manifest purpose, that is, to protect in their right and privilege, as to denominational schools, the Catholics or Protestants who might in the future find themselves in the minority in this province.

We must not overlook the fact that it was considered, and well known at the time, that the Protestants and Catholics were in about equal numbers in the province. That proposition is sufficiently established by the fact that the first school Act passed by the Manitoba Legislature in 1871 provided that an equal number of Protestants and Catholics were to be appointed as members of the Board of Education, and that the moneys voted by the legislature should be equally divided, one-half to be appropriated for the support of Protestant schools, and the other half for the support of Catholic schools.

Another fact not to be left unnoticed is that Manitoba was the only province entering Confederation after the original union for which the provisions of the 93rd section of the British North America Act were departed from and modified. Nothing of the kind is found in the terms made with British Columbia and Prince Edward Island when they entered Confederation in 1871 and 1873. Why was that departure from the provisions of the British North America Act made in regard to denominational schools for Manitoba only? Undoubtedly because it was well known that the population of this province was equally divided between the Protestants and Roman Catholics, and that there were already by practice, in the country, denominational schools, which the legislature intended to protect and ensure permanently to any class of persons, either Protestants or Catholics, who might desire to continue in the enjoyment of that privilege. That accounts for the insertion of the two words "or practice" in the Manitoba Act.

Before examining more fully what is the true and real purport of the words "or practice," as applying to the right and privilege in question, it may be convenient to consider what is a right and what is a privilege. A right is a just claim; a legal title; something positive which can be enforced by law. A privilege is sometimes also a direct advantage or benefit; but it is often considered more as of a negative character, such as an immunity, an exemption from some burden, beyond the common advantage of other individuals. So, the words "right" and "privilege" are technical words, having by themselves well defined legal meanings.

The same cannot be said of the word "practice" in the sense in which it is used in this sub-section. It is not a technical legal word, and it has no particular legal meaning. It is not found in any such sense in law dictionaries. It is only an ordinary popular word to be construed in its ordinary popular sense. It means custom or habit, use or usage. In the sub-section in question, it qualifies the words "right" and "privilege." "Privilege by law" may be considered a technical expression, to be construed according to its technical meaning. But "privilege by practice" becomes an ordinary popular expression to be interpreted in its popular sense.

"The words of a statute," says *Maxwell* at p. 67, "are to be understood in the sense in which they best harmonize with the subject of the enactment and the object in view."

In *Jessen* v. *Wright*, 2 Bligh, Lord Redesdale says at p. 56, "That the general intent shall overrule the particular is not the most accurate expression of the principle of decisions. The rule is that technical words shall have their legal effect, unless from other words it is very clear that the testator meant otherwise." The above was quoted approvingly by Lord Wensleydale in *Roddy* v. *Fitzgerald*, 8 H. L. 877.

In *The Fusilier*, 34 L. J., P.M. & A., 27, the words "persons belonging to the ship," in the Merchant Shipping Act, 1854, were, in matter of reward for salvage, construed to apply to passengers as well as to the crew. "As to the words 'belonging to such ship,'" says Dr. Lushington, "'belonging' is certainly a word *ancipitis usus* with reference to the subject matter; but one of the rules of construing statutes, and a wise rule too, is that they shall be construed *uti loquitur vulgus*, that is according to the common understanding and acceptation of the terms, and I think that nothing is more common than to say of passengers by a ship that they are persons belonging to the ship, and would be included under the expression 'persons.'"

In this case the expression "privilege by practice" must be construed in its popular sense, having always in sight the object which the legislature had in view when they were dealing with limitations to the power of the Provincial Legislature, in regard to schools, and when they knew that certain classes of persons had by practice, *i.e.*, by custom and usage, denominational schools which were sought to be protected. That construction "harmonizes best with the object which the legislature had in view."

The mere change of a word in a similar statute for another word of the same purport, or the addition of one or more words of the same purport, as the word already used, does not always show an intention of the legislature to have it operate as a change or alteration of the meaning. But it is not so here. The words "by law," and "by practice," cannot be considered as of the same purport. The addition of the words "or practice," shows clearly an intention of the legislature to give an entirely new meaning to the provision, and to add something to the limitation already imposed on the Provincial Legislature, in order to make it apply to, and provide for, the case under consideration. What is then the true meaning intended by the legislature in inserting those words?

It is contended that very little importance should be attached to the words. It cannot, however, be supposed that they were placed there fortuitously, unmeaningly, on the speculative chance that they might fit some hypothetical unknown state of things. The position of denominational schools then existing by practice, was known by the framers of the Act through the delegates sent from this country to negotiate and arrange with the Dominion authorities the terms on which the new province would enter Confederation. In the course of those negotiations, the provisions respecting schools, to be inserted in the Act, must have been fully discussed. Those words were, therefore, inserted advisedly to secure to those interested the permanency of denominational schools enjoyed at the time by practice, but not recognized by law. This must have been the privilege by practice meant by the provision.

The adverse contention is, that the only privilege enjoyed by Roman

Catholics before the union, and secured by the words "by practice," was the privilege of having denominational schools sustained by themselves as private schools, and that, under the new school law, they may have the same privilege still. The privilege of being taxed for the support of schools from which, according to their conscience and to the principles of their faith, they could derive no benefit, and of taxing themselves besides for the only schools to which they could conscientiously send their children, would be a very strange privilege indeed. Let us see whether such could have been the intention of the legislature in adding the words "or practice" in the Manitoba Act.

Strictly speaking, the legislature has, within the scope of its jurisdiction, the unlimited power to make any, even unjust or absurd, enactments. But, at the same time, it is never contemplated that in civilized modern countries a legislature would disregard and set at naught the well known principles of natural justice and equity. The right of any persons or class of persons to have and support private schools is a primordial right, as the right to breathe air or eat bread. Supposing the legislature of a province, having full power to do so, would pass a Public School Act with compulsory attendance, which all ratepayers would be bound to support, that would not affect the natural right of a citizen to teach his own children in his own house, before school time in the morning, between school hours in the middle of the day, or after the closing of the public school in the afternoon, and so to have and conduct a private school in his own premises. Nothing even would prevent him from having his neighbour's children attending such teaching, or having such teaching done by his daughter, or any other person. This would be a private school which no one would by law be bound to support, a school of the same nature as those stated to exist before the union. Such a natural right does not want any legislation to protect it. Can we, therefore, suppose that the only thing which was aimed at and intended by the Dominion Parliament in adding the words "by practice" was to protect and ensure to the minority of the future the natural right to have such schools? Can we, reasonably, assume that the Federal Parliament, anticipating and fearing that the Manitoba Legislature might, against all natural justice and fairness, deprive a whole class of persons of such primordial right, inserted the words "or practice," for the only purpose of guarding and protecting the minority that might be, against such unjust and oppressive legislation? That surely could not have been anticipated, and the enactment could not have been intended to prevent such imaginary mischief.

In *R.* v. *Skeen* case, Bell 115, Lord Campbell said, "When by the use of clear and unequivocal language, capable only of one construction, anything is enacted by the legislature, we must enforce it, although in our opinion it may be absurd or mischievous. But if the language employed admits of two constructions, and according to one of them the enactment would be absurd or mischievous, and according to the other it would be reasonable and wholesome, we surely ought to put the latter construction upon it as that which the legislature intended." A similar view was expressed by Parke, B., in *Beck* v. *Smith*, 1 M. & W. 195, where he held that, when the grammatical construction of the words used would lead to any manifest absurdity or inconvenience, the language may be varied or modified so as to avoid such inconvenience.

But as it may be further objected on this point, as the legislature has the power to pass statutes to establish a State church, to prescribe an oath of supremacy objectionable to Roman Catholics, to disfranchise or create other disabilities affecting them, why was there no provision made to protect them against such contingencies? The reason is obvious: because it was confidently and rightly understood and taken for granted that the people on whom a constitution, based on the representative system, was being conferred, were civilized and reasonable enough not to wantonly depart, on these questions, from the broad and equitable principles prevailing in modern British and other civilized constitutional institutions. A constitution assumes a certain number of general principles, and is not supposed to provide for every minor detail of having its provisions carried out. As to schools, however, the question had very properly to be looked upon in a different light. The experience of the past had taught a profitable lesson; the difficulties and controversies which had arisen before on that question in Ontario, Quebec, and other centres of mixed population, the strong prejudices by which certain persons and certain classes were liable to be carried on that point, engendering the most bitter feelings in communities otherwise living harmoniously together, must have shown to the legislators that this was a live and burning question to be settled and provided for, and influenced them to protect the new province against the trouble and agitation experienced over it elsewhere.

If, as I have stated, by being narrowly construed to protect only private schools which need no protection, the words "or practice" would be a superfluous and meaningless enactment, they must have some other meaning. By carefully considering all the circumstances which led to their being inserted in the Manitoba Act, it appears to me most evident that the Dominion Legislature, knowing that there were effective denominational schools in the country, knowing also that there being no law to authorize them, the right or privilege to have them maintained, would not be secured after the union by the provisions of the British North America Act, clearly intended to give legal sanction to the privilege enjoyed by practice.

To the contention that the new school law does not interfere with the privilege of any class of persons to have still denominational schools, as private schools, the Roman Catholics can justly say: If the new act does not take from us the right of having our schools, it deprives us of the privilege of subscribing exclusively for our own schools. Prior to the union, the Roman Catholics had the positive right of having their own denominational schools; they had, besides, the negative right, that is, the privilege of not being compelled to support other schools. They had that right and privilege as a matter of fact, and the words "or practice" were inserted to prevent their being interfered with under the new constitution.

Besides considering the historical facts and circumstances bearing upon a statute to ascertain its real sense, another mode of determining its true meaning

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is to examine its different parts, and even parts of other Acts on the same subject. As stated by Lord Mansfield, in *R.* v. *Loxdale*, 1 Burr., p. 447, "when there are different statutes *in pari materiâ*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system, and as explanatory of each other."

According to L. J. Turner, in *Hawkins* v. *Gathercole*, already cited, the court has to consider not only the words of the Act of Parliament, but the intent of the legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign circumstances, so far as they can justly be considered to throw light upon the subject.

So far, I have dealt only with the first sub-section of the 93rd section of the British North America Act, and the corresponding sub-section in the Manitoba Act.

The 2nd sub-section of the said 93rd section of the British North America Act extends to the dissentient schools of the Protestants and Roman Catholics of Quebec, the powers, privileges and duties conferred and imposed by law at the union on the separate schools and school trustees of the Roman Catholics in Upper Canada.

By the 3rd sub-section it is enacted that: "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 Catholic minority of the Queen's subjects in relation to education."

The 4th sub-section provides for remedial laws to be made by the Parliament of Canada for the due execution of the provision of that section and of any decision of the Governor-General in Council, as the circumstances of each case may require, on an appeal being made for that purpose. Of these provisions the first sub-section is reproduced in the Manitoba Act with the addition of the words "or practice." Sub-section 2 is omitted. Sub-section 3 is re-enacted in an altered form; the first three lines are omitted, and the appeal is allowed, not only from any act or decision of any provincial authority, but also from any act or decision of the Legislature of the province. Sub-section 4 is inserted *verbatim*. Sub-sections 2 and 3 of section 22 of the Manitoba act correspond to sub-sections 3 and 4 of section 93 of the British North America Act.

In this case, we have nothing to do with the appeal provided for by the two last mentioned sub-sections. But we are entitled to consider them if they can throw any light on the meaning of the first sub-section.

The first sub-section speaks of any right or privilege with respect to denominational schools; the second sub-section gives an appeal from any Act or decision of the legislature, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority in relation to education. If the minority, either Protestant or Catholic, had any right or privilege in relation to education, it must be a right or privilege in regard to their own respective schools, that is, their own denominational schools. Why should there be an appeal to protect their right or privilege, if they had none? The appeal must have been provided because the Dominion Legislature meant and intended that the denominational schools which Protestants as a class, and Roman Catholics as a class, had by practice at the union, were to have a legal recognition under the Manitoba Act, and as such were to be protected against Act of the Provincial Legislature as well as against any Act or decision of any provincial authority. The meaning which I have held should be given to the words "or practice," is thus explained and confirmed by reference to the other provisions of section 22 of the Manitoba Act, and the corresponding provisions of the 93rd section of the British North America Act. As already mentioned, there was no reason to re-enact, in the Manitoba Act, any of the provisions of the 93 section in relation to denominational schools, and in relation to appeals by minorities, if there was no such privilege already existing by practice which was intended to be recognised by law under the new constitution.

An objection made against the claim of the applicant is, that if the Roman Catholics are entitled to be secured in the continuance of the denominational schools, the other various denominations of Protestants would have the same privilege. I do not see that this is an objection at all. The provision speaks of any class of persons having by law or practice any right or privilege with respect to denominational schools. As it is established that the schools existing at the union were denominational schools, respectively controlled by the Roman Catholics and by the various Protestant denominations, I see no reason to doubt that, if the first sub-section of the 22nd section of the Manitoba Act is to be taken alone and independently of the other sub-sections the adherents of the English Church, the Presbyterians, the Episcopalians, and any other denominations of Protestants who had by practice denominational schools at the time, would be entitled, under this provision, to keep and maintain them as such. That is one aspect of the question.

The other aspect appears when we look at the other sub-sections in the British North America Act, and in the Manitoba Act. Christians who, for centuries have been in all Christendom divided into two great classes, Roman Catholics and Protestants, and designated as such, are also in the abovementioned sub-section, for the purpose of denominational schools, divided and designated as Roman Catholics and Protestants. It being an elementary rule that construction of a statute is to be made of all its parts together, and not of one part only, we must look to these different provisions applying to the subject-matter, and, in doing so, we are led to the conclusion that the legislature, in speaking of any class of persons in respect to denominational schools, intended to refer to the Roman Catholics as a body, and to Protestants as a body, and to apply the protection to either one or the other who might happen to be in the minority.

It is also said that the only privilege secured to the Roman Catholics, by the words "or practice," is the right to exempt from the compulsory attendance at the public schools which might be established. But there was no such thing here at the time as public schools, in the sense of state schools, and no such thing as compulsory attendance. That question of compulsory attendance was not in issue between Protestants and Catholics, or between particular denominations of Protestants. That question could not have been contemplated in the limitation clause of the Manitoba Act, as securing the right or privilege of any class or body of Christians against the probable tendencies of any other Christian body who might thereafter find themselves in the majority. The words, therefore, were not inserted to prevent a wrong, or remedy an evil which did not exist, was not foreseen, and was not apprehended, because it was not in issue.

On the argument, it was contended by the Attorney-General that, if the Catholics have by the first sub-section in the Manitoba Act, the privilege of being exempt from contributing to the support of any other but their own denominational schools, the Provincial Legislature would be deprived of the power to pass any effective school law, because the persons who had no children and had not to pay for any schools before the union, would claim that the privilege heretofore enjoyed by them from being taxed to support any schools, would be prejudicially affected. The objection is not a serious one. The law deals with classes, not individuals. The provision was made to protect the rights and privilege which any class of persons had with respect to denominational schools, not the claim or privilege of individuals who happened not to support any school.

It was also urged by the Attorney-General that, if the Dominion Parliament had intended to secure to the Catholics of the province the right to have their own denominational schools as in Ontario and Quebec, why was not a special provision in regard to it put in the Manitoba Act, similar to the 2nd sub-section of the 93rd section of the British North America Act? And he argues that the omission shows that there was no such intention. In the first place, that sub-section is a positive provision extending to the dissentient schools in Quebec the powers, privileges and duties which the Catholics of Ontario had by law before the union in regard to separate schools. There were no such schools existing by law in this country at the time. In the second place, the question may be satisfactorily answered by its being thus retorted: If the Dominion Parliament did not intend to secure to the Roman Catholics the right and privilege enjoyed by them at the union with regard to denominational schools, why were the principal provisions of the 93rd section of the British North America Act re-enacted in the Manitoba Act, and why were such provisions amended by extending further and increasing the limitations already imposed on Provincial Legislatures? If Parliament had no such intention, the British North America Act was quite sufficient. There was no necessity and no use for re-enacting its provisions and extending the limitation clause already existing.

Reverting to the interpretation of statutes susceptible of more than one construction, it is an elementary rule that the construction which appears more just and more reasonable will be adopted.

In *Regina* v. *Monk*, 2 Q. B. D. 555, Brett, L. J., said that "when a statute is capable of two constructions, one of which will work a manifest injustice, and the other will work no injustice, you are to assume that the legislature intended that which would work no injustice." Lord Blackburn expressed the same view in *Rothes* v. *Kirkcaldy Waterworks Commissioners*, 7 App. Cas. 702, when he said, "I quite agree that no court is entitled to depart from the intention of the legislature as appearing from the words of the Act, because it is thought unreasonable, but when two constructions are open, the court may adopt the more reasonable of the two."

In some cases, when the occasion justifies it, the court goes so far as to modify the language of the enactment, or add to it, in order to give it a reasonable construction.

In *Hollingworth* v. *Palmer*, 4 Ex. 267, Parke, B., after reading section 16 of 7 & 8 Vic., c. 112, which was to be construed, said at p. 281: "This section is certainly most incorrectly worded, and it is, therefore, necessary to modify its language in order to give it a reasonable construction. The rule we have always followed of late years is to construe statutes, like all other written instruments, according to the ordinary grammatical sense of the words used, and if they appear contrary to, or irreconcilable with, the expressed intention of the legislature, or involve any absurdity or any inconsistency in their provisions, they must be modified so as to obviate that inconvenience, and no further."

In *Tennant* v. *Howatson*, 13 App. Cas. 489, the words, "Nothing contained in this ordinance," were held to mean "Nothing contained in the two preceding sections of this ordinance."

In this case, however, we have not to resort to any such modification of the language of the enactment, nor to any addition thereto. In construing the provision questioned, which provision is clearly susceptible of more than one construction, it is not difficult to see which construction is more reasonable and more conducive to justice. The Roman Catholics had by practice denominational schools before the union; during nineteen years since the union, and until the new School Act was passed, they had said denominational schools recognized and authorized by law. They declare, under the oath of the Archbishop of St. Boniface, the head of their church in this province, that, on the principle of their religious belief, and on the ground of conscience, they consider the schools provided for by the new Schools Act, not fit for the purpose of educating their children, and that their said children will not attend said schools, that rather than countenance such schools, they will have to establish, support and maintain schools in accordance with their principles and faith.

If the narrower construction of the provision in question is adopted, they will have to tax themselves to support their own schools, the only schools which in conscience they can send their children to, and they will have, besides, to be taxed and to pay for the support of the other schools, schools from which the non-Catholics will derive all benefit, and the Catholics themselves no benefit whatever. Moreover, the legislative grant, which is the people's money, contributed by Catholic as well as by other citizens, will be exclusively devoted to assist the other schools, while the Catholics will not get their proportionate share to maintain their own schools. Would not that be most unreasonable and a great injustice to the Roman Catholics, while the other portion of the community would get more than naturally they would be reasonably and justly entitled to? Now, if the broader and more equitable construction prevail, the Roman Catholics, in being allowed to have their schools maintained and recognized by law, would get nothing more than strict and fair justice, and the non-Catholics would suffer no injustice.

Protestants and Catholics have different views and different principles as to the education which children should receive in elementary schools. Some Protestants are adverse to any religious teaching in public schools, and hold that such teaching should be purely secular; others, and, I think, a larger proportion of them, are desirous that the general principles of Christianity be taught, and that there should be some scriptural reading, and other exercises of a religious character. As to Roman Catholics, they go farther. While believing that the teaching of secular subjects required by the State should be given due consideration, and full effect, they hold, as a matter of conscience, based on the principles of their faith, that their children should also be taught in the doctrines and tenets of their church, and that the religious exercises should be those of the Roman Catholic Church, and no other.

As stated by the Archbishop of St. Boniface in his affidavit filed, "Protestants are satisfied with the system of education provided for by the Public Schools Act, and are perfectly willing to send their children to the schools established and provided for by the said Act. Such schools are, in fact, similar to the schools maintained by the Protestants under the legislation in force immediately prior to the passage of the said Act." The Archbishop, is, in that, substantially corroborated by the Reverend Professor Bryce who says, in his affidavit filed, that the Presbyterians are able to unite with their fellow-Christians of other churches in having taught in the public schools (which they desire to be taught by Christian teachers) the subjects of secular education. It is easy to understand why the various denominations of Protestants can unite in a common system of public schools, and why Roman Catholics cannot similarly join their Protestant fellow-citizens. Protestants are more or less divided between themselves on certain matters of doctrine, and on some formal precepts of a dogmatic character; but a very large number of general principles and a considerable amount of doctrinal tenets of Christianity are held in common by all of them. If they differ on certain particular points, they agree on a great many things. In school matters they practically entertain the same views and find no difficulty in uniting together. But the differences between the Roman Cotholics and the various denominations of Protestants are wide and substantial, and include most essential points of dogma and discipline. It is not an uncommon thing, in this country at least, to see Protestant ministers of different denominations exchange pulpits on certain occasions. No one would even think of seeing the same thing done between a Protestant minister and a Roman Catholic priest. The same characteristic differences are held by Catholics to exist on the school question. While some Protestants may not be able to see why Catholics should have conscientious objections to send their children to public schools taught by Protestant teachers, Catholics have actually such conscientious objections, and hold that they are insuperable. A man's conscience is a thing of such a personal and idiosyncratic character that it cannot be measured by the particular feelings and dictations of any other man's conscience.

The State may hold that ignorance is an evil to be remedied by public instruction and may see that certain secular subjects, which are known to form the basis of a proper education, be taught in schools, assisted by public money. But in a community composed of different elements, the State should not ignore the particular condition, wants and just claims of an important class of citizens, especially when such important class are in every respect loyal and law-abiding subjects, and there is nothing in their wants and claims clashing with the rights of other classes, or contrary to, or conflicting with, the letter, the spirit or the true principles of the constitution. The liberty of conscience is one of the fundamental principles of our constitution. What the Roman Catholics ask in claiming the right to maintain their denominational schools is only the carrying out, to the full extent, of that fundamental principle. The desirability of having religious instruction combined with secular teaching in schools is, as stated by my brother Killam, considered as of the utmost importance by very many Protestants as well as by Roman Catholics.

I may, on this point, take some brief references from a very important public document—the final report of the commissioners appointed to inquire into the elementary Schools Act, England and Wales. The commission was issued by Her Majesty the Queen on the 15th January, 1886, to twenty-four distinguished men of England, chosen for their learning, their ability and their high social position, the very large proportion of whom were Protestants of various denominations. The inquiry was very extensive, and lasted until June, 1888, when the final report was made, and afterwards presented by command of Her Majesty to both Houses of Parliament.

At page 112 of their said report, the commissioners say: "Upon the importance of giving religious as well as moral instruction, as part of the teaching in day public elementary schools, much evidence was brought before us." And at page 113: "All the evidence is practically unanimous as to the desire of the parents for the religious and moral training of their children."

At page 124: "We are convinced that if the State were to secularize elementary education, it would be in violation of the wishes of the parents, whose views on such a matter are, we think, entitled to the first consideration. Many children would have no other opportunity of being taught the elementary doctrines of Christianity, as they do not attend Sunday Schools, and their parents, in the opinion of a number of witnesses, are quite unable to teach them."

Such were the views of the commissioners as to the religious teaching in schools.

As to the conscience question, the commissioners say, at p. 121: "While we are most anxious that conscientious objections of parents to religious teachings and observances in the case of children, should be most strictly respected, and that no child should, under any circumstances, receive any such training contrary to a parent's wishes, we feel bound to state that a parent's conscientious feelings may be equally injured, and should be equally respected and provided for, in the case where he is compelled by law to send his child for all his school time to a school where he can receive no religious teaching."

At page 127: "After hearing the arguments for a wholly secular education we have come to the following conclusions: * * * * (4.) That inasmuch as parents are compelled to send their children to schools, it is just and desirable that, as far as possible they should be enabled to send them to a school suitable to their religious connections or preferences." The same thing is repeated as the 69th of their concluding recommendations at page 213 of the report.

An argument has been advanced, in this country and elsewhere, that State aid given to schools where religious teaching is carried on, would be an endowment to religious education which the State should not undertake to do. Such, however, is not the opinion of the commissioners; the report says, at page 119: "We cannot concur in the view that the State may be constructively regarded as endowing religious education when, under these conditions, it pays annual grants for secular education in aid of voluntary local effort to schools in which religious instruction forms part of the programme."

As to the religious teaching in schools, the opinion of five of the commissioners who made a special report is thus expressed at page 244: "We recognise that for the great mass of the people of this country, religious and moral teaching are most intimately connected and that in our judgment the effectiveness of the latter depends to a very large extent upon religious sanctions. We think that the present liberty of religious teaching recognized by law for local managers, is an ample security, that so long as the prevalent opinion of the country remains unchanged, the education of the children and the formation of their character will be based upon those principles which are dear to the mass of the people."

The above quotations show that the views of the Roman Catholics of this country on religious teaching in schools are not much different from those entertained by the mass, as well as by the cultured portion of the people of England, Protestants as well as Roman Catholics.

On the grounds hereinbefore mentioned, and on the authorities cited, I believe that the re-enactment in the Manitoba Act of the main provisions of the 93rd section of the British North America Act, was for the purpose of ensuring, under the constitution of the new province, to any class of persons who might desire it, the maintenance of the denominational schools existing at the time of the union; that the words "or practice," added to the first sub-section of the 22nd section of the Manitoba Act, can have no other meaning, and should receive no other construction than that they were clearly intended by the legis-

Judgment of Dubuc, J. —*continued.*

lature to give a legal status to the said denominational schools, which, as a matter of fact, were known to exist at the time, though not recognised by any law; that the said interpretation should be adopted on the ground, amongst others, that if the Roman Catholics are allowed to have their denominational schools maintained under the law, no injustice or detriment whatever will result to the other classes of the population, whilst otherwise, by being obliged to establish and support schools to which they could conscientiously send their children, and paying at the same time for schools from which they cannot and will not derive any benefit, the Roman Catholics will suffer a very great injustice, and the legislature, by inserting the words "or practice," intended to provide, and in fact did provide against such injustice being done to the Catholic minority in this province.

I am, therefore, led to the conclusion that the Public Schools Act of last session, by which the denominational schools, heretofore existing, are legislated out of legal existence, prejudicially affects the privilege which the Roman Catholics had by practice at the time of the union with respect to denominational schools; that, in consequence the said Public Schools Act is *ultra vires* of the Provincial Legislature, and that the two by-laws in question passed in compliance with the provisions of the said Act, are illegal and should be quashed.

In my opinion, the order of my brother Killam should be reversed, and the summons made absolute, with costs.

BAIN, J.

Judgment of Bain, J.

This is an application to reverse an order made by Killam, J., dismissing an application made under section 258 of the Municipal Act, to quash the by-laws of the city of Winnipeg, numbered 480 and 483, authorising an assessment for city and school purposes in the city for the current municipal year. These by-laws enact that a rate or tax of two cents on the dollar shall be levied and collected on the whole assessed value of the real and personal property in the city, of which rate 4½ mills on the dollar is to be for school expenditure, and the balance for interest on debentures and ordinary municipal expenditure. The application to quash the by-laws is made on the ground that they are illegal, "because by the said by-laws the amounts to be levied for school purposes for Protestant and Roman Catholic schools are united, and one rate levied upon Protestants and Roman Catholics alike for the whole sum." It is not questioned that the Public Schools Act, 53 Vic., c. 31, M., 1890, authorizes the assessment or levy that the by-laws provide for, but is contended that the Act itself, providing as it does for the establishment of a provincial system of free and non-sectarian public schools, for the support of which all taxable property is made liable to be assessed and taxed, is *ultra vires* of the Provincial Legislature, and that the previous School Act, which the Act assumed to repeal, is still in force, and that under it the taxes for the support of Protestant and Roman Catholic schools must be levied separately on the property of Protestants and Roman Catholics respectively.

Under the School Acts in force in the province previous to the passing of the Public Schools 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 and control of the public schools, was divided into two sections, one composed of all 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 a Protestant ratepayer be obliged to pay for a Roman Catholic school, or a Catholic ratepayer for a Protestant school.

The Public Schools Act of 1890 repealed all former School Acts, and established in place of the two sets of schools that had existed under these Acts, a system of free and non-sectarian public schools, for the support of which all taxable property is liable to be taxed. It is under the authority that this Act gives, that the by-laws in question were enacted; and the question that arises in the application to quash them is the exceedingly grave and important one, whether or not the legislature, in passing this Act, has exceeded the powers and jurisdiction conferred upon it by the constitution of the province.

The power of the Provincial Legislature to make laws concerning education is derived from section 22 of 33 Vic., c. 3, D., usually known as the Manitoba Act. By section 2 of this Act, the provisions of the British North America Act, 1867, except those of them that specially applied to or affected only individual provinces, and except so far also as they were varied by the Manitoba Act, were made applicable to the new province, as if it had been one of the provinces that were originally united to form the Dominion. By section 93 of the British North America Act it is provided that: "In and for each province the 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." Then a sub-section applies to the province of Quebec only, and extends to the dissentient schools in that province, whether Protestant or Catholic, all the powers and privileges that at the union the law of Upper Canada conferred on the separte schools there, and the third sub-section provides that, "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." A fourth sub-section provides that the Parliament of Canada may make remedial laws for the due execution of the provisions of the section and of any decision of the Governor-General in Council under it.

The 22nd section of the Manitoba Act provides that "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;" and a third sub-section is in the same terms as sub-section 4 of the 93rd section of the British North America Act. This section of the Manitoba Act was evidently intended to deal with and to cover the whole subject of education in the province; and I agree with my brother Killam that the powers conferred by this section cannot be either enlarged or restricted by anything that is in the 93rd section of the British North America Act, and that the provisions of the 93rd section are material in this case only in so far as they will assist us to arrive at the proper construction of the section of the Manitoba Act. It is evident that the section in the Manitoba Act was based on the 93rd section. But there are important differences, evidently made with some more or less definite intention; and a comparison of the two enactments can hardly fail to assist us in seeking to arrive at the intention expressed in section 22.

The general power of the legislature to make laws in relation to education is subject then to the restriction that "nothing in any such law shall prejudicially affect any right or privilege in respect to denominational schools which any class of persons have by law or practice at the union." This sub-section differs from the 1st sub-section of section 93, in the British North America Act, only by the addition of the words "or practice;" and as, prior to the union, there were no laws in force in the territory, which now forms the province, on the subject of education or schools, denominational or otherwise, the reason of the insertion of the words "or practice" is obvious.

The contention of the applicant is that Roman Catholics, as "a class of persons," had, by practice, prior to the union, certain rights and privileges with respect to denominational schools; and that the Public Schools Act, by establishing a system of free and public schools, and by making all assessable property of Roman Catholics, as well as of all others, liable to be taxed for the support of these schools, prejudicially affects these rights, and that, therefore, the Act is *ultra vires* and invalid, and that the School Act and the school system it purports to repeal and abolish, are still in force. These rights and privileges, that it is claimed Roman Catholics had before the union, by practice, are formulated by the learned council for the applicant to be, first, the right to be separate from the rest of the community with reference to education; second, the right to compete on equal terms with other schools; and third, the immunity from contributing to the support of any other schools than their own; and this last is claimed to be rather in the nature of a privilege than a right.

The reason why Parliament made use of the expression, a "right or privilege in practice," is more obvious, perhaps, than the precise meaning that should be given to the expression it has used. On the argument, no careful attention was given by any of the learned counsel to the consideration of the meaning of these somewhat vague and indefinite words, but in examing the question raised by the application, it is necessary to fix, as far as possible, and have in mind what is meant by the words, in order to determine if the evidence shows that Roman Catholics, as a "class of persons," had the rights and privileges claimed, or any other rights and privileges, in practice, with respect to denominational schools; and if it appears that they had, then it will be further necessary to inquire if they have been prejudicially affected by the Act in question.

In his affidavit, filed in support of the application, His Grace the Archbishop of St. Boniface, states that, prior to the passage of the Manitoba Act, there existed in the territory now constituting the province of Manitoba, a number of effective schools for children. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations. The means necessary for the support of the Roman Catholic schools were supplied to some extent by fees paid by some of the children who attended the schools, and the rest was paid out of the funds of the church, contributed by its members. 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 supplied 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. His Grace adds: "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, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth."

The affidavits of Alex. Polson and John Sutherland, filed in reply, merely supplement His Grace's affidavit by stating "that schools which existed prior to the province of Manitoba entering Confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. No school taxes were collected by any authority, prior to the province entering Confederation, and there were no means by which any person could be forced by law to support any of said private schools." The affidavits do not show how these schools were established; whether the Roman Catholic and the various Protestant denominations, as churches, established the schools and appointed teachers and directly controlled them, or whether they were established by individuals as private enterprises, and were conducted in accordance with the religious views of the denomination to which the individual proprietors belonged and to which they looked for support. However, it is stated that the schools were denominational ones, and that some of them were controlled by the Roman Catholic Church and the others by various Protestant denominations.

On these facts, then, what "rights or privileges in practice" are Roman Catholics shown to have had in respect to their schools?

I find myself unable to see how it can be said that they had any *privilege* in respect of their denominational schools, in any strict, or even popular, sense of the word "privilege." It is not shown, or claimed, that they enjoyed any benefit or advantage in respect of their schools that the various other classes of persons who had established schools did not likewise enjoy in respect of theirs, or that any other individual might not have enjoyed had he chosen to open a school. They were under no obligation, indeed, to contribute to the support of the schools of the other denominations, nor for that matter to contribute to the support of their own schools, but in this respect all other classes of persons, and individuals as well, were precisely in the same position and enjoyed the same immunity; and that which is the common immunity and in the common and equal enjoyment of all cannot properly be said to be a "privilege" of any one person or class.

I may say here that I entirely agree with my brother Killam in holding that the schools that are established by the Public Schools Act are not "denominational" schools. The advisory board is given power to prescribe forms of religious exercises to be used in the schools, but no pupil is required to attend these exercises against the wish of his parents or guardian. The 8th section of the Act expressly provides that the schools shall be entirely non-sectarian, and that no religious exercises shall be allowed in them except that prescribed by the advisory board; and we must assume that the board will prescribe forms of religious exercises that shall be entirely non-sectarian. It is a matter of public knowledge that some of the leading and most representative men of some of the Protestant denominations object to these schools, and, as His Grace says in the affidavit, "would like education to be of a more distinctly religious character than that provided for by the said Act." I quite admit, however, that the objection on the ground of the absence of an education that is distinctly religious will be felt much less by Protestants than by Roman Catholics, but I cannot hold that the non-sectarian religious exercises that the Act authorizes, or even that the absence of all religious exercises or teaching in the schools makes, or would make, them Protestant or denominational schools.

It is to be observed, too, that in this sub-section 1, Parliament was not thinking only of the two great divisions of Roman Catholics and Protestants, but had in mind and intended to preserve the rights and privileges that other classes of persons besides Catholics or Protestants had, or might have, in respect of denominational schools. This was expressly so held as regards the corresponding sub-section in the 93rd section of the British North America Act in *Ex parte Renaud*, 1 Pugs. N.B.R. 273, usually known as the New Brunswick school case; and, as the present learned Chief Justice of the Supreme Court said in that case, "We think that the term 'denomination' or 'denominational,' as generally used, is in its popular sense more frequently applied to the different denominations of Protestants than to the Church of Rome; and that the most reasonable inference is that sub-section 1 was intended to mean just what it expresses, viz., that 'any,' that is, every 'class of persons' having any right or privilege in respect to denominational schools, whether such class should be one of the numerous denominations of Protestants or Roman Catholics, should be protected in such rights." For an example of the use of the word "denominational" in the sense ascribed to it by the Chief Justice, we have only to turn to paragraph 3 of the affidavit of His Grace the Archbishop, where he speaks of some of the schools having been "controlled by the Roman Catholic Church and others by various Protestant denominations."

A recent learned writer on jurisprudence (*Holland, Elements of Jurisprudence*, 4th Ed., 70) has defined a "legal right" as "a capacity residing in one man of controlling with the assistance of the State, the action of others." But from the circumstances of the case, as well as from the addition of the words "by practice" to the sub-section as it is in the British North America Act, it is evident, I think, that Parliament intended that the sub-section in the Manitoba Act should apply to other rights than legal ones. At page 69, the author, whose definition of a "legal right" I have given, says: "When a man is said to have a right to do anything, or over anything, or to be treated in a particular manner, what is meant is that public opinion would see him do the act, or make use of the thing, or be treated in that particular manner, with approbation, or at least with acquiescense; but would reprobate the conduct of any one who should prevent him from doing the act, or making use of the thing, or should fail to treat him in that particular way. A 'right' is thus the name given to the advantage a man has when he is so circumstanced that a general feeling of approval, or at least of acquiescence, results when he does or abstains from doing certain acts, and when other people act or forbear to act in accordance with his wishes; while a general feeling of disapproval results when any one prevents him from so doing or abstaining at his pleasure, or refuses to act in accordance with his wishes." A "right" in this sense is nothing more than a "moral right," and Professor Holland so terms it and distinguishes it from a "legal right." In the case of *Fearon* v. *Mitchell*, L. R., 7 Q. B., 690, to which the Chief Justice has called my attention, the court, in construing a section that provided that no market should be established "so as to interfere with any rights, powers or privileges enjoyed within the district by any person, without his consent," held that the word "rights" especially when taken in conjunction with the words "powers or privileges," must mean rights acquired adversely to the rest of the world, and peculiar to the individual, and did not apply to a right which an individual enjoyed in common with the rest of Her Majesty's subjects. Had the words "right or privilege" stood alone in the sub-section, this is doubtless the only meaning that could have been properly given to them, but from the addition of the words "by practice," and from the state of circumstances in reference to which Parliament was legislating, I am disposed to think the words were used in their widest signification, and that the "rights" that Parliament had in view were in the nature of those that Professor Holland describes as "moral rights." What was meant, then, by the sub-section was, I think, that nothing in any law to be passed by the legislature relating to education was to prejudicially affect anything that any class of persons had been in fact, and generally in the habit of doing with respect to denominational schools, with the acquiescence, implied or expressed, of the rest of the community. A view of the meaning of the sub-section more favourable to the contention of the applicant cannot possibly be taken.

The affidavits show that before the union, private schools regulated and controlled by the Roman Catholic Church, had been established and maintained. These schools are properly termed denominational schools, and they were it is to be inferred, established and maintained with the acquiescence of the rest of the community. If then I am not giving too wide a meaning to the term "right or practice," it must be held that it has been established that Roman Catholics had the right to establish and maintain denominational schools, and, of course, to attend them, or send their children to them if they saw fit.

From the fact that there were these denominational schools, and that they were all conducted according to the distinctive views and beliefs of Roman Catholics, Roman Catholic parents would naturally send their children to these schools rather than to those which were conducted by the various Protestant denominations, which also, we may assume, were conducted according to the distinctive religious views of the denominations that controlled them; and the deduction of His Grace the Archbishop, is doubtless entirely correct when he says in the 6th paragraph of his affidavit, 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." But this, it seems to me, falls far short of establishing that Roman Catholics had a distinct and positive right to be separate in matters of education; and to say that they were thus more or less separate, is only to say in other words, that they had the right to maintain denominational schools and send their children to them, if they saw fit. Their being separate was only an incident of their right to maintain the schools.

The other right that the counsel for the applicant claims that Roman Catholics had at the union by practice, was the right to compete on equal terms with Protestants in maintaining their denominational schools. All the schools were private enterprises, and all were upon the same footing and competed for the support of the public on equal terms, as far as any influence external to the class of persons who controlled the schools was concerned, and no one will question the correctness of the proposition advanced. The different schools had the right to compete with one another on equal terms, just as we might say that a merchant or tradesman has the right to compete with other merchants or tradesmen on equal terms. But this proposition seems to have been advanced with the idea that the schools established under the Public Schools Act are denominational or Protestant schools; and on this point I have already expressed my opinion.

It will be admitted that it is the imperative duty of every State or civil government to provide means by which, at all events, elementary and ordinary education shall be placed within the reach of every child in the community. It is recognized that it is a danger to the State that any portion of its citizens

RECORD.

In the Supreme Court of Canada.

Case.

Judgment of Bain, J. —*continued.*

should grow up in ignorance, and that a State is justified in imposing taxation to provide means by which this danger will be prevented or lessened. Under the constitution of this province, the power to make laws in relation to education has been given exclusively to the Provincial Legislature. To it has also been given the power to impose taxation for provincial purposes; and in giving these powers, Parliament clearly contemplated and intended that some system of public instruction and education would be provided by the legislature, and that, as far as should be found necessary, taxation would be imposed to provide and support such a system. The power of the legislature to make laws in relation to education, was made subject only to one qualification or restriction, that nothing in such laws should prejudicially affect 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 legislature has by the Act in question provided for the establishment of a system of public, free and non-sectarian or undenominational schools, at which every child in the province can attend, and has made all taxable property in the province liable to be taxed for the support of these schools. No one, however, can be compelled to attend these schools if he does not wish to, and there is nothing in the Act that will in any way prevent any person, or class of persons, from establishing schools that shall be strictly denominational, and from competing on equal terms with other denominational schools that may be established. The rights, then, that Roman Catholics had before the union to establish denominational schools and to attend them, and to compete, as regards their schools, on equal terms with other denominations, or Protestants generally, has not been taken away, and can be exercised now as fully as it could have been before the union. The attendance at these schools, it is true, may be prejudicially affected by the competition of the free public schools established under the Act, in the same way that the business of a merchant who has a right to carry on business, may be affected by another merchant opening a store in the exercise of a similar right, but the right itself is as little affected in the one case as the other. Nor do I think these rights in respect of denominational schools, or any other right or privilege that on the evidence could possibly be claimed, can be said to be prejudicially affected by the fact that the property of Roman Catholics, in common with the property of every one else, is made liable to be taxed in support of the public, undenominational schools that the Act establishes. No right in respect to such schools is affected by this taxation; the taxation to support these public schools is for a provincial purpose, and if Roman Catholics, as is said, are less able to support their denominational schools by whatever amount of taxes they have to pay to the public schools, the same may be said of any other tax that is imposed by the legislature for provincial or municipal purposes. On the question of what is meant by the expression, "prejudicially affect any right," the judgment of the court in the New Brunswick school case, in which the court had to consider the effect of these words in the section of the British North America Act, is instructive.

The Parish Schools Act of New Brunswick, which was in force in that province when the province entered Confederation, secured to all children whose parents did not object, the reading of the Bible in the parish schools, and expressly provided that the Bible, when read in the parish schools by Roman Catholic children, should, if required by parents, be the Douay version, without note or comment. But the Common Schools Act, 1871, which repealed the Parish Schools Act, omitted this provision and declared that all schools conducted under its provision should be non-sectarian, and the Board of Education, under the powers given to it by the Act, made the regulation that "it shall be the privilege of every teacher to open and close the school by reading a portion of scripture (out of the common or Douay version, as he may prefer), and by offering the Lord's prayer." It is evident, therefore, that Roman Catholics were thus placed in a very different position as regards the actual enjoyment of the right or privilege they had to insist that the Douay version should be read to their children, from that they were in before the passing of the Common Schools Act, but the court held, that if this were a right or privilege in respect of denominational schools within the meaning of the sub-section, it was not taken away, although it was not protected by any express enactment, and that, therefore, the right could not be said to have been prejudicially affected so as to make the Act invalid.

But, it is said, Roman Catholics do not claim that the effect of the sub-section is to render them and their property for ever exempt from taxation for the support of public schools, and they admit that they are liable and willing to be taxed for the support of Roman Catholic public schools as they were under the school system that the present Act has abolished; and the principal part of the persuasive argument of the counsel for the applicant was devoted to an endeavour to show that having regard to the history of the controversy with respect to denominational schools in the older provinces, Parliament could have intended nothing else by the provisions of section 22 than to confirm to Roman Catholics in Manitoba the same rights and privileges in regard to separate schools that had been won for the minority in Upper Canada, and that were not only confirmed to Ontario, but were extended to Quebec, by the second sub-section of the 93rd section of the British North America Act, and that the court should give effect to what we must thus assume was the intention and policy of Parliament. It is urged, too, that if sub-section 1 is to have no more effect than to preserve the right to maintain denominational schools, it is useless and inoperative, and that Parliament would never have thought it worth while to make an enactment merely to preserve this right, as it cannot be supposed that any legislature would ever think of taking it away. It is satisfactory to find under the circumstances, that there is still this confidence on the part of the applicant in the fairness and liberality of those who may from time to time form the majority of the legislature, but admitting that his confidence is well founded, and that the sub-section will never be required to preserve the right in question, it does not follow that it must be given the wider operation contended for.

It is, of course, necessary for any one who is interpreting and construing a statute to make himself acquainted, as far as he can, with the history of the enactment and the external circumstances which led to its being passed, so that he may be so far in the place of those whose words he is interpreting that he can see what the words they used relate to. But "the external circumstances which may thus be referred to do not, however, justify a departure from every meaning of the language of the Act. Their function is limited to suggesting a key to the true sense when the words are fairly open to more than one; and they are to be borne in mind with the view of applying the language to what was intended, and of not extending it to what was not intended." (*Maxwell* on *Statutes*, p. 32.) And as Sir William Ritchie said in *Ex parte Renaud*, "It is a well established canon of construction that an Act is to be construed according to the ordinary and grammatical sense of its language, if precise and unambiguous; and it is likewise a rule, established by the highest appellate authority, that the language of a statute, taken in its plain, ordinary sense, and not its policy or supposed intention, is the safer guide in construing its enactments." The question for a court always is, not what Parliament meant, but what its language means."

But looking at the history of the controversy in regard to separate schools, and at all the external circumstances that we are asked to consider, it is very far from clear to my mind that Parliament meant anything more by the provisions of section 22 than the language that it used naturally expresses. It will occur to overy one that, had it been the intention to give and confirm to Roman Catholics, or any other class of persons in the new province, the right to have separate schools, and the immunity from supporting any but their own schools, the right would have been given in explicit terms. It was well known what agitation and bitter ill-feeling the question had caused in Upper Canada before it was settled; and if Parliament had intended to settle it once for all for Manitoba, I find it impossible to think that, with the provisions of the British North America Act that settled it for Ontario and Quebec before it, and from which section 22 was adapted, it would not have inserted a similar express provision in the Manitoba Act. But it has not done so, and the inference I would draw from these external circumstances, as well as from the language of the section, is that Parliament intended to leave the question to be settled by the people of the province themselves, as it had been by the people of the provinces in which a settlement had been arrived at, making only the natural and just restriction that existing rights in respect of denominational schools should not be prejudicially affected by any laws that the legislature should make. As we have seen, "various Protestant denominations" were exactly in the same position as regards denominational schools as Roman Catholics were, and if Roman Catholics can claim the right to have separate schools and to support only their own schools, so can each one of these Protestant denominations. But in the absence of any express and explicit enactment to this effect, it is hard to believe that it could have been the intention or policy of Parliament to impose such a state of affairs upon the new province.

The Act of the legislature that we are asked to hold to be unconstitutional and invalid is one that deals with a subject over which the legislature, by the constitution of the province, has been given exclusive jurisdiction, subject only as far as the courts are concerned, to the one restriction or limitation that the laws to be made by the legislature shall not prejudicially affect these rights in respect of denominational schools. With the policy of the legislature, the court has nothing to do, and in dealing with such cases, the presumption of the court should always be, I think, in favour of the constitutionality of the Act in question; and in this case the court should not undertake to declare the Act invalid unless it is established beyond reasonable doubt that the legislature has exceeded its jurisdiction by contravening and infringing upon this restriction or qualification. The rule that I have indicated is the one that is followed in the Supreme Court of the United States, and on this subject I cannot do better than adopt the language of Chief Justice Marshall in *Fletcher* v. *Peck*, 6 Cranch, 128: "The question," he says, "whether a law be void for its repugnancy to the constitution is at all times a question of much delicacy, which ought seldom, if ever, be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its Acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a strong and clear conviction of their incompatibility with each other."

I think my brother Killam was right in dismissing the application to quash the by-laws, and I agree with the chief justice that this application should be dismissed with costs.

JUDGMENTS IN THE SUPREME COURT OF CANADA.

Delivered October 28th, 1891.

Sir J. W. RITCHIE, C.J.

Judgment of Ritchie, C.J.

This is an application to quash two by-laws of the municipal corporation of the city of Winnipeg, which were passed for levying a rate for municipal and school purposes in that city for the year 1890, and they assess all real and personal property in the city for such purpose. It is asked that these by-laws be quashed for illegality on the following, among other grounds: That because of the said by-laws the amounts to be levied for school purposes for the Protestant and Roman Catholic schools are united, and one rate levied upon Protestants and Roman Catholics alike for the whole sum.

The state of education in Manitoba, and the relation of the Catholic Church in connection therewith, is thus shown by the affidavit of Archbishop Taché, which is in no way contradicted. He says:—*(The Chief Justice here read the affidavit, ante p. 40.)*

It must be assumed that in legislating with reference to a constitution for Manitoba, the Dominion Parliament was well acquainted with the conditions of the country to which it was about to give a constitution; and they must have known full well that at that time there were no schools established by law, religious or secular, public or sectarian. In such a state of affairs, and having reference to the condition of the population, and the deep interest felt and strong opinions entertained on the subject of separate schools, it cannot be supposed that the legislature had not its attention more particularly directed to the educational institutions of Manitoba, and more especially to the schools then in practical operation, their constitution, mode of support, and peculiar character in matters of religious instruction. To have overlooked considerations of this kind is to impute to Parliament a degree of shortsightedness and indifference, which in view of the discussions relating to separate schools which had taken place in the older provinces or some of them, and to the extreme vigilance with which educational questions are scanned and the importance attached to them, more particularly by the Catholic Church, as testified to by Monseigneur Taché, cannot, to my mind, be for a moment entertained. Read in the light of considerations such as these, must we not conclude that the legislature well weighed its language, and intended that every word it used should have force and effect?

The British North America Act confers on the local legislature the exclusive power to make laws in relation to education, provided nothing in such laws 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; but the Manitoba Act goes much farther and declares, that nothing in such law shall prejudicially affect 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. We are now practically asked to reject the words "or practice" and construe the statute as if they had not been used, and to read this restrictive clause out of the statute as being inapplicable to the existing state of things in Manitoba at the union, whereas on the contrary, I think, by the insertion of the words "or practice," it was made practically applicable to the condition at the time of the educational institutions, which were, unquestionably and solely, as the evidence shows, of a denominational character. It is clear that, at the time of the passing of the Manitoba Act, no class of persons had by law any rights or privileges secured to them, so if we reject the words "or practice" as meaningless or inoperative, we shall be practically expunging the whole of the restrictive clause from the statute. I know of no rule of construction to justify such a proceeding, unless the clause is wholly unintelligible or incapable of any reasonable construction. The words used, in my opinion, are of no doubtful import, but are, on the contrary, plain, certain and unambiguous, and must be read in their ordinary grammatical sense. Effect should be given to all the words in the statute, nothing adding thereto, nothing diminishing therefrom, as was said by Tindall, C.J., in *Everett* v. *Wells*, 2 Scott, N.R., 531. The legislature must be understood to mean what it has plainly expressed, and this excludes construction. See *Rex* v. *Banbury*, 1 A. & E. 142.

It is a settled canon of construction that no clause, sentence or word shall be construed superfluous, void or insignificant, if it can be prevented. See *Queen* v. *The Bishop of Oxford*, 4 Q. B. D. 261.

While it is quite clear that at the time of the passing of this Act, there were no denominational or other schools established and recognized by law, it is equally clear that there was at that time in actual operation or practice a system of denominational schools in Manitoba, well established, and the *de facto* rights and privileges of which were enjoyed by a large class of persons. What, then, was there more reasonable than that the legislature should protect and preserve to such class of persons those rights and privileges they enjoyed in practice, though not theretofore secured to them by law, but which the Dominion Parliament appears to have deemed it just should not, after the coming into operation of the new provincial constitution, be prejudicially affected by the action of the local legislature ?

I quite agree with the cases cited by the learned Chief Justice of Manitoba as to the rules by which the Act should be construed. I agree that the court must look, not only at the words of the statute, but at the cause of making it, to ascertain the intent. When we find the Parliament of Canada altering and adding to the language of the British North America Act, by inserting a limitation not in the British North America Act, must we not conclude that it was done advisedly ? What absurdity, inconsistency, injustice or contradiction is there in giving the words "or practice" a literal construction, more especially (as I have endeavoured to show) as the literal meaning is the only meaning the words are capable of and is entirely consistent with the manifest intention of the legislature, namely, to meet the exigencies of the country, and cover denominational schools of the class practically in use and operation ? If the literal meaning is not to prevail, I have yet to hear what other meaning is to be attached to the words "or practice." If the legislature intended to protect the classes of persons who had founded and were carrying on denominational schools of the character of those which existed at the passing of the Act, I am at a loss to know what other words they could more aptly have used. They might, it is true, have said: "which any class of persons has by law or usage," but the words "practice" and "usage" are synonymous. I agree, also, that we should ascertain what the language of the legislature means, in other words, to suppose that Parliament meant what Parliament has clearly said.

It cannot be said that the words used do not harmonize with the subject of the enactment, and the object which I think the legislature had in view. If the legislature intended to recognize denominational schools, how could they have used more expressive words to indicate their intention since the words used, read in their ordinary grammatical sense, admit of but one meaning, and therefore one construction, and we should not speculate on the intention of the legislature, that intention being clearly indicated by the language used, in view of the condition of, and the state of education in that country, the object the legislature must have had in view in using them, was clearly to protect the rights and privileges with respect to denominational schools, which any class of persons had by law *or practice*, that is to say, had by usage, at the time of the union. I cannot read the language of the Act in any other sense.

The decision of the court of New Brunswick in the case of *ex parte Renaud*, 1 Pugsley 273, referred to in the court below, has no application in this case. That case turned entirely on the fact that the Parish School Act of New Brunswick, 21 Vic., ch. 9, conferred no legal rights on any class of persons with respect to denominational schools. It was there simply determined that there were no legal rights with respect to denominational schools, and therefore no rights protected by the British North America Act; a very different case from that we are now called on to determine. It may very well be that in view of the wording of the British North America Act and the peculiar state of educational matters in Manitoba, the Dominion Parliament determined to enlarge the scope of the British North America Act and protect not only denominational schools established by law but those existing in practice, for as I am reported to have said, and no doubt did say, in *ex parte Renaud*, that in that case "we must look to the law as it was at the time of the union, and by that and that alone governed"; now on the other hand in this case, we must look to the practice with reference to the denominational schools as it existed at the time of the passing of the Manitoba Act.

That this was the view taken by the legislature of Manitoba would seem to be indicated by the legislation of that province, up to the passing of the Public Schools Act, which very clearly recognized denominational schools and made provision for their maintenance and support, providing that support for Protestant schools should be taxed on Protestants, and for Catholic schools should be taxed on Catholics, and conferring the management and control of Protestant schools on Protestants and the like management and control of Catholic schools on Catholics. This denominational system was most effectually wiped out by the Public Schools Act and not a vestige of the denominational character left in the school system of Manitoba. Mr. Justice Dubuc gives an accurate synopsis of the legislation.

The only question, it strikes me, we are now called upon to consider is: Does this Public School Act prejudicially affect the class of persons who, in practice, enjoyed the rights and privileges of denominational schools at the time of the union? Now what were the provisions of the Public Schools Act? Mr. Justice Dubuc likewise gives a synopsis of the Public Schools Act as follows:—

[His Lordship here read the portion of the judgment of Dubuc, J., and proceeded.]

But it is said that the Catholics as a class are not prejudicially affected by this Act. Does it not prejudicially, that is to say injuriously, disadvantageously, which is the meaning of the word prejudicially, affect them when they are taxed to support schools of the benefit of which by their religious belief and the rules and principles of their church they cannot conscientiously avail themselves, and at the same time by compelling them to find means to support schools to which they can conscientiously send their children, or in the event of their not being able to find sufficient means to do both, to be compelled to allow their children to go without either religious or secular instruction? In other words, I think the Catholics were directly prejudicially affected by such legislation; but, whether directly or indirectly, the local legislature was powerless to affect them prejudicially in the matter of denominational schools, which they certainly did by practically depriving them of their denominational schools and compelling them to support schools the benefit of which Protestants alone can enjoy.

In my opinion the Public Schools Act was *ultra vires* and the by-laws of the city of Winnipeg, Nos. 480 and 483, should be quashed and this appeal allowed with costs.

Judgment of Strong, J.

STRONG, J.

I have read the judgment prepared by the Chief Justice and entirely concur in the conclusion at which he has arrived as well as in the reasons he has given therefor. I have nothing to add to what he has said.

(*Translation.*)

Judgment of Fournier, J.

FOURNIER, J.

It is by means of an application to quash by-laws Nos. 480 and 483, passed by the municipal council of the city of Winnipeg, that the appellant has raised in this case the important question of the constitutionalty of the Act 53 Vic., ch. 38, concerning the public schools of Manitoba.

By the two by-laws passed in virtue of the new School Act and of the provisions of the Municipal Act a tax of two cents on the dollar is imposed upon the value of all property, movable and immovable, in the city of Winnipeg. The proportion of this tax appropriated to school purposes is fixed at four and one-fifth ($4\frac{1}{5}$) mills on the dollar.

The ground urged for the quashing of these by-laws is that by them a uniform tax is imposed upon Catholics and Protestants alike for the support of the public schools.

This ground is presented in the following terms :—"Because by the said by-laws the amounts to be levied for school purposes for the Protestant and Catholic schools are united and one rate levied upon Catholics and Protestants alike for the whole sum."

This question was submitted to the Hon. Judge Killam, who decided in favour of the constitutionality of the Act and of the legality of the by-laws in question. His judgment was affirmed by the majority of the Supreme Court of Manitoba. It is the last-mentioned judgment which is now submitted for the consideration of this court.

By this Act, 53 Vic., ch. 38, the system of separate schools, Catholic and Protestant, which was established in conformity with the Act granting a constitution to Manitoba, 33 Vic., ch. 3, was completely swept away after an existence of nineteen years.

It is material to the decision of this question to refer back to the circumstances which led to the admission of this province into the Canadian Confederation. First, it must be remembered that (after a rebellion which 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 which had just been pacified), it was for the purpose of establishing public peace and conciliating the people there that the Federal Government accorded them the constitution which they have enjoyed up to the present time.

The principle of separate schools introduced into the British North America Act by the 93rd section was also introduced into the constitution of Manitoba, and was declared to be applicable to the separate schools which actually existed in the territory prior to its organization as a province. The population was then divided almost equally between Catholics and Protestants, and while giving to the province the power to legislate concerning education, sec. 22, sub-section 1, nevertheless, adds to the restriction contained in sec. 93 of the British North America Act against prejudicially affecting in any way the rights and privileges conferred by law relative to separate schools, the further restriction that such legislation should not prejudicially affect separate schools existing by practice at the union.

It is upon this extension of the prohibition of section 93, which protected separate schools, the schools established by practice, that the legislature of Manitoba acted in introducing the principle of separate schools for Protestants and Catholics, in the first School Act passed after its organization. For this purpose it was provided by that Act that the Lieutenant-Governor in Council should have authority to nominate a board of education, composed of not less than ten, and not more than fourteen persons, of whom one-half should be Catholics and the other Protestants, and two superintendents, one for the Protestant schools and the other for the Catholic schools, who should be joint secretaries of the board.

The duties of the board are defined as follows :—

1st. To make from time to time such rules as should be deemed expedient for the organization of the common schools.

2nd. To choose the books, maps and globes for the use of the common schools, taking care to choose English books, maps and globes for the English schools, and French books for the French schools, but this power not to extend to the choice of books concerning religion and morality, such choice being provided for by a subsequent clause.

3rd. To change and sub-divide, with the sanction of the Lieutenant-Governor, any school district established under the Act. Sub-section 12 gave to the board authority to prescribe the books relating to religion and morality for the use of the schools. Sub-section 13: The moneys appropriated by the legislature for education shall be equally divided, one-half for the support of Protestant schools and the other for that of Catholic schools.

The first board nominated by the Lieutenant-Governor in Council was composed of the Archbishop of St. Boniface, the Bishop of Rupert's Land, several Catholic priests and Protestant clergymen of different denominations, and two lay members for each district.

The Act has been amended from time to time to satisfy the new requirements necessary when the settlement of the province was being developed and the population had increased, but the system of separate schools for Catholics and Protestants has always been maintained. The only material changes that were contained in the Act of 1875, were, that the number of members of the board was increased to 21, 12 Protestants and 9 Catholics, and the sums voted by the legislature were to be divided between Protestants and Catholics in proportion to the number of children attending the schools in each Catholic or Protestant district.

Subject to these changes the system of separate schools, and the independent action of the two sections of the board, were distinctly affirmed by the subsequent legislation. Section 27 of the Act of 1875, ch. 27, provided that the establishment in a district of a school of one denomination should not prevent the establishment of a school of another denomination in the same district. This principle was extended and made a part of the system of sections 39, 40 and 41 of the Act of 1876, ch. 1.

Such was the state of affairs which had existed in relation to education since the admission of the province of Manitoba into the union. It is by virtue of the provisions of the Constitutional Act, confirmed by an Act of the Imperial Parliament, that all the Acts of the province establishing the systêm of separate schools have been passed and carried out.

Although before the union there was not, strictly speaking, any system of public education in Manitoba yet for a long time prior to that Protestants and Catholics were respectively accustomed to maintain on their own account and at their own expense, schools which were in fact separate schools where instruction was imparted according to the principles of each denomination. In his affidavit to this effect produced in support of the grounds advanced by the appellant, the facts of which are not contested by the other side, Archbishop Taché refers to the state of affairs then existing as follows :—

"Before the Act of the Parliament of Canada passed in the 33rd year of the reign of Her Majesty Queen Victoria, ch. 3, known as the Manitoba Act, and before the Order in Council made in virtue of that Act, there existed in the territory now forming the province of Manitoba a number of effective schools for the education of children. 3. These schools were separate schools (denominational), some being regulated and controlled by the Catholic Church and the others by the various Protestant denominations. 4. The necessary means for the support of the Catholic schools were furnished in part by school fees paid by the parents of the children who attended the schools, and the rest was paid by the church from contributions by its members. 5. During this period Catholics had no interest in nor control over Protestant schools, and the Protestants had no interest in nor control over Catholic schools. There were no public schools in the sense of schools supported by the state. Catholics maintained the schools of their church for the benefit of Catholic children and were not obliged to contribute to the support of any others. In everything pertaining to education the Catholics during this period were, by usage and practice, separated from the remainder of the population, and their schools were conducted in accordance with the principles and doctrines of the Catholic Church."

In the same affidavit the Archbishop declares that the church considers the schools established under the Public Schools Act not proper schools for the education of Catholic children and that Catholic children will not attend them; that sooner than patronize these schools Catholics will prefer to go back to the system in force prior to the Manitoba Act, and that they will establish and maintain schools which will conform to the principles of their faith; that Protestants approve of the system of education established by the Public Schools Act because they resemble in every respect the schools which they maintained prior to the repeal of the former statutes which recognised the system of separate schools over which they had absolute control.

The affidavits in opposition to the motion showed that the schools existing prior to the admission of Manitoba into the union were only private schools, subject to no control on the part of the public and receiving no public subsidies; that no taxes were imposed by authority for this object, and there were no legal means of compelling the public to contribute to the support of these private schools.

The affidavits produced on each side in no way contradict each other and they give a correct idea of the situation of the schools existing in the territory which now forms the province of Manitoba. Their effect is that it is clearly proved that the schools then existing, though not established by any law, were in fact and in practice separate schools (denominational schools). It is this state of affairs which has been sanctioned by section 22, sub-section 1, of the Constitutional Act of Manitoba, by enacting that nothing in the laws which shall be passed by the legislature shall prejudicially affect any right or privilege conferred at the union by law or practice on any particular class of persons in the province, in relation to separate schools (denominational schools).

This provision is the source of the power exercised by the legislature of Manitoba by virtue of the Act 34 Vic., ch. 12, confirming and approving of the system of separate schools previously in existence. We have seen from the principal provisions of the statute above cited that the control exercised by Protestants and Catholics over their respective schools was preserved to them by the law and by the subsequent enactments until the passing of the Act 53 Vic., ch. 38.

In the session of 1890 the legislature passed two Acts on the subject of education. The first, ch. 37, abolished the board of education formerly existing, as well as the office of superintendent of education, and created a department of education formed of the executive or of a committee taken from its members, nominated by the Governor-in-Council, and of an Advisory Board composed of seven members, of whom four were to be nominated by the department of education, two by the teachers of the province and one by the council of the university. Among their other duties the Advisory Board had power to choose and prescribe text books and books of reference for the use of schools and school libraries, to define the qualifications of teachers and inspectors of schools; to name the persons who should prepare examination papers; to prescribe the form of religious exercises which should be used in the schools.

The other Act is "The Public Schools Act," ch. 38, the constitutionality of which is attacked. It revokes all statutes in force concerning education and declares, by sec. 3, that all school districts, Protestant and Catholic, and also the elections and nominations to every office, the contracts and assessments heretofore made with respect to Catholic and Protestant schools and in existence at the time of its coming into force should be subject to the provisions of the present Act. Sec. 4 continues in office the trustees existing at the time of its coming into force as if they had been appointed under the provisions of the Act. Sec. 5: All public schools shall be free, and all children from 5 to 16 years of age in rural municipalities, and from 6 to 16 years of age in cities shall have the right to attend them. Sec. 6: The religious exercises in the public schools shall be conducted in accordance with the regulations of the Advisory Board. The time for these exercises is fixed, and if parents don't wish their children to take part in them the latter shall be dismissed before these exercises begin. By sec. 7, the use of religious exercises is at the option of the school trustees for the district, and upon receipt of authority in writing from the said trustees the teachers will be obliged to hold these religious exercises. The public schools will not be sectarian, and no religious exercises will be permitted except in the manner above prescribed.

The Act provided for the establishment of school districts in the rural municipality, and in the cities and towns, for the election of school trustees, and the imposition of taxes for school purposes.

Sec. 92 declares "that the municipal council of every city, town and village shall levy and collect upon all taxable property within the limits of the municipality, in the manner prescribed in the Act and in the Municipal and Assessment Acts, such sums as shall be required by the trustees for school purposes. Sec. 108 contains, on the subject of the legislative grant for schools, the following provision: (*a*) "Every school which shall not be conducted in conformity with the provisions of this Act or of any other Act then in force, or in conformity with the regulations of the Department of Education or the Advisory Board, will not be considered a public school according to law and will receive no portion of the legislative grant." Sec. 143 directs that "teachers shall not use any other school books than those authorized by the Advisory Board, and no part of the legislative grant will be paid to schools using unauthorized books." By sec. 179: "In cases where, before the coming into force of this Act, Catholic school districts have been established such as are mentioned in the preceding section, that is, covering the same territory as a Protestant district, such Catholic school district, from the time of this Act coming into force, shall cease to exist, and all the property of such district, with its liabilities, shall belong to the public school district."

These provisions taken together have produced a complete change in the system of education; the statute has swept away not only the clauses of the former law establishing separate schools, but has even forbidden the use of the terms "Catholic and Protestant denominations." Sec. 179, in cases where a

Catholic school district covers the same territory as a Protestant district, goes the length of confiscating the property of the Catholic district and handing it over to the Protestant district designated by the name of public school.

By this analysis of the principal provisions of the Act 53 Vic., ch. 38, it will be seen that the legislature of Manitoba, having first established, in conformity with the power given to it by its constitution, a system of separate schools, has completely abolished the system and organized another directly opposed to it by which it sweeps away the right to separate schools such as had existed up to that time, substituting for it another, founded after the non-sectarian principle, excluding religious instruction from the schools and allowing the school trustees to choose the books relating to religion and morality which shall be used in the schools.

The system thus established is altogether opposed to the religious ideas of Catholics and to the doctrines of the Roman Catholic Church, and takes away from them the right recognised by the Manitoba Act to have separate schools.

Is not this legislation beyond the power of the legislature? Is it not directly opposed to sec. 22 of the Manitoba Act, and therefore *ultra vires?*

Section 93 of the British North America Act, which gives to the provincial legislatures authority to legislate on the subject of education, contains the following restriction: "Nothing in such law shall prejudicially affect any right or privilege conferred by law before the union upon any particular class of persons in the province with respect to separate schools (denominational)."

This provision was inserted in the first sub-section of section 22 of the Manitoba Act with the single alteration of the addition of the words "or practice" after the words "by law," so that this section now reads as follows:—"Nothing in such laws shall prejudicially affect any right or privilege conferred before the union by law or practice upon any particular class of persons in the province with respect to separate schools (denominational schools)."

The solution of this question, then, rests altogether upon the interpretation to be given to the words "or by practice" introduced into section 22, and which are not found in section 93 of the British North America Act. Evidently the addition of these words was not made without design, and their signification should be ascertained by the application of the rules governing the interpretation of statutes as laid down in the books.

One of the first rules is, that when the terms of a statute are susceptible of only one meaning the court cannot inquire into the intention of the legislature according to its own ideas of what it was intended to enact. *Maxwell on Statutes*, p. 6; *Re York* v. *Midland Railway Company*, 1 E. and B. 858.

When the language is precise and unambiguous, but at the same time not susceptible of a reasonable interpretation and consequently the Act cannot be enforced, the court has no right to give the words, on mere conjecture a meaning which does not belong to them. *Maxwell on Statutes*, p 23. This rule is only applicable to the case where the language is precise and susceptible of only one meaning.

The words "or practice" inserted in section 22 of the Manitoba Act have not in fact a technical meaning, although in ordinary language they have a clear and unambiguous meaning. It is argued, however, that they signify that Roman Catholics, although compelled to contribute to the support of public schools, may still maintain separate schools as private schools. Such a construction is very narrow and one entirely opposed to the terms of section 22. It is argued also, that they assure to them exemption from the obligation to attend the public school, but in my opinion the most liberal and sensible interpretation beyond doubt is that separate schools being, as a matter of fact, in existence at the time of the union, these words were introduced into the Manitoba Act to give them a legal existence and to prevent the local legislature from legislating to their detriment.

If the words "by practice" were susceptible of different interpretations the old rule of interpretation could be applied which declares that what might be said to be contained in the letter of the statute is not within the bounds of the Act if it does not conform to the intention of the legislature *Maxwell*, p. 24; *Bacon's Abr.*, *Statute*, (1) E. It is, then, the intention of the legislature which should be looked for in order to gain a correct idea of the meaning of the words "by practice." At p. 27, Maxwell says further: "To arrive at the real meaning, it is always necessary to take a broad general view of the Act, so as to get an exact conception of its aim, scope and object. It is necessary, according to Lord Coke, to consider: 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy." This rule was enunciated in Heydon's case, 3 Rep. 7, decided in the reign of Queen Elizabeth, and has been followed ever since.

It is often necessary, in order to ascertain the real meaning of the words used in a statute, to go back to the history of the subject-matter and examine the particular circumstances which induced the legislature to adopt the provision.

In the case of the *River Wear Commissioners* v. *Adamson* (3 App. Cas.) Lord Blackburn says at page 756:—

"I shall state as precisely as I can what I understand from the decided cases, to be the principles on which the courts of law act in construing instruments in writing, and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But from the interpretation of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object appearing from the circumstances, which the person using them had in view, for the meaning of words varies according to the circumstances with respect to which they were used."

"In the interpretation of a statute," says Maxwell, at p. 30, citing *Graham* v. *Bishop of Exeter*, Rep. by Moore 462, "the interpreter, in order to understand the subject-matter and the scope and object of the enactment, must, in Coke's words, ascertain what was the mischief or defect for which the law had not provided, that is, he must call to his aid all those external or historical facts which are necessary for this purpose, and which led to the enactment, and for these he may consult contemporary or other authentic works and writings."

In *Attorney-General* v. *Sillem*, 2 H. & C., Lord Bramwell expressed the same view when he said at p. 529: "It may be a legitimate mode of determining the meaning of a doubtful document to place those who have to expound it in the situation of those who made it, and so, perhaps history may be referred to, to show what facts existed bringing about a statute, and what matters influenced men's minds when it was made."

Similar language was used by L. J. Turner in *Hawkins* v. *Gathercole* (6 De G., M. & G. 1.) He says at pp. 20 and 21: "In construing the Acts of Parliament, the words which are used are not alone to be regarded. Regard must also be had to the intent and meaning of the legislature. The rule upon the subject is well expressed in the cases of *Stradling* v. *Morgan*, Plowd. 204; and also in *Eyston* v. *Studd*, Plowd. 467. In determining the question before us, we have therefore to consider not merely the words of the Act of Parliament, but the intent of the legislature to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign (meaning extraneous) circumstances, so far as they can justly be considered to throw light upon the subject."

In *Holme* v. *Guy* (5 Ch. D. 905), Jessel M. R., says: "The court is not oblivious of the history of law and legislation. Although the court is not at liberty to construe an Act of Parliament by the motives which influenced the legislature, yet when the history of law and legislation tells the court what the object of the legislature was, the court is to see whether the terms of the section are such as to fairly carry out that object and no other, and to read the section with a view to finding out what it means, and not with a view of extending it to something that was not intended."

To establish the real meaning of the words "or by practice," these authorities justify us in examining the circumstances under which, and the object for which, these words were introduced into the Act.

The 93rd section of the British North America Act gives to the legislature of each province the exclusive power to make laws concerning education, subject, however, to certain restrictions, the first of which is that nothing in those laws shall prejudicially affect any right or privilege which any class of persons has by law. Sub-section 1 of the 22nd section of the Manitoba Act adds to this prohibition that of prejudicing the rights conferred *by practice* on any class of persons as well as those conferred by law.

What was the reason of the introduction of this restriction into sec. 93, and with what intention was it extended to rights and privileges which rested only upon practice in Manitoba at the time of the passing of the Act 33 Vic., ch. 3?

When the provinces of Ontario, Quebec, Nova Scotia and New Brunswick were united each had a complete system of public schools established by law. In Ontario and Quebec the law recognized, in favour of minorities of a different creed from that of the majority, the right to have separate schools. In establishing these schools the minorities were relieved from contributing to the support of the public schools and were entitled to a proportionate share of the legislative grant.

In Upper Canada (Ont.) the question of separate schools had formed the subject of active and fierce struggles between Protestants and Catholics, but it was eventually set at rest by the School Act of 1863, which re-established peace and harmony in the province.

In Nova Scotia and New Brunswick there was a different state of affairs; although, as a matter of fact, the Catholics there had their own schools under the law relating to common or parish schools, yet these schools were not recognized as separate schools, and the Catholics had no right or privilege by law in that respect.

The authors of Confederation, in order to avoid a renewal of the disturbance which had existed over this matter in the old province of Canada between Catholics and Protestants, while recognizing in the provinces the sole right to legislate with respect to education, wisely adopted provisions for the protection of the rights and privileges of minorities by prohibiting all legislation which would work injury to the rights and privileges existing with respect to education.

This restriction was to be applied to every new province subsequently coming into the union as well as to those which originally formed part of it.

A question concerning the extent of this restriction was raised in New Brunswick. The law in force on this subject at the date of the Confederation was the Parish Schools Act of 1858. In 1871 the legislature passed an Act in respect to common schools, to which the Catholics made strong objections. Petitions were sent to the legislature and to the Parliament of Canada to prevent it coming into force. Eventually the matter was brought before the Supreme Court of New Brunswick, and that court, in a very elaborate judgment delivered by Sir W. J. Ritchie, then Chief Justice of the Supreme Court of New Brunswick, decided that the Catholics of New Brunswick had not by law, at the time of Confederation, any right or privilege with respect to separate schools. In the course of his observations the Hon. Chief Justice thus expresses himself: "Where is there anything that can, with propriety, be termed a legal right? Surely the legislature must have intended to deal with legal rights and privileges. How is it to be defined? How enforced?" And further on: "If the Roman Catholics had no legal rights, as a class, to claim any control over, or to insist that the doctrines of their church should be taught in all or any schools under the Parish Schools Act, how can it be said (though as a matter of fact such doctrines may have been taught in a number of such schools) that, as a class of persons, they have been prejudicially affected in any legal right or privilege with respect to 'denominational schools,' construing these word in their ordinary meaning, because under the Common Schools Act of 1871 it is provided that the schools shall be non-sectarian ? "

This decision was afterwards affirmed by the Privy Council. It is easy to see, by the reasons given in support of this decision, and by the importance attached to the expression "legal rights," that if the rights which the Catholics had *by practice*, had been specially mentioned, as well as those existing by law, the decision would have been different.

Mr. Ewart, counsel for the appellant, having remarked that the words "by practice" were introduced into the Manitoba Act to avoid the difficulties which had arisen in New Brunswick, the Attorney-General, counsel for respondent, stated that the School Act of New Brunswick was passed in 1871, a year after the Manitoba Act was passed, but he should have added that the proposed law had been for some time before the legislature and the public, and had been made the subject of very vigorous debates. The Hon. Geo. E. King had introduced this measure for the first time in 1869 and a second time on 24th February, 1870, when it was referred to a Committee of the Whole House and discussed on 17th, 22nd and 31st March and 1st April. The Act did not come into force until a year after it was passed.

The Manitoba Act, passed by the Parliament of Canada, became law on the 12th May, 1870, more than one month after the Schools Act of New Brunswick was discussed, and more than a year after the first introduction of that Act into the legislature.

Would it be at all extraordinary if the discussion which had taken place upon this subject at various times, had been published, publicly commented upon and had come to the knowledge of the members of the Government of Canada and of the House of Commons ?

It is certain that the disturbance produced by this Bill invaded the Commons, and it was, no doubt, for the purpose of preventing a renewal of such disturbance that the words "by practice" were added in the 22nd section of the Manitoba Act.

The existence of separate schools in the territory of Manitoba before the organization of the province, was well known, as well as the fact that no law existed to protect Catholic minorities or those of Protestants who might wish to preserve their separate schools. These facts, it may be presumed, were known to the legislators. As there was, then, no law in existence with respect to separate schools, nor any other kind of schools, the first sub-section of section 93 of the British North America Act, or its introduction into the Manitoba Act, would have been of no avail. The Catholics of that province would have found themselves in a worse position than those in New Brunswick, for there, at all events, as was stated in the judgment in Renaud's case, the Catholics, though without rights established by law, could, however, have had their doctrines taught in the existing schools.

The framers of the Manitoba Act seem to have been impressed by this state of affairs and it was, no doubt, to remedy it that they inserted in sec. 22 the words "by practice," which are not found in sec. 93, for the purpose of afterwards securing to Catholic or Protestant minorities the right to separate schools which they then enjoyed by practice. The legislature of Manitoba so thoroughly appreciated the intention of the Federal Parliament in introducing the words "by practice" into the Manitoba Act, that by its first statute with respect to schools, it established a complete system of separate schools, Catholic and Protestant, which has existed for nineteen years. Its interpretation of the words "by practice" is in accordance with the spirit of the legislation and the rules of interpretation.

If clause 22 had only contained the terms of sub-section 1 of sec. 93 it would not have protected the rights of the minorities, because the terms "rights and privileges *by law*" would not have been applicable to the state of affairs existing in Manitoba where separate schools had no legal existence though they had been established for a long time *by practice and usage.*

The addition of the terms "by practice" was essential to meet the case which it was desired to provide for.

If it is a fact that these words have no technical meaning it is none the less a fact that under the circumstances in which they were used they have a clear and precise meaning and exactly cover the idea which it was intended to express of a matter which, though having no sanction *by law* yet existed in fact *by usage*, and the *custom* of the country. It is expressed in ordinary language and should be construed by its ordinary and popular meaning. The terms "by law" and "by practice" evidently signify different things and the addition of the words "by practice" makes it clear that the legislature intended to extend the restriction so as to make it applicable to the peculiar condition of the province. These words have not been placed there inadvertently and without purpose. The position of the separate schools existing in fact was made known to the framers of the Act at all events by the delegates sent to regulate the terms of admission of the province into Confederation. The question, no doubt, was thoroughly discussed and it was for the purpose of finally settling it that the words "by practice" were added in sec. 22 in order to prohibit all legislation to their prejudice.

It would be absurd to say that the privilege guaranteed to Catholics by the words "by practice" could be satisfied by allowing them to have separate schools in the shape of private schools carried on at their own expense. As such privilege exists at common law no legislation would be required to secure it and the expression "by practice" would then be entirely abortive and without meaning. While the Federal Parliament knew of the existence in the territory of separate schools, and that there was no law authorizing them, and was willing to secure to them a legal existence after the union, it also knew that the provisions of the British North America Act alone were not sufficient for that object. It is, no doubt, for this reason that section 93 was modified by the addition of the words "by practice."

This, then, is a provision which, so far from having no meaning, has been wisely inserted to supply an important omission which would have existed at the organization of the province.

We may here then apply the rule which directs that when the language of an Act is susceptible of two meanings, one of which would be absurd and the other reasonable and salutary in its effect, the latter should be adopted as being in accord with the intention of the legislature.

In the case of the *Queen* v. *Monk* (2 Q. B. D. 555), Brett, L.J., says: "When a statute is capable of two constructions, one of which will work a manifest injustice, and the other will work no injustice, you are to assume that the legislature intended that which would work no injustice." Lord Blackburn expresses the same opinion in the case of *Rothes* v. *Kirkcaldy Waterworks Commissioners*, 7 App. Cas. 702, when he says: "I quite agree that no court is entitled to depart from the intention of the legislature as appearing from the words of the Act, because it is thought unreasonable, but when two constructions are open, the court may adopt the more reasonable of the two."

It is easy to see which of these two constructions is the more just and reasonable. If the construction put upon the words "by practice" was not sufficient to give them a right to maintain their separate schools, Catholics would be taxed for schools which they could not attend and of which Protestants would have the sole benefit, while, on the contrary, by giving the words "by practice" their true construction, Catholic schools will be recognized by law. These words "by practice" have, beyond doubt, been introduced into the Manitoba Act to secure to those who desire it the right to maintain their separate schools and to give them the sanction of law.

These reasons seem to me sufficient to prove that the Act in question constitutes a clear contravention of the provisions of sec. 22, sub-section 1, of the Manitoba Act which forbids all legislation calculated to prejudicially affect separate schools.

There is another rule of construction which directs that in order to correctly interpret a statute it should be considered as a whole and its various provisions compared one with another so as to ascertain its true spirit. The Manitoba Act does not deal with the subject of separate schools in sec. 22 only; there are, indeed, a number of other provisions on this subject, taken in part from sec. 92 of the British North America Act, the object of which evidently is to protect the exercise of the right to separate schools by the first section.

Sub-section 2 allows an appeal to the Governor-General in Council from every act or decision of any provincial authority affecting any of the rights or privileges of the Protestant or Roman Catholic minorities of Her Majesty's subjects, relative to education.

Sub-section 3: In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the execution of the provisions of this section is not made, or in case any decision of the Governor-General in

Council upon any appeal under this section is not duly executed by the proper provincial authority, then, and in every such case, and so far only as the circumstances of each case shall require, the Parliament of Canada shall have power to pass remedial laws for the due execution of the provisions of this section, as well as of any decision of the Governor-General in Council under the authority of this same section.

Sub-section 1, in speaking of separate schools, provides that no prejudice shall be worked to a right or privilege existing by law *or practice* on the subject of these schools; the second gives a right of appeal from every Act or decision of the legislature or any other provincial authority calculated to affect the rights or privileges of Catholic or Protestant minorities on the subject of education. If these minorities have any rights or privileges on the subject of education they are, beyond doubt, those which relate to their separate schools. It is certain, then, that they have rights and privileges on this subject since the law gives a right of appeal to protect them against every injury which operates to their prejudice. Why should an appeal have been given to them if they have no right with respect to separate schools? Is it not, on the contrary, because they were already in possession of this right, by practice, that Parliament has given it the sanction of law by this provision in order to protect them against every injury by the legislature or any other provincial authority.

The construction given to the words "by practice" is, therefore, found to be confirmed by the other provisions of section 22 so as to leave no doubt as to their meaning.

I am therefore of opinion that the Act 53 Vic., ch. 38 (Man.) with respect to public schools is *ultra vires*, and that the two by-laws passed by authority of that Act are illegal and ought to be set aside and the appeal allowed with costs.

(*Translation.*)

TASCHEREAU, J.

Judgment of Taschereau, J.

The appellant by the proceedings taken in this case attacks the constitutionality of the Public Schools Act passed by the legislature of the province of Manitoba in 1890. The proceedings taken before the provincial courts, and the manner in which the question has been submitted to us, have already been referred to at length by my learned colleagues who have just given their opinion, and it would be a waste of time to repeat them. The question of law itself is narrowed down to a small compass, for the respondent and the Attorney-General of the province in their factum and in their argument before this court, as well as the learned judges of the court below, concede that the Catholics of the province are not, and could not be deprived, by the Act in question, of the right which they always had to have separate schools, and could not be obliged to send their children to the public schools. It is purely on the provisions of the statute which impose upon the Catholics a tax for the support of the public schools that there is any controversy.

RECORD.

In the Supreme Court of Canada.

Case.

Judgment of Taschereau, J., *—continued.*

Section 22 of the Act of 1870, constituting the province of Manitoba, reads as follows in the French version, which it must not be forgotten is the law as well as the English version :—

" In the province the legislature may exclusively make laws in relation to education, subject and according to the following provisions: Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons may have by law or practice (*ou par la coutume*)." These are precisely the words used in the 93rd section of the British North America Act, with the simple addition of the words "or practice" (*ou par la coutume*)."

It must therefore be the *rights* and *privileges* that the Catholics of that part of the country enjoyed *by custom* at the time of the union in reference to the denominational schools (for there were none *by law* on the subject-matter) which cannot be interfered with by the legislature, the power of the legislature in the matter of education being subject to the above restriction. This could not be controverted, and the learned Attorney-General of the province has become a party to the appeal in this case only to contend that the statute, passed by the legislature, although enacting that the appellant (and with him all the Catholics of the province) is bound to contribute his share of the tax imposed for the support of the public schools, does dot in any wise prejudice *any right or privilege* which they enjoyed *by custom.* It is necessary, therefore, to first ascertain what evidence there is in the case in reference to such custom or practice in that part of the North-west Territories prior to the union. His Grace the Archbishop of St. Boniface, in an affidavit filed in the proceedings by the appellant, described it as follows :—

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

" 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.

" 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 the Roman Catholic children, and were not under obligation to, and did not contribute to the support of any other school.

" In the matter of education, therefore, during the period referred to, Roman

Catholics were, as a matter of custom by practice, separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth.

"Roman Catholic schools have always formed an integral part of the work of the Roman Catholic Church. That church has always considered the education of the children of Roman Catholic parents as coming peculiarly within its jurisdiction. The school, in the view of the Roman Catholics, is in a large measure the 'children's church,' and wholly incomplete and largely abortive, if religious exercises be excluded from it. The church has always insisted upon its children receiving their education in schools conducted under the supervision of the church, and upon being trained in the doctrines and faith of the church. In education, the Roman Catholic Church attaches very great importance to the spiritual culture of the child, and regards all education unaccompanied by instruction in its religious aspect as possibly detrimental and not beneficial to children. With this regard the church requires that all teachers of children shall not only be members of the church, but shall be thoroughly imbued with its principles and faith; shall recognize its spiritual authority and conform to its directions. It also requires that such books be used in the schools, with regard to certain subjects, as shall combine religious instructions with those subjects, and this applies peculiarly to all history and philosophy."

His Grace further swears that:

"The church regards the schools provided for by 'The Public Schools Act,' and being chapter 38 of the statutes passed in the reign of Her Majesty Queen Victoria, in the 53rd year of her reign, as unfit for the purpose of educating their children, and the children of Roman Catholic parents will not attend such schools. Rather than countenance such schools, Roman Catholics will revert to the system of operation previous to the Manitoba Act, and will establish, support and maintain schools in accordance with their principles and faith as aforementioned.

"Protestants are satisfied with the system of education provided for by the said Act, 'Public Schools Act,' and are perfectly willing to send their children to the schools established and provided for by the said Act. Such schools are in fact similar in all respects to the schools maintained by the Protestants under the legislation in force immediately prior to the passing of the said Act. The main and fundamental difference between Protestants and Catholics with reference to education, is, that while many Protestants would like education to be of a more distinctly religious character than that provided for by the said Act, yet they are content with that which is so provided and have no conscientious scruples against such a system; but Catholics, on the other hand, insist and have always insisted upon education being thoroughly permeated with religious aspects. That causes and effects in science, history, philosophy and aught else should be constantly attributed to the Deity and not taught merely as causes and effects.

"The effect of 'The Public School Act' will be to establish public schools in every part of Manitoba where the population is sufficient for the purpose of a school, and to supply in this manner education to children free of charge to them or their parents further than their share in common with other members of the community of the amounts levied under and by virtue of the provisions contained in the Act.

"In case Roman Catholics revert to the system in operation previous to the Manitoba Act, they will be brought in direct competition with the said public schools; owing to the fact that the public schools will be maintained at public expense, and the Roman Catholic schools by school fees and private subscriptions, the latter will labour under serious disadvantage. They will be unable to afford inducements and benefits to children to attend such schools equal to those afforded by public schools, although they would be perfectly able to compete with any or all schools unaided by law-enforced support."

John Sutherland and Alexander Polson, in the two affidavits produced by the respondent filed in answer to the petition of the appellant, also described how matters stood in the province in reference to schools prior to the union, as follows:—

"That schools which existed prior to the province of Manitoba entering Confederation were purely private schools, and were not in any way subject to public control, nor did they in any way receive public support.

"No school taxes were collected by any authority prior to the province of Manitoba entering Confederation, and there were no means by which any person could be forced by law to support any of the said private schools. I think the only public revenue of any kind then collected was the customs duty, usually 4 per cent."

The only possible conclusion of fact to be drawn from these affidavits, which form the only evidence of record on this point, is that prior to the union, the Catholics residing in that territory by custom, enjoyed not only the privilege of having their schools, but also, negatively and as a correlative and an essential part of such privilege, that of not being obliged to contribute to the support of any other system of education. The fact of not being assessable for the support of other schools than their own, was the privilege which they had. The privilege alone of having their private schools would have been illusory—in fact, it could not be said to be a *privilege*; the right to have private schools is a common law right. To retain a custom or practice which would have enabled them to support their own schools as well as the schools of others, would have been a singular privilege. In fact, the privilege then ought more properly to be said to belong to the class of persons whose schools would have been supported by the Catholics. This, it seems to me, is in effect what the respondent says he is willing to concede now to the Catholic minority in the province:—

"The statute of 1890, says the respondent, obliges, it is true, the Catholics to contribute to the support of public schools but it does not compel them to send their children to these schools, and does not prevent them either from establishing separate schools, and therefore, does not prejudice any of the rights or privileges enjoyed by them by custom prior to the union, and the statute then is *intra vires*." Such an argument is, in my opinion, entirely erroneous. As a matter of fact I would not believe that it was seriously relied on, were it not that the provincial court has adopted it. It virtually amounts to this: to allow the majority, which is non-Catholic, to say to the Catholic minority, "You have the privilege of having your schools, you can retain it, provided you help to support ours; you cannot send your children to our schools, but we do not ask that you should, all we want you to do is to pay for the education of our children."

I have looked in vain through the record to come to the conclusion that this was *the custom* or *practice* prior to the union. The contrary, to my mind, is clearly proved. Can it be possible to imagine the practical existence of such a system as the one that the respondent would like to establish in Manitoba, and at the same time say that the right to have separate schools exists, a right which could not be denied under section 22 of the Act constituting the province of Manitoba? It is evident that the legislature by this section, foreseeing that necessarily in the near future, one or the other of the two classes, Protestant or Catholic, would preponderate by its numbers in the projected province, provided for either case. At that time they were about equally divided, for if we refer to the legislation which was enacted by the new province on this subject-matter, in 1871, we find that it was provided that the Board of Education should have an equal number of Protestants and Roman Catholics, with a superintendent for each class, also dividing equally between the two classes the Government subsidy. It was when this was the actual state of affairs that Parliament provided, by section 22, for either of these eventualities. By the first sub-section, which I have given at length, Parliament secures to the minority, either Protestant or Catholic, as the case may be, the right which they had at the time by custom (or practice), and by sub-section 2 gives a right of appeal to the Governor-General in Council in respect to any legislation which might be made in relation to their rights on this matter. If it had happened that the Protestants had been in the minority they certainly could not have been forced to contribute to the support of Catholic schools. They would immediately have claimed the right to have their schools, as their co-religionists have in the province of Quebec, *the right* or *privilege* in its entirety and without prejudice, that is, with the exemption of being taxed for the Catholic schools. The Catholics of Manitoba, who are to-day in the minority, claim but the same right and the free exercise of such right. I am of the opinion that their claim is well founded. They have the same right to establish their system of schools as their co-religionists have in the province of Ontario, or on the same principle.

It is with this object in view and this object alone—at least, I cannot suppose any other—that the special provision in reference to denominational schools, reproduced from the British North America Act, was inserted in the Act constituting the province of Manitoba, adding the words or "by custom," or "by practice," words which had become necessary, as I have already stated, to complete the idea of the legislature and to provide for its due execution, it being a well-known fact that at that time there existed no law in the territory on the subject-matter, and that all was regulated by custom and by practice only.

The corporation of the city of Winnipeg (respondent) and the Attorney-General, whilst in the abstract they are willing to recognize to the minority the right to have separate schools, yet they want to interfere with the free exercise of such right. The whole of the Government grant to education is by the statute in question appropriated to the public schools or free schools; nothing is granted to the minority, sec. 108. Nevertheless this grant is taken out of the public revenue to which the minority has contributed its *pro ratâ* proportion, and this fact is the sole basis of His Grace the Archbishop of St. Boniface's complaint in the 11th paragraph of his affidavit, but upon which an erroneous interpretation has been put by some. His Grace does not fear for the Catholic schools the competition of the public schools, if the legislature will only place them on the same footing before the law. What His Grace does assert is that if it is intended to support the public schools at the cost of the state and leave the Catholic schools to be supported by voluntary contributions, the latter will find themselves in a most disadvantageous position. I do not think it is necessary to add anything to demonstrate the truth of his assertion. But, not only does the statute in question, I repeat, give to the public schools the whole of the Government grant, but also imposes upon Catholics direct taxation for their support. Nay, more, a tax is imposed for the support of the public schools, not only on all private property belonging to Catholics, but even on school-houses and other property destined by Catholics for the education of Catholic children. The statute goes so far by sec. 174 as to order the confiscation in certain cases for the benefit of the public or free schools, of educational establishments belonging to the Catholic minority.

I am of opinion that such legislation causes a prejudice to the *rights* and *privileges* belonging to this minority prior to the union, and therefore is *ultra vires.*

The respondent, in answer to the appellant's petition, makes use also of the following ground of argument: "It is possible," he says, "that this legislation does cause a prejudice to the rights of the minority, but nevertheless it is within the powers of the legislature of the province of Manitoba; because, for example," he continues, "a municipal tax or other tax may indirectly more or less deprive Catholics of the necessary funds to support their schools, yet you must submit." This reasoning cannot prevail, for it is based on something that does not exist. By section 22 of the Federal Act of 1870, the Provincial Legislature is specially prohibited from causing any prejudice to the rights of the minority when dealing with the subject-matter of education. Then again in the case of a municipal tax, the minority is on a perfect footing of equality with the majority and receives its proportionate share of what is produced by the tax; whilst in the present case the appellant contends that he is prejudicially affected by being obliged to pay for others and to contribute for the support of schools from which he receives no benefit. This is what in reality he complains of. You concede in theory his right to a system of schools, but you place obstacles in the way of the exercise of the right. If the state levies, for example, $20,000, or any other amount on this minority for the support of the public schools, this virtually it seems to me deprives Catholics of so much of their means for the support of their own schools. Now, to place obstacles to the exercise of a right, to interfere with it or obstruct it, is, in itself, clearly to cause a prejudice to that right. And this is what the legislature of Manitoba could not do under the unequivocal terms of the one statute which confers upon it the power to enact laws respecting education.

I am of opinion to allow the appeal.

PATTERSON, J.

Judgment of Patterson, J.

The Statute of Canada (33 Vic., ch. 3) which gave its constitution to the province of Manitoba declares in section 22 that, in and for the province of Manitoba, the legislature "may exclusively make laws in relation to education, subject and according to the following provision :—

"(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."

"Law" here evidently means statute law. The basis of the constitution given to the new province was the British North America Act, 1867. It is declared that the Act shall apply to the province, excepting, amongst other things, such provisions as are varied by the Manitoba Act (33 Vic., ch. 3, s. 2).

Section 93 of the British North America Act, which dealt with the subject of provincial legislation respecting education, was not intended to be applied to Manitoba without some variations. It was therefore re-written to form section 22 of the Manitoba Act, the original language being adhered to wherever no variation of the provisions was intended. In this way I suppose it was that section 22 happens to refer to rights and privileges with respect to denominational schools which any class of persons had in the province by law, when there was no statute touching such schools that affected Manitoba. The reference in section 93 was to statutory rights and privileges existing in some of the provinces entering into the confederation. In section 22 it meant nothing. If that section, which is a transcript of section 93 with the interpolation of the words "or practice," had not introduced those words, it would have been inoperative for want of something to operate on. It is not an example of very precise or accurate drafting. The first question for us to decide is what the added words "or practice," mean, or whether they also mean nothing. "Which any class of persons have by law or practice"—in grammatical effect "have by law or *by* practice."

What is meant by having *by practice?*

To have *by law* here means to have under some statutory provision, the preposition "by" pointing to the law or statute as the means or instrument by which the right or privilege was acquired. Are we obliged to understand the term "by practice" as intended to signify acquired by practice or user, involving some idea of prescription? It is arguable and has in effect been argued that

RECORD.

In the Supreme Court of Canada.

Case.

Judgment of Patterson, J. —*continued.*

that is the proper understanding of the term—that the word "by" must have the same force when understood in the one place as when expressed in the other, leading to the conclusion that, inasmuch as no rights or privileges in respect of denominational schools had been acquired in the territory in that manner, the clause in question is wholly inoperative.

The construction thus contended for may be capable of being supported by strict reasoning from rules of grammar or rhetoric, but it is not, in my judgment, appropriate to this clause. We have seen that precision and accuracy are not characteristics of the clause as a whole, and we cannot properly single out these particular words "by practice" for very critical and pedantic treatment.

We must credit the legislature with having intended that these words, which were added to those taken from section 93, should have some effect. I take the meaning of the clause to be that rights and privileges in respect of denominational schools existing by statute, if any such there had been, and rights actually exercised in practice at the time of the union, were not to be prejudicially affected by provincial legislation.

There were denominational schools maintained by different classes of persons, some by the Roman Catholic Church, others by Protestants. The right to establish and maintain such schools was not derived from statutory law. It was incident to the freedom of British subjects and was independent of and anterior to legislation. The Manitoba Act did not assume to preserve that right merely as an abstract and theoretical right, but it did so in favour of such classes of persons as at the union were practically exercising it. If this construction seems to do any violence to the language of the clause it is only by treating the word "by" where it is understood before the word "practice" as not having precisely the same force as when expressed before the word "law." But as once remarked by one of the most eminent of English judges, Lord Stowell, when Sir W. Scott, "Courts are not bound to a strictness at once harsh and pedantic in the application of statutes." (*The Reward*, 2 Dods. Adm. Rep. 269.)

Dicta to the same effect, as well as examples of their application, abound in the books. Thus in a recent case, *Salmon* v. *Duncombe* (L. R., 11 App. Cas., 627), we find it laid down in the judgment of the Judicial Committee, that where the main object and intention of the statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of law, except in the case of necessity or the absolute intractability of the language used.

"The more literal construction of a statute," said Lord Selborne, in *Caledonian Ry. Co.* v. *North British Ry. Co.*, (L. R., 6 App. Cas., 114), "ought not to prevail if it is opposed to the intentions of the legislature, as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated."

In my opinion, the Roman Catholics are a class of persons who had, within the meaning of the statute, rights and privileges with respect to denominational schools in the province of Manitoba at the union.

The rights and privileges preserved by the statute were only those peculiar to schools as denominational schools, or which gave the schools that character. Chiefly, they were the education of their children, under the control and direction of the church, and the maintenance of their schools for that purpose.

A point is made in the affidavit on which these proceedings are founded upon the fact that the schools of the Roman Catholic Church were maintained by the Catholics by contributions in some form, as fees for tuition, or as contributions to the general funds of the church, or possibly, though we are not told that it was so, as subscriptions for school purposes, and the schools of the Protestants were maintained by Protestants, neither body contributing, or being liable to contribute, to maintain the schools of the other. The fact is not without importance from a point of view which I shall presently notice, but I am not prepared to hold that the immunity enjoyed from liability to support schools of another denomination, at a time when taxation for school purposes was unknown in the territory, was a privilege in respect of denominational schools.

The provincial statute of 1890, which is attacked as *ultra vires*, renders every taxpayer liable to assessment for the support of the public schools. These schools are not denominational, and they are objectionable to the Roman Catholic Church, which insists upon the supervision of the education of the children of its members. The effect of the new statute and the grounds of objection to it are explained in the affidavit of Archbishop Taché. I refer particularly to paragraphs 8, 10 and 11. Rather than countenance the public schools, he tells us in the 8th paragraph, Roman Catholics will revert to the system in operation previous to the Manitoba Act, and will establish, support and maintain schools in accordance with their principles and faith. In other words, they will assert and act upon the privilege or right in respect of denominational schools which, as I construe section 22, they had as a class at the union.

It is thus in effect asserted on the part of the applicant, that the right or privilege has not been destroyed by the Public Schools Act of 1890. The same assertion is made on the part of the respondents, who make it one of their grounds in support of the by-laws which are attacked, or rather in support of the provincial statute. But the right or privilege may continue to exist and yet be injuriously affected. It is not the cancelling or annulling of the right that is forbidden. The question is, does the statute of 1890 injuriously affect the right? That it does so appears to me free from serious doubt.

In one form or another the members of the church supported the schools of the church. As a class of people they bore the burden. We are not concerned to inquire how the burden was distributed among the individual members, or whether each one bore some part of it. The privilege in question appertained to the class of people, and the burden was borne by the class. The bearing of the burden was essential to the enjoyment of the privilege. It is the maintenance of a school that is of value to the community or class rather than the abstract or theoretical right to maintain it. In other words, the value of the right depends upon the practical use that can be made of it. Whatever throws an obstacle in the way of that practical use prejudicially affects the right. It is not conceivable that in any community, and notably among the settlers in a region like Manitoba, a burden of taxation for the support of public schools can be imposed on the people of any religious denomination without rendering it less easy for the same people to maintain denominational schools. The degree of interference is immaterial. If it occurs to any extent the right to maintain the denominational school is injuriously affected.

It has been objected that the argument against the public school tax on the ground of its making the people less able to support their denominational schools involves the denial of the right to impose ordinary municipal taxes, because those taxes also absorb their share of the means of the taxpayers. The objection is aside from the issue. The provision of the statute relates only to legislation respecting education, and the restriction is upon the power to make laws on that subject.

It is, however, merely a question of pecuniary ability to do one's share in supporting a denominational school in addition to paying the public school tax. Assuming the ability in the case of every individual belonging to the denomination, which is an extravagant assumption, we must remember that one payment is compulsory and the other voluntary. When a man has, under compulsion, paid his money for the support of the public school, it is natural that he should be less willing to avail himself of the privilege of paying for the support of the other, though his right to pay as well as his ability remain. The contest is over the right or privilege, not of the individual, but of the class of persons.

We are familiar with the expression "injuriously affected" as used in the compensation clauses of the Railway Acts and in the English Lands Clauses Act. It would be labour lost to cite cases turning upon the application of the provisions for compensating persons whose lands are injuriously affected by work done under sanction of law. They are very numerous, and the English cases will be found collected in Cripps on Compensation (2nd Ed., ch. 9) and several other treatises. The claim to compensation failed in many of the cases in which lands were injuriously affected, for reasons arising on the statutes under which the claim was made, as, *e.g.*, because the injury was caused by an act that would not have given a right of action at common law, or because it was caused by the operation only, and not by the construction of the work; but all the cases agree in recognizing as something that injuriously affects a man's property whatever interferes with his convenience in the enjoyment of it or of any right in respect of it, or prevents him from enjoying it to the best advantage, and whether the injury happens to be permanent or only temporary. The same principle makes it imperative to hold that the right of a class of persons with respect to denominational schools is injuriously affected if the effect of a law passed on the subject of education is to render it more difficult or less convenient to exercise the right to the best advantage. I mean the direct effect of the law, and I regard the prejudice to the denominational school which is worked by making those to whom it looks for support pay the school tax as a direct effect of the statute. There may be indirect results by which the denominational school may suffer in its prestige or prosperity, yet which cannot be taken to bring the statute under the censure of section 22. One of these, viz., the competition of the public schools, is alluded to in the eleventh paragraph of His Grace the Archbishop's affidavit. I am not quite sure that I fully understand that paragraph. I am not sure whether the objection it indicates extends to the establishment of any schools at the public expense, or only to the assessment of Roman Catholics for the support of public schools. I shall, therefore, merely say that according to my present opinion, a public school may, by reason of superior equipment or of other advantages, compete with a denominational school to the disadvantage of the latter without thereby affording just cause for complaint.

Upon the grounds which I have thus discussed, I am of opinion that the Act of 1890 transgresses the limits of the power given by the 22nd section of the Manitoba Act, and that the assessment which the appellant is resisting is illegal.

It may not be out of place to remark, though it is scarcely necessary to do so, that there is no general prohibition of legislation which shall affect denominational schools. The prohibition relates only to the rights and privileges of classes of persons and to legislation which injuriously affects such rights. There is, therefore, room for legislative regulation on many subjects, as, for example, compulsory attendance of scholars, the sanitary condition of school-houses, the imposition and collection of rates for the support of denominational schools, and sundry other matters which may be dealt with without interfering with the denominational characteristics of the school, and which, I suppose, were dealt with in the statutes of the province that were repealed in 1890 to make way for the system now complained of.

I am of the opinion that the appeal should be allowed and the by-laws of the city of Winnipeg, Nos. 480 and 483, quashed, the appellant having his costs of the appeal and also of all proceedings in the courts below.

LOGAN *vs.* THE CITY OF WINNIPEG.

Logan *v.* City of Winnipeg.

Affidavit of Bishop of Rupert's Land, sworn 3rd Dec. 1891.

AFFIDAVIT.

In the Queen's Bench.

In the matter of the application to quash by-law 514 of the city of Winnipeg.

I, the Most Reverend Robert Machray, Doctor of Divinity, of the city of Winnipeg, in the province of Manitoba, the Bishop of Rupert's Land, make oath and say:

1. In the year 1865 I was appointed by the Crown, on the recommendation of the Archbishop of Canterbury, under the sign manual of the Queen, Bishop of Rupert's Land.

2. The diocese of Rupert's Land, in 1865, covered the whole of the North-west Territories of Canada, the district of Keewatin, the present province of Manitoba and that portion of the westerly part of the province of Ontario lying westerly of the height of land and running between Rat Portage and Port Arthur.

3. Subsequently the diocese was sub-divided into eight bishoprics, one of which, still known as Rupert's Land, consists of the province of Manitoba and that portion of the province of Ontario referred to above. The whole of the said original diocese of Rupert's Land is now called the ecclesiastical province of Rupert's Land, of which I am the Metropolitan, and I am also Bishop of the smaller diocese of Rupert's Land last above described.

4. I have continued to be Bishop of the old diocese of Rupert's Land first above described, and of the smaller diocese last above described, ever since my appointment in 1865.

5. Upon my arrival in the diocese in 1865 I found there existed a great want of schools for the education of the youth, and I at once set about reorganizing St. John's College, and in 1866 I opened it for higher education and it has so continued ever since, and I commenced as soon as I could the reorganization of the system of primary schools of which I found most vacant.

6. I endeavoured to start at least one parochial school in each parish where there was a missionary of the Church of England, and I so far succeeded in this work that with the assistance of the Church Missionary Society of the Church of England there were under my care in 1867 fourteen common parochial schools within the Red River settlement, as well as schools at the missions in Manitoba outside the settlement and missions in the interior.

7. In the year 1869 there were sixteen schools regularly organized for the teaching of boys and girls in the different parishes in the said Red River settlement, inclusive of Westbourne and Scanterbury.

8. I find that in my address to the synod of Rupert's Land, delivered on the 29th day of May, 1867, I used the following language with reference to the schools, viz. :—" Passing now from the college to the common schools, I rejoice to say that there has been, during the past half year, a full opportunity for learning the elements of education—reading, writing and arithmetic—from the extreme end of the Indian settlement up to Westbourne, with the single exception of the small parish of St. Margaret's at the High Bluff, and in that parish a very creditable subscription was promised towards the salary of a master, so that I trust by another year even that blank may be supplied. And I believe the distances to be travelled to these schools are not greater than are frequently performed in our home parishes in England and Scotland. Excluding the school at Westbourne, which remains on the Church Missionary list, being about thirty-five miles beyond the settlement, we must look to the maintenance of fourteen schools. Of these eight have hitherto been supported by the Church Missionary Society at a cost of £285 a year. The society said some time ago that this help must at once cease."

And in my charge to the synod of Rupert's Land on the 24th day of February, 1869, I used the following language:—" Schools have been established in every parish, but the effort to maintain them has been a difficult one, from the larger amount now required to obtain the services of a schoolmaster and from frequent resignations. The whole question must, however, soon be grappled with. There must be some distinct regulations laid down defining the conditions under which grants from the diocesan fund are to be given, and some plan of diocesan inspection will be necessary. But before we can obtain all we could wish with our schools, I feel we must be able to provide still larger salaries and have trained teachers. How to secure such a training has been a good deal in my mind, but I do not yet see the way to the accomplishment of what I wish." And the statement therein made by me on those two occasions are, I believe, true in substance and in fact, and are given in the reports of the synod published at the time.

9. The schools which were established as above set forth continued until the establishment of public schools by the laws of Manitoba hereinafter referred to.

10. The teacher in each of these schools was under the control of the vestry and the clergyman of each parish, and in some cases there were two and even three parochial schools in one parish. The schools were opened and closed with forms of prayer, and the teacher of each of these schools was required to instruct the school every day in the Holy Scriptures, and he was required to teach the children the English Church catechism. The missionary in each parish was expected to look after such religious training and to teach the children or see that the children were taught according to the tenets of the Church of England, and the said schools were denominational schools belonging to and supported by the religious denomination of the Church of England.

11. The teachers were paid a salary, part of which was paid through me to the parish clergyman, as I was treasurer of the synod, and specially looked after the funds for the support and maintenance of these various schools.

12. The money for the payment of the school teachers and for the maintenance of the schools was procured partly from the funds of the church, partly from voluntary subscriptions and partly from fees charged the parents of the children attending the parochial schools; but as far as my knowledge goes, no child of any English Church parents was prevented from attending these schools by reason of poverty.

13. The schools above described were purely denominational schools; the teachers were members of the Church of England. I do not remember in my time any instance of a teacher who was not a member of our church, with one exception.

14. At the time of the union of this province with Canada there were estimated to be, and I believe there were, about 12,000 Christians residing in this province. Of these over 6,000 were Roman Catholic and nearly 5,000 were

ers of the Church of England, the rest were chiefly Presbyterians, with a other denominations.

15. The Christians residing in this province as above set forth resided in what was known as the Red River settlement, and would practically be included in an area not exceeding sixty miles from the city of Winnipeg.

16. In the year 1871, when the first Public School Act of Manitoba was passed, I joined heartily with the Provincial Executive in endeavouring to carry into effect the school law then enacted, believing that under that Act public schools could be carried on giving such religious instruction as would be satisfactory to the members of the Church of England and to myself.

17. But many of the members of the Protestant section of the Board of Education did not hold the same views as myself as regards, for example, the necessity of not only reading but teaching the Bible, so that the religious instruction given in the schools was never satisfactory to me; but there was nothing in the Act preventing a more satisfactory amount of religious teaching when the members of the section became favourable to this, so I always looked forward to securing some day more satisfactory provision. With the great majority of the bishops and clergy of the Church of England, I believe that the education of the young is incomplete, and may even be hurtful if religious instruction is excluded from it.

18. The Public Schools Act passed by this province in the year 1890 has so limited religious exercises that it is doubtful if under it there can be any religious teaching given in the schools, so that the public schools to-day are not, as regards religious teaching, as I hoped and expected they would be when the first Act was passed.

19. The religious and moral training given to children in the public schools of this province, under sanction of the laws of this province, is not in accordance with my views or wishes, and is not in accordance with the views of Church of England; and consequently the present law, in taxing all members of the Church of England, and giving no aid from the state to denominational schools, prejudicially affects the rights and privileges of the people belonging to the Church of England with respect to the denominational schools which they had by practice, and were lawfully exercising, before and at the union of this province with Canada.

20. Before the union I, with the advice of my synod, controlled the religious training of children of persons belonging to the Church of England, in their education in the parochial schools.

21. When the first School Act was passed above mentioned, and when the first schools under that Act were established, the various parish vestries, with my sanction, permitted schools to be established and to be carried on under that Act in most, if not all, the school-houses in which the Church of England parish schools had previously been carried on, and my sanction was given in the hope and belief that at least those public schools would still give a religious and

moral training such as I thought it necessary for children to receive; but I had known then that the Public Schools law would permit and allow schools under that Act to be carried on without, or with as little, religious training as is now given in the public schools of this province, I should have done what I could to resist it, and, if unable in our peculiar circumstances to continue those parochial schools, I should have encouraged the opening of such schools and the increasing of them as soon as it was permitted; and I have no doubt that if religious training is excluded from the public schools, as is threatened, this will be the policy in future of the Church of England and of myself. The re-establishment of our parish schools is merely a question of means and time.

22. If separate schools are granted to any body of Christians because of rights secured owing to practice existing prior to the union, then I claim that the Church of England is peculiarly entitled to such separate schools.

23. As far as I have had any influence, I have always endeavoured to influence public opinion and the legislature as much as I could to have provision made for the religious training of youth, and by the Public Schools Act of 1890 I was deeply disappointed; and I believe that by that Act, if separate schools do not receive state aid as well as the schools under the Act, the children of parents of the Church of England have been prejudicially affected.

24. Before the Act of 1890 was passed, I expressed my views on the schools question, and on the rights of the people of the Church of England, under the Manitoba Act, in my charge to the synod, given on the 29th day of October, 1889, in which I used the following language:—" Though we have " not now any primary schools, it is not because, in view of the church, such " schools are of small importance. The day was when we had a church primary " school wherever we had a clergyman. That was our position when this " province was transferred to Canada, and it seems probable that the Dominion " intended to recognize such efforts in the past and to protect the school interests " that then existed. But our church saw such advantages in a national system " of schools, and such reason to have confidence in the administration of it, that " it went heartily into it, trusting that the schools would be worthy of a Christen " people and give an education in which the first, namely, the religious interests " of the children, would not be lost sight of. And I may say that the only " reason which has led me for so many years to give up time that I could ill " spare to be a member of the Board of Education has been the hope that, by " conciliatory action, I might help in securing a measure of religious instruction " reasonably satisfactory at once to ourselves and the other religious bodies."

25. One of the schools conducted by the Church of England as hereinbefore mentioned was situate in the parish of St. John's, which parish now forms a part of the city of Winnipeg, and said school was situate at the time of the union of this province with Canada in a territory which now forms part of the territory of the city of Winnipeg.

26. Said schools of the Church of England were supported in part by funds of the church, in part by voluntary subscriptions, and in part by fees voluntarily

paid by members of the Church of England and by the parents and guardians of children attending such schools, and were in no way supported or aided by funds raised by general rates or taxation.

R. MACHRAY,
Bishop of Rupert's Land.

Sworn before me at Winnipeg, in the province of Manitoba, this 3rd day of December, A.D. 1891.

J. R. FULLERTON,
A Commissioner in B. R., &c.

In the Queen's Bench.

Affidavit of Alexander Logan, sworn 3rd Dec. 1891.

In the matter of the application to quash By-law 514 of the city of Winnipeg.

I, Alexander Logan, of the city of Winnipeg, in the province of Manitoba, Esquire, make oath and say:

1. I was born in the year eighteen hundred and forty-one, at Point Douglass, in the Red River settlement in Rupert's Land, and I have always resided at the said Point Douglass, and still reside there.

2. The said Point Douglass is in the parish of St. John, in the province of Manitoba, and is within the territorial limits of the city of Winnipeg, and I am a resident of the said city of Winnipeg and a ratepayer thereof to a large amount.

3. I am and always have been a member of the Church of England.

4. At the time of the union of the province of Manitoba with Canada I was married and had two children.

5. At, and for many years prior to the said union, there was a parochial denominational school of the Church of England within the said parish of St. John, and within the territory now comprised in the city of Winnipeg, and the said school was a day school conducted by teachers appointed by the Church of England Bishop of Rupert's Land, in which, and in addition to the ordinary subjects taught in schools, the catechism of the Church of England was taught, and the pupils in said school were instructed in religious subjects according to the tenets of the Church of England.

6. The said school was continued up to and for some time after the union of the said province with Canada, and the same school still exists in a modified form, and I attended said school as a pupil before said union and received my primary education therein.

7. I was well acquainted with the said Red River settlement before and after said union, and I say that at the time of said union there was established in each parish of the Church of England throughout said settlement a parochial

denominational school, and in some parishes more than one of such schools, and and in all such schools teachings in religious subjects according to the Church of England faith were conducted in a manner similar to the said school in the parish of St. John, and the children of English church parents attended said schools and no other schools.

8. Save and except the said English church parochial school of the parish of St. John and St. John's College, which also belonged to the Church of England, and except a private school kept by the nuns on the property of the late William Drever, there was not at the time of said union any school or educational institution in existence within said territory now included in the city of Winnipeg.

9. The territory comprised in the city of Winnipeg covers an area of about twenty square miles.

10. The paper writing hereunto annexed and marked with the letter "A" is a certified copy of the above-mentioned by-law of the city of Winnipeg, No. 514, and said copy was received from the city clerk of the city of Winnipeg.

11. In and by said by-law a rate is levied for school purposes of four and two-tenths mills in the dollar upon all ratepayers alike, and upon persons of all religious denominations alike, and the moneys so raised are intended to be used in the support of public non-sectarian schools pursuant to the provisions of the Public Schools Act.

12. I have not yet paid my taxes for the year one thousand eight hundred and ninety-one imposed under said by-law.

13. I have at the present time three children of school age, namely, one of the age of fourteen years, one of the age of eleven years, and one of the age of five years, and I claim the right to have my children taught religious exercises in school according to the tenets of the Church of England, and I claim that such right was secured to me and other members of the Church of England, at the time of said union, by the provisions of the Manitoba Act.

14. I do not approve of the manner in which religious exercises are taught in schools where they are so taught under the provisions of the Public Schools Act, and I claim that the tax for the support of schools imposed upon me by said by-law, and pursuant to said Public Schools Act or by any other Act of the legislature by which I am compelled to contribute for the support of schools not under the control of the Church of England, prejudicially affects my rights as a member of the Church of England, and if compelled to pay such tax I and other members of the Church of England are less able to support schools in which religious exercises and teachings in accordance with our form of worship could be conducted.

ALEXANDER LOGAN.

Sworn before me, at the city of Winnipeg, in the province of Manitoba, this 3rd day of December, A.D. 1891.

R. H. HAYWARD.

A Commissioner in B. R., &c.

By-law No. 514, dated 13th July, 1891.

"A."

By-law No. 514.

A by-law to authorize an assessment for city and school purposes in the city of Winnipeg for the current municipal year, A.D. 1891.

Whereas it is expedient and necessary for city purposes to raise the sum of $389,327.19 for interest on debentures and ordinary current municipal and district and school expenditure for the current year by a tax on all real and personal property appearing on the assessment rolls of the city of Winnipeg for the year 1891, except properties wholly or partially exempt.

And whereas the amount of the whole rateable property of the city of Winnipeg as shown by the last revised assessment rolls of the said city of Winnipeg is $19,944,270.

And whereas certain properties are exempt from all rates save for schools and school expenditure, and it will require a rate of $19\frac{1}{2}$ mills on the dollar on the amount of the said rateable property to raise the sum so required as aforesaid for interest on debentures now accruing due and for the ordinary current municipal and school expenditure for the year A.D. 1891, whereof the rate of $15\frac{3}{10}$ mills on the dollar shall be for interest on debentures now accruing due, and for the ordinary current municipal expenditure, and the rate of $4\frac{2}{10}$ mills on the dollar shall be for school expenditure for the year 1891.

Therefore the council of the city of Winnipeg in council assembled enacts as follows :—

1. There shall be raised, levied and collected a tax of $19\frac{1}{2}$ mills on the dollar upon the whole assessed value of the real and personal property in the city of Winnipeg, according to the last revised assessment rolls for the year 1891, of which the amount of $15\frac{3}{10}$ mills on the dollar shall be to provide for the payment of interest on debentures now accruing due, and for the ordinary current municipal expenditure, and $4\frac{2}{10}$ mills on the dollar shall be for the schools of the city for the year A.D. 1891.

2. Upon properties rateable for school expenditure only, there shall be levied and collected a rate of $4\frac{1}{5}$ mills on the dollar of assessment.

3. The sum of two dollars ($2.00) poll tax shall be levied and collected from every person residing within the city of Winnipeg and being of the age of 21 years and upwards who has not been assessed upon the assessment roll of the city of Winnipeg, or whose taxes do not amount to two dollars, in which latter case a total tax of two dollars only shall be levied, which taxes shall be collected in the same manner as other taxes.

The taxes and rates hereby imposed shall be considered to have been imposed and to be due on and from the 14th day of July, A.D. 1891.

By-law No. 514, dated 13th July, 1891 —*continued*.

Done and passed in Council assembled at the city of Winnipeg, this 13th day of July, A.D. 1891.

A. McMICHEN,
Chairman.

C. J. BROWN,
City Clerk.

Certified true copy of by-law No. 514 of the city of Winnipeg, passed in Council on the 13th day of July, A.D. 1891.

C. J. BROWN,
City Clerk.

In the Queen's Bench.

Affidavit of R.H.Hayward sworn 4th Dec. 1891.

In the matter of the application to quash by-law 514 of the city of Winnipeg.

I, Robert Henry Hayward, of the city of Winnipeg, in the province of Manitoba, accountant, make oath and say:

1. I am now and have been for the past ten years a resident of the city of Winnipeg.

2. I am and have been for a number of years past a ratepayer of said city.

3. I am a member of the Church of England.

4. The religious exercises conducted in the public schools of the city of Winnipeg at the present time are those prescribed by the advisory board of the Department of Education, pursuant to the provisions of the Public Schools Act, and such exercises consist of the reading, without note or comment, of certain selections from the authorized English version of the Bible, or the Douay version of the Bible, and the use of a form of prayer.

5. The said selections from the Scriptures are not taught, but are simply read without comment, and neither the catechism of the Church of England nor any other catechism is taught in said schools, nor is any religious instruction given in said schools beyond the reading of said selections from the Bible, and the reading of said prayer.

6. The printed pamphlet now produced and shown to me and marked as exhibit "B" to this my affidavit, is a printed copy of the regulations of the said advisory board regarding religious exercises in public schools, and the said pamphlet was received from the Department of Education for the province of Manitoba.

Affidavit of R.H.Hayward sworn 4th Dec. 1891 —*continued.*

7. I have read over the certified copy of the above mentioned by-law, which is annexed to the affidavit of Alexander Logan, sworn to herein on the 3rd day of this present month of December, and which certified copy is now produced and shown to me at the time of making this affidavit, and is marked as exhibit "A" to this affidavit.

8. In and by the said by-law a rate is levied for school purposes of $4\frac{2}{10}$ mills in the dollar upon all ratepayers of the city of Winnipeg alike, and upon members of the Church of England as well as upon members of all other religious denominations, no distinction being made in respect of religious denominations, and the moneys so raised are intended to be used in the support of public non-sectarian schools established pursuant to the provisions of the Public Schools Act.

9. The effect of said by-law is that members of the Church of England are compelled to pay a tax for the support of public non-sectarian schools, in which there is not religious teaching according to the tenets of the Church of England.

10. I have one boy of school age, namely, the age of 13 years, and although I am compelled by the said by-law and by the Public Schools Act to contribute to the support of said public schools established under said Public Schools Act, I send him to a school established by the rector of the English church parish of All Saints, in the said city of Winnipeg, and under the control and management of the said rector, where he receives religious instruction according to the tenets of the said Church of England in addition to ordinary school instruction, and I voluntarily pay fees for his tuition at said school, and I do not send him to any of the said public schools.

11. There are many other boys in the said city of Winnipeg sent by their parents, who are resident ratepayers of the city of Winnipeg and members of the Church of England, to the said All Saints' School, for reasons which I verily believe are similar to my own.

R. H. HAYWARD.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 4th day of December, A.D. 1891.

GHENT DAVIS,

A Commissioner in B. R., &c.

"B."

Regulations of Advisory Board, adopted 21st May, 1890.

Regulations of the Advisory Board regarding Religious Exercises in the Public Schools. Adopted 21*st May*, 1890.

Until further notice the religious exercises in the public schools shall be :—

(*a*) The reading, without note or comment, of the following selections from the authorized English version of the Bible or the Douay version of the Bible.

(*b*) The use of the following forms of prayer.

SCRIPTURE READINGS.

PART I.—*Historical.*

1.	The Creation	Gen. i. 1—19.
2.	The Creation—*cont.*	Gen. i. 20—31.
3.	The Fall of Man	Gen. iii.
4.	The Deluge	Gen. viii. 1—22.
5.	The Covenant with Noah	Gen. ix. 1—17.
6.	The Trial of Abraham	Gen. xxii. 1—18.
7.	Isaac Blesses Jacob	Gen. xxvii. 1—29.
8.	Esau's Blessing	Gen. xxvii. 30—45.
9.	Jacob's Vision	Gen. xxviii. 10—22.
10.	Jacob's Return to Bethel	Gen. xxxv. 1—15.
11.	Joseph and his Brethren	Gen. xxxvii. 1—22.
12.	Joseph Sold into Egypt	Gen. xxxvii. 23—36.
13.	Pharaoh's Dream	Gen. xli. 1—24.
14.	Joseph's Interpretations	Gen. xli. 25—43.
15.	Jacob's Sons' Visit	Gen. xlii. 1—20.
16.	Jacob's Sons' Return from Egypt	Gen. xlii. 21—38.
17.	The Second Visit to Egypt	Gen. xliii. 1—14.
18.	Joseph and his Brethren	Gen. xliii. 15—34.
19.	Joseph and his Brethren—*cont.*	Gen. xliv. 1—13.
20.	Joseph and his Brethren—*cont.*	Gen. xliv. 14—34.
21.	Joseph Discovers Himself to His Brethren	Gen. xlv.
22.	Jacob and his Household go into Egypt	Gen. xlvi. 1—6, 28—34.
23.	Jacob's Interview with Pharaoh	Gen. xlvii. 1—12.
24.	Death of Jacob	Gen. xlviii. 1—21.
25.	Burial of Jacob	Gen. l. 1—26.
26.	Moses at the Burning Bush	Exod. iii. 1—20.
27.	Grievous Oppression of the Hebrews	Exod. v.
28.	The Passover	Exod. xii. 1—20.
29.	The Israelites Escape through the Red Sea	Exod. xiv. 10—31.
30.	The Song of Deliverance	Exod. xv. 1—22.
31.	Giving of Manna	Exod. xvi. 2—35.
32.	The Water from the Rock	Exod. xvii.
33.	The Ten Commandments	Exod. xx. 1—17.
34.	The Covenant with Israel	Exod. xxiv.
35.	The Tabernacle	Exod. xl. 17—36.
36.	Spies sent into Canaan	Num. xiii. 17—33.
37.	The People Rebel at the Report of the Spies	Num. xiv. 1—30.
38.	The Song of Moses	Deut. xxxii. 1—14.

39. The Death of Moses .... Deut. xxxiv.
40. Joshua Succeeds Moses .... Josh. i. 1—17.
41. The Covenant with Joshua .... Josh. xxiv. 1—28.
42. The Call of Samuel .... 1 Saml. iii.
43. The Israelites Desire a King .... Saml. viii. 1—20.
44. Samuel Anoints Saul .... Saml. ix. 21—27, xi. 1—11.
45. Samuel Anoints David .... Saml. xvi.
46. David and Goliath .... Saml. xvii. 1—27.
47. David Overcomes Goliath .... Saml. xvii. 28—54.
48. David and Jonathan .... Saml. xviii. 1—16.
49. David instructed as to the Building of the Temple .... 1 Chron. xvii. 1—17.
50. David's Advice to Solomon .... 1 Chron. xxviii. 1—20.
51. David's Preparation for Building the Temple .... 1 Chron. xxix. 1—19.
52. Solomon's Wise Choice .... 1 Kings iii. 1—15.
53. Preparations for Building the Temple .... 1 Kings v.
54. Solomon's Prayer at the Dedication of the Temple .... 2 Chron. vi. 1—21.
55. Solomon's Prayer .... 2 Chron. vi. 22—42.
56. Elijah .... 1 Kings xvii.
57. Elijah and the Prophets of Baal .... 1 Kings xviii. 1—21.
58. Discomfiture of the Prophets of Baal .... 1 Kings xviii. 22—46.
59. Elijah in the Wilderness .... 1 Kings xix. 1—13.
60. Elijah and Elisha .... 2 Kings ii. 1—15.
61. Naaman the Leper .... 2 Kings v. 1—19.
62. The Fall of Israel .... 2 Kings xvii. 6—24.
63. Public Worship of God Restored .... 2 Chron. xxix. 20—36.
64. Deliverance under Hezekiah .... 2 Kings xix. 1—19.
65. Deliverance under Hezekiah—*cont.* .... 2 Kings xix. 20—36.
66. Rejoicing of the Israelites at the Restoration of Divine Worship .... 2 Chron. xxx.
67. Jerusalem taken by Nebuchadnezzar .... 2 Chron. xxxvi. 5—21.
68. The Golden Image .... Dan. iii. 1—18.
69. The Fiery Furnace .... Dan. iii. 19—30.
70. Daniel in the Lion's Den .... Dan. vi.
71. The Temple Rebuilt .... Ezra i. 1—6, and iii.

Part II.—*The Gospels.*

1. Christ the Word .... John i. 1—18.
2. The Birth of Christ announced .... Luke ii. 8—20.
3. The Visit of the Magi .... Matt. ii. 1—12.
4. The Song of Simeon .... Luke ii. 25—40.
5. Jesus in the Temple .... Luke ii. 41—52.
6. The Baptism of Jesus Christ .... Matt. iii. 1—17.
7. The Temptation of our Lord .... Luke iv. 1—15.
8. Testimony of John the Baptist .... John i. 19—34.

9.	The First Disciples	John i. 35—51.
10.	Jesus of Nazareth	Luke iv. 16—32.
11.	At Capernaum	Matt. iv. 13—25.
12.	Sermon on the Mount	Matt. v. 1—12.
13.	Sermon on the Mount—*cont*	Matt. v. 13—20, 33—37.
14.	Sermon on the Mount—*cont*	Matt. v. 38—48.
15.	Sermon on the Mount—*cont*	Matt. vi. 1—18.
16.	Sermon on the Mount—*cont*	Matt. vi. 19—34.
17.	Sermon on the Mount—*cont*	Matt. vii. 1—14.
18.	Sermon on the Mount—*cont*	Matt. vii. 15—29.
19.	The Miraculous Draught of Fishes	Luke v. 1—15.
20.	The Healing of the Paralytic	Luke v. 16—26.
21.	The Twelve Apostles sent forth	Matt. ix. 36—38, x. 1—11.
22.	The Centurion's Servant. The Widow's Son	Luke vii. 1—17.
23.	The Declaration concerning John	Matt. xi. 2—19.
24.	The Feast in Simeon's House	Luke vii. 36—50.
25.	Privileges and Responsibility	Matt. xi. 20—31.
26.	The Sabbath	Luke vi. 1—11.
27.	Parable of the Sower	Mark iv. 1—20.
28.	Parable of the Tares, &c.	Matt. xiii. 24—35.
29.	Parable of the Tares explained, with other Parables	Matt. xiii. 36—52.
30.	Children brought to Jesus. Conditions of Discipleship	Mark x. 13—30.
31.	Tribute to Cæsar. The Widow's Offering	Matt. xxii. 15—22; Mark xii. 41—44.
32.	Christ Confessed	Matt. xvi. 13—28.
33.	Christ feeding Five Thousand	Mark vi. 30—41.
34.	Christ Walking on the Sea	Matt. xiv. 22—33.
35.	The Transfiguration	Matt. xvii. 1—13.
36.	The Great Supper	Luke xiv. 7—24.
37.	The Lost Sheep and Lost Piece of Silver	Luke xv. 1—10.
38.	The Two Sons	Luke xv. 11—32.
39.	The Pharisee and the Publican	Luke xviii. 9—17.
40.	Blind Bartimeus. Zaccheus the Publican	Luke xviii. 35—43; xix. 1—10.
41.	The Good Samaritan	Luke x. 25—37.
42.	The Good Shepherd	John x. 1—18.
43.	Christ One with the Father	John x. 22—42.
44.	Humility	John xiii. 1—17.
45.	The Death of Lazarus	John xi. 30—48.
46.	The Triumphal Entry into Jerusalem	Mark xi. 1-11; Matt. xxi. 9-16.
47.	Parable of the Ten Virgins	Matt. xxv. 1—13.
48.	Parable of the Talents	Matt. xxv. 14—30.
49.	The Judgment	Matt. xxv. 31—46.
50.	Christ Comforts the Disciples	John xiv. 1—14.
51.	The Holy Spirit promised	John xiv. 15—31.
52.	Christ the True Vine	John xv. 1—17.

RECORD.

In the Supreme Court of Canada.

Case.

Regulations of Advisory Board, adopted 21st May, 1890 —*continued.*

53. Last Sayings of Jesus .... John xvi. 1—15, 26—33.
54. The Prayer of Christ .... John xvii. 1—26.
55. The Box of Precious Ointment .... Matt. xxvi. 1—13.
56. The Last Supper .... Matt. xxvi. 17—29.
57. The Agony in the Garden. Betrayal of Jesus.... Matt. xxvi. 30—56.
58. Christ before Caiaphas and Peter's Denial .... Matt. xxvi. 57—75.
59. Christ before Pilate .... Matt. xxvii. 1—25.
60. The Crucifixion .... Matt. xxvii. 26—43.
61. The Crucifixion—*cont.* .... Luke xxiii. 39—56.
62. The Resurrection .... Mark xvi. 1-7; John xx. 3-18.
63. The Journey to Emmaus .... Luke xxiv. 13—35.
64. Jesus Appears to His Disciples. The Doubts of Thomas .... John xx. 19—29.
65. Jesus Appears again to His Disciples .... John xxi. 1—23.
66. The Ascension .... Matt. xxviii.

Form of Prayer.

Most merciful God, we yield Thee our humble and hearty thanks for Thy fatherly care and preservation of us this day, and for the progress which Thou hast enabled us to make in useful learning; we pray Thee to imprint upon our minds whatever good instructions we have received, and to bless them to the advancement of our temporal and eternal welfare; and pardon, we implore Thee, all that Thou hast seen amiss in our thought, words, and actions. May Thy good Providence still guide and keep us during the approaching interval of rest and relaxation, so that we may be prepared to enter on the duties of the morrow with renewed vigour both of body and mind; and preserve us we beseech Thee, now and for ever, both outwardly in our bodies and inwardly in our souls, for the sake of Jesus Christ Thy Son, our Lord. Amen.

Our Father who art in Heaven, hallowed be Thy Name. Thy kingdom come. Thy will be done on earth as it is in Heaven. Give us this day our daily bread; and forgive us our trespasses, as we forgive them that trespass against us; and ead us not into temptation, but deliver us from evil. Amen.

The grace of our Lord Jesus Christ, and the love of God, and the Fellowship of the Holy Ghost, be with us all evermore. Amen.

In the Queen's Bench.

Affidavit of Alexander Polson, sworn 12th Dec. 1891

In the matter of the application to quash by-law 514 of the city of Winnipeg.

I, Alexander Polson, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, License Inspector, make oath and say:

1. That for a period of fifty years I have been a resident of the province of Manitoba.

RECORD.

In the Supreme Court of Canada.

Case.

Affidavit of Alexander Polson, sworn 12th Dec. 1891 —*continued.*

2. That schools which existed prior to the province of Manitoba entering Confederation, were, so far as the people were concerned, purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. Attendance at such schools was voluntary, and only the parents or guardians who had children attending school paid any fees. There was no law or statute as to schools. The schools were under the direction of the clergy or the governing bodies of one of the three churches, the Roman Catholic, the Church of England, and the Presbyterian.

3. No school taxes or rates were collected by any authority prior to the province of Manitoba entering Confederation, and there were no means by which any person could be forced by law to support any of said private schools.

I think the only public revenue of any kind then collected was the customs duty of 4 per cent. but none of this was for schools. There were no municipal or school rates, and no direct taxes of any kind levied, whether by assessment on property, income tax, or otherwise.

ALEX. POLSON.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 12th day of December, A.D. 1891.

CHAS. N. BELL,
A Commissioner in B. R., &c.

In the Queen's Bench.

In the matter of an application to quash by-law 514 of the city of Winnipeg.

Affidavit of George Bryce, sworn 11th Dec. 1891

I, George Bryce, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, professor in Manitoba College, make oath and say:

1. That I have been a resident of the Province of Manitoba since the year 1871. That I am the minister of the Presbyterian Church longest resident in the province; that I have been in constant communication with the officers and councils of the church, having been the first Moderator of the Synod of Manitoba and the North-west Territories of the Presbyterian Church Canada, and I am personally aware of the truth of the matters herein alleged.

2. That I am familiar with the opinions of the Presbyterians of the province in the years immediately succeeding the entrance of Manitoba into Confederation in 1870, and am aware that the Presbyterians of this province did not claim to have the church schools, which had been previously voluntarily maintained by them or by the church for them, continued to them at cost to the general public, but were willing to support a public school system.

3. That in founding Manitoba College, in November, 1871, I took over the highest class of Kildonan School as the beginning of the college, which had thus far continued a purely church institution, and for which I never heard the claim advanced that we were entitled to any consideration under the Manitoba Act; indeed, I always considered the Government schools as entirely different, and, up to 1871, unknown in the country, and for several years we did take younger students into our church college, who might have been educated in the Government schools alongside.

4. That about the year 1876 a strong agitation took place in the province to have one public school system established, but this agitation failed to obtain effect in legislation.

5. The Presbyterian Synod of Manitoba and the North-west Territories, which represents the largest religious body in Manitoba, passed in May, 1890, a resolution heartily approving of the Public School Act of this year, and I believe it is approved of by the great majority of the Presbyterians of Manitoba.

6. That the Presbyterian Church is most solicitous for the religious education of all its children. It takes great care in the vows required of parents at the baptism of their children, and in urging its ministers to teach from the pulpit the duty of giving moral and religious training in the family. It is most energetic in maintaining efficient Sunday schools, which have been called the "children's church," and in requiring the attendance of the children at the church services, which are made a great means of instruction. I think it is our firm belief that this system, joined with the public school system, has produced and will produce a moral, religious and intelligent people.

7. I believe that the views of a large number of the Presbyterians in this province are represented by the following extracts from a public address delivered by the Rev. J. M. King, D.D., Principal of Manitoba College, on the 31st day of October, 1889. After giving reasons in opposition to purely secular schools, Dr. King proceeds :—" At the opposite extreme there is a system of separate or denominational schools, such as to some extent now obtains in this province, a system under which not only is religious instruction given, but the distinctive doctrines and practices of individual churches are taught. Does the continuance and extension of this system promise a solution of the educational difficulty? By no means. Less injurious probably in its operation, it is even more indefensible in principle than the one which has been so freely criticised. First, it is in direct violation of the principle of the separation of church and state. It is unnecessary—indeed, it would be quite irrelevant—to argue this principle here. It is that on which, rightly or wrongly, the state with us is constituted. I do not understand it to mean that the state may not have regard to religious considerations, such as it shows when it enforces the observance of the Sabbath rest, or that it may not employ religious sanctions, as it does when in its courts of law it administers an oath in the name of God; but I do understand it to mean that the state is neither to give material aid to the operations of the church in any of its branches, nor to interfere with its liberties. Each, while necessarily influencing the other, has its own distinctive

sphere, and must bear all the responsibilities of action within that sphere . . . . Second, the system of separate or sectarian schools operates injuriously on the well-being of the state. However useful it may be to the church or churches adopting it, enabling them to keep their youth well in hand and to preserve them from any danger to faith and morals which might result from daily contact with those of a different creed, it is in that measure hurtful to the unity and therefore to the strength of the state. It occasions a line of cleavage in society, the highest interests of which demand that it should as far as possible be one. It perpetuates distinctions, and almost necessarily gives rise to distinctions which are at once a reproach and a peril . . . . Surely the state should not, unless compelled to do so, lend the authority of law and the support of public moneys to a system of education which so injuriously affects its unity and therefore its stability and well-being . . . . But if a purely secular system of education is deemed in the highest degree objectionable, and a denominational or sectarian system only less objectionable, what is it proposed to establish in their place ? I answer, a system of public, unsectarian, but not non-religious schools. It is admitted on all hands that the main work of the school ought to be instruction in the various secular branches. Its primary aim is to fit those in attendance for the active duties of life. But as not inconsistent with this aim, rather as in a higher degree subservient to its attainment, it is desired that the religious element should have a definite place assigned to it in the life of the school; that it should be recognized to this extent at least, that the school should be opened and closed with prayer; that the Bible, or selections from it, should be read daily, either in common, or in the Douay version as the trustees may direct; that the morality inculcated should be Christian morality, and that the teacher should be at liberty to enforce it, and should be encouraged to enforce it, and should be encouraged to enforce it by those considerations, at once solemn and tender, which are embraced in the common belief of Christendom. A system of public education of this kind, in which religion has a definite but at the same time strictly guarded place assigned to it, ought to be acceptable to the great majority of the people of this province. It has certainly much to recommend it. It has no sectarian features, and yet it is not godless. Religion is recognized in it in such form and degree as to make it possible to give a high tone to the life of the school, as to secure more or less familiarity with the contents of Scripture on the part of every child, and as to make available for the teacher those lofty and sacred sanctions which have in all ages been found the most effective instruments in the enforcement of morality."

GEORGE BRYCE.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 11th day of December, A.D. 1891.

ALEX. HAGGART,

A Commissioner in B. R., &c.

RECORD.

In the SupremeCourt of Cadada.

Case.

Affidavit of Edmund M. Wood, sworn 10th Dec. 1891

In the Queen's Bench.

In the matter of the application to quash By-law 514 of the city of Winnipeg.

I, Edmund M. Wood, of the city of Winnipeg, in the province of Manitoba, Esquire, make oath and say:

1. I am an officer employed by the Government of Manitoba, and occupy the position of chief clerk in the Department of Municipal Commissioner, and am also employed in the Public Works Department, and know the facts herein deposed to be true.

2. Pursuant to chapter 25 of the statutes passed in this province in the fifty-second year of Her Majesty's reign, the Government of the province of Manitoba erected a building to be used as the Manitoba Deaf and Dumb Institution, the erection and completion of which building with its furniture cost over $18,000.

3. The Government of the province of Manitoba have for several years past carried on at public expense a school for the teaching of the deaf and dumb, and that school is now being carried on at an annual cost of about 7,500 dollars $\frac{}{100}$ cents.

4. This money is paid out of the general funds of the province, and the school is open to all classes of people of every creed and belief.

5. The school is purely non-sectarian, and is for the education in a purely secular way of all classes of children.

E. M. WOOD.

Sworn before me, at Winnipeg, in the province of Manitoba, this 10th day of December, A.D. 1891.

JOHN O. SMITH,

A Commissioner, &c.

In the Queen's Bench.

Affidavit of Thomas D. Cumberland, sworn 10th Dec. 1891.

In the matter of the application to quash By-law 514 of the city of Winnipeg.

I, Thomas Dickey Cumberland, of the city of Winnipeg, in the province of Manitoba, Barrister, make oath and say:—

1. I have examined the Dominion Government census returns of the census of the province of Manitoba taken during the year 1886, and I find that the population of the said province shown by said census was 108,640.

2. From the said returns I find that the five leading religious denominations in the said province were according to the said census in number as follows,

Affidavit of Thomas D. Cumberland, sworn 10th Dec. 1891 —*continued.*

namely:—Roman Catholic, 14,651; Church of England, 23,206; Presbyterian, 28,406; Methodist, 18,648; and Baptist, 3,296.

3. I have been a resident of the province of Manitoba since the year 1881.

4. I believe no material change has taken place in the relative numbers of the different denominations aforesaid since the year 1886 in Manitoba.

T. D. CUMBERLAND.

Sworn before me, at Winnipeg, in the province of Manitoba, this 10th day of December, A.D. 1891.

J. B. MORRICE,
A Commissioner, &c., in B. R.

In the Queen's Bench.

In the matter of the application to quash By-law 514 of the city of Winnipeg.

Affidavit of Hector M. Howell, sworn 12th Dec. 1891

I, Hector Mansfield Howell, of the city of Winnipeg, in the province of Manitoba, Esquire, make oath and say:

1. I have resided in this province continuously for the last twelve years. I have travelled over large portions of this province, and am familiar with its general state of its settlement and the distribution of its population.

2. The chief city of the province is the city of Winnipeg, with a present population of about 25,000 people. There are two other towns with population of about 4,000 each, and there is a large number of villages with population ranging from 200 or 300 to 1,000 people.

3. According to the last census taken in this year, there is reported to be about 155,000 residents in the whole province, and in my opinion at least 50,000 of these reside in villages and in the towns and in the city of Winnipeg. The remainder of the population reside upon farms pretty evenly distributed over an area of country exceeding 23,000 square miles.

4. From my knowledge of the sparse settlement of this country, I verily believe that if separate schools are granted to the English Church people and to the Roman Catholics it will be very difficult to support any system of public schools except in the centres of population like towns and cities, and I verily believe that if three systems of schools were established, each system would be ery defective and would be of little use towards general education.

H. M. HOWELL.

Sworn before me, at Winnipeg, in the province of Manitoba, this 12th day of December, A.D. 1891.

HEBER ARCHIBALD,
A Commissioner in B. R., &c.

RECORD.

In the Supreme Court of Canada.

Case.

Judgment of Taylor, C. J.

JUDGMENT OF THE COURT OF QUEEN'S BENCH.

TAYLOR, C. J.

This is an application made by a ratepayer, a member of the Church of England to quash the by-law No. 514, of the city of Winnipeg, for levying and raising the assessments for the year 1891, on the grounds:—

(1.) That by the said by-law the amount estimated to be levied for school expenditure is levied upon members of the Church of England and all other religious denominations alike;

(2.) That it is illegal to assess members of the Church of England for the support of schools which are not under the control of the Church of England, and in which there are not taught religious exercises prescribed by that church.

The affidavits filed in support of the application allege that at the time of the union with Canada of what is now the province of Manitoba, there were in operation a number of parochial schools in which the distinctive principles and doctrines of the Church of England were taught, and which were supported by that church and out of the funds of the church. In the case of *Barrett* v. *Winnipeg*, 7 M. R. 273; 19 S. C. R., a Roman Catholic ratepayer sought to quash two by-laws of the city, levying, by assessment, the amount required for the municipal and school purposes of the city for the year 1890. The ground upon which it was sought to quash these by-laws was that, by them the amounts levied for school purposes for the Protestant and Catholic schools were united and one rate levied upon Protestants and Roman Catholics alike for the whole sum. The question involved in that case was whether the Public Schools Act of 1890, under the authority of which the city had acted, was one within the power of the local legislature to pass. The argument against its validity was that the Roman Catholics had, at the time of the union, denominational schools in this province, and therefore the Act prejudicially affected a right or privilege which they, as a class of persons, then had by law or practice. The Supreme Court has decided the contention to be well founded; that the Public Schools Act is one which the legislature of this province had no power to pass, and has ordered the by-laws in question in that case to be quashed. If the facts alleged in the affidavits supporting the present application are correct, and no attempt has been made to contradict them, I do not see how it can be distinguished from *Barrett* v. *Winnipeg*. The Supreme Court there decided a case in which the question was raised as here, by an individual member of the church. There can be no doubt that under the decision of the Supreme Court in that case the members of the Church of England are also a class of persons who had, in the matter of education, a right or privilege by law or practice at the time of the union. In the New Brunswick case of *Renaud*, the court in New Brunswick dealt with section 93 of the British North America Act to which section 22 of the Manitoba Act is similar. In that case the learned Chief Justice, now Chief Justice of the Supreme Court, held that the words of sub-section 1 were not intended to distinguish between Roman

Catholics on the one hand and Protestants on the other. The sub-section means, he said, just what it expresses, that "any," that is every, "class of persons" having any right or privilege in respect of denominational schools, whether such class should be one of the numerous denominations of Protestants or Roman Catholics, should be protected. If that is the true meaning of sub-section 1 of section 93 of the British North America Act, and I do not see how any other reading can be given to it, the same construction must be put upon the corresponding sub-section of the Manitoba Act. The words Protestant and Catholic are used in the British North America Act as in the Manitoba Act. That being so, there can, I think, be no doubt that under the decision of the Supreme Court in *Barrett* v. *Winnipeg*, the members of the Church of England are a class of persons who had, at the time of the Union, a right or privilege by law or practice which is prejudicially affected. I cannot see that the argument can be urged of acquiescence on the part of the applicant. He may not, indeed he did not, move while the previous School Acts were in force, but it is a public right he is now contending for, and I do not see that such a constitutional right can be waived. It may slumber or not be enforced, but it is there all the same. If the members of the Church of England have the right or privilege under the Act, it is illegal to assess members of that church for the support of schools which are not under the control of that church; and as the by-law No. 514 now in question levies one rate upon ratepayers of all denominations, it is illegal and must be quashed.

Mr. Justice Dubuc concurred.

Judgment of Dubuc, J.

Bain, J.

Judgment of Bain, J.

I agree with the Chief Justice that the application should be allowed. In view of the decision of the Supreme Court, reversing the judgment of this court in *Barrett* v. *Winnipeg*, 7 M. R. 273, it seems to me that the only question that is open to us to consider is, whether the applicant has shown that he is one of a class of persons who, at the time of the union, were maintaining denominational schools; the affidavits filed show that Mr. Logan was at the time of the union, and still is, a member of the Church of England, and at the time of the union the Church of England was maintaining a number of schools, and that these schools beyond question were strictly denominational schools. Now, unless it can be held that sub-section 1 of section 22 of the Manitoba Act applies only to Roman Catholics and Protestants, and not to Roman Catholics and the several Protestant denominations or classes of persons who were maintaining denominational schools, the applicant here is in precisely the same position that Mr. Barrett was in in *Barrett* v. *Winnipeg*, and he has made out a much stronger case as regards Episcopalians than Mr. Barrett did as regards Roman Catholics. What was shown in the Barrett case was, that the applicant was a ratepayer and a member of the Roman Catholic Church, and that the church, prior to and at the time of the union, had been maintaining denominational schools and the Supreme Court holding that the Public Schools Act, 1890, prejudicially affected the rights of Roman Catholics with respect to denominational schools, declared the Act to be invalid, and quashed the by-law that the city of Winnipeg had enacted under its authority. As regards the application of sub-section 1, I agree with the Chief Justice that it applies not merely to Protestants and Roman Catholics, but to every class of persons who were maintaining denominational schools at the time of the union, and indeed, the decision in *Ex parte Renaud* probably precludes any other view of its application.

I cannot distinguish the present case from *Barrett* v. *Winnipeg*, and I think the by-law must therefore be quashed.

Judgment of Judicial Committee of Privy Council in both cases.

JUDGMENT OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL IN BOTH CASES.

Present:

LORD WATSON,	LORD MACNAGHTEN,	LORD HANNEN, and
LORD HOBHOUSE,	LORD MORRIS,	LORD SHAND.

THE CITY OF WINNIPEG *v.* BARRETT—THE CITY OF WINNIPEG *v.* LOGAN.

These were appeals instituted on behalf of the city of Winnipeg, the first from a judgment of the Supreme Court of Canada, of October 28, 1891, reversing decisions of the Court of Queen's Bench of Manitoba, and of Mr. Justice Killam, and the second from a decision of the Court of Queen's Bench of Manitoba, of December 19, 1891.

The arguments were heard before a committee consisting of Lord Watson, Lord Macnaghten, Lord Morris, Lord Hannen, Sir Richard Couch and Lord Shand, when their lordships reserved judgment.

Lord Macnaghten delivered the judgment as follows:—These two appeals were heard together. In the one case the city of Winnipeg appeals from a judgment of the Supreme Court of Canada, reversing a judgment of the Court of Queen's Bench for Manitoba; in the other from a subsequent judgment of the Court of Queen's Bench for Manitoba, following the judgment of the Supreme Court. The judgments under appeal quashed certain by-laws of the city of Winnipeg, which authorized assessments for school purposes in pursuance of the Public Schools Act, 1890, a statute of Manitoba to which Roman Catholics and members of the Church of England alike take exception. The views of the Roman Catholic Church were maintained by Mr. Barrett; the case of the Church of England was put forward by Mr. Logan. Mr. Logan was content to rely on the arguments advanced on behalf of Mr. Barrett, while Mr. Barrett's advisers were not prepared to make common cause with Mr. Logan, and naturally would have been better pleased to stand alone. The controversy which has given rise to the present litigation is, no doubt, beset with difficulties. The result of the controversy is of serious moment to the province of Manitoba, and a matter apparently of deep interest throughout the Dominion. But in its legal aspect the question lies in a very narrow compass. The duty of this board is simply to determine as a matter of law whether, according to the true construction of the Manitoba Act, 1870, having regard to the state of things which existed in Manitoba at the time of the union, the Provincial Legislature has or has not exceeded its powers in passing the Public Schools Act, 1890. Manitoba became one of the provinces of the Dominion of Canada under the Manitoba Act, 1870, which was afterwards confirmed by an Imperial statute known as the British North America Act, 1871. Before the union it was not an independent province, with a constitution and a legislature of its own. It formed part of the vast territories which belonged to the Hudson's Bay Company, and were administered by their officers or agents. The Manitoba Act, 1870, declared that the provisions of the British North America Act, 1867, with certain exceptions not material to the present question, should be applicable to the province of Manitoba, as if Manitoba had been one of the provinces originally united by the Act. It established a legislature for Manitoba, consisting of a legislative council and a legislative assembly, and proceeded, in section 22, to re-enact with some modifications the provisions with regard to education which are to be found in section 93 of the British North America Act, 1867. Section 22 of the Manitoba Act, so far as it is material, is in the following terms:—"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 (2) which any class of persons have by law or practice in the province at the union." Then follow two other sub-sections. Sub-section 2 gives an "appeal," as it is termed in the Act, 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." Sub-section 3 reserves certain limited powers to the Dominion Parliament in the event of the Provincial Legislature failing to comply with the requirements of the section or the decision of the Governor-General in Council. At the commencement of the argument a doubt was suggested as to the competency of the present appeal in consequence of the so-called appeal to the Governor-General in Council provided by the Act. But their Lordships are satisfied that the provisions of sub-sections (3) 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. Sub-sections 1, 2 and 3 of section 22 of the Manitoba Act, 1870, differ but slightly from the corresponding sub-sections of section 93 of the British North America Act, 1867. The only important difference is that in the Manitoba Act, in sub-section 1, the words "by law" are followed by the words "or practice," (4) which do not occur in the corresponding passage in the British North America Act. These words were no doubt introduced to meet the special case of a country which had not as yet enjoyed the security of laws properly so called. It is not, perhaps, very easy to define precisely the meaning of such an expression as "having a right or privilege by practice." But the object of the enactment is tolerably clear. Evidently the word "practice" is not to be construed as equivalent to "custom having the force of law." 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. What, then, was the state of things when Manitoba was admitted to the union? On this point there is no dispute. It is agreed that there was no law, or regulation, or ordinance with respect to education in force at the time. There were, therefore, no rights or privileges with respect to denominational schools existing by law. The practice which prevailed in Manitoba before the union is also a matter on which all parties are agreed. The statement on the subject by Archbishop Taché, the Roman Catholic Archbishop of St. Boniface, who has given evidence in Barrett's case, has been accepted as accurate and complete. "There existed," he says, "in the territory now constituting the province of Manitoba a number of effective schools for children. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic Church, and others by various Protestant denominations. The means necessary for the support of 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 were paid out of the funds of the church, contributed by its members. 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 the Roman Catholic children, and were not under obligation to and did not contribute to the support of any other schools." 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 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 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 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 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. It has been objected that if the rights of Roman Catholics, and of other religious bodies, in respect of their denominational schools, are to be so strictly measured and limited by the practice which actually prevailed at the time of the union, they will be reduced to the condition of a "natural right" which "does not want any legislation to protect it." Such a right, it was said, cannot be called a privilege in any proper sense of the word. If that be so, the only result is that the protection which the Act purports to extend to rights and privileges existing "by practice" has no more operation than the protection which it purports to afford to rights and privileges existing "by law." It can hardly be contended that, in order to give a substantial operation and effect to a saving clause expressed in general terms, it is incumbent upon the court to discover privileges which are not apparent of themselves, or to ascribe distinctive and peculiar features to rights which seem to be of such a common type as not to deserve special notice or require special protection. Manitoba having been constituted a province of the Dominion in 1870, the Provincial Legislature lost no time in dealing with the question of education. In 1871 a law was passed which established a system of denominational education in the common schools, as they were then called. A Board of Education was formed, which was to be divided into two sections, Protestant and Roman Catholic. Each section was to have under its control and management the discipline of the schools of the section. Under the Manitoba Act the province had been divided into 24 electoral divisions, for the purpose of electing members to serve in the Legislative Assembly. By the Act of 1871 each electoral division was constituted a school district, in the first instance. Twelve electoral divisions, "comprising mainly a Protestant population," were to be considered Protestant school districts; twelve, "comprising mainly a Roman Catholic population," were to be considered Roman Catholic school districts. Without the special sanction of the section there was not to be more than one school in any school district. The male inhabitants of each school district, assembled at an annual meeting, were to decide in what manner they should raise their contributions towards the support of the school, in addition to what was derived from public funds. It is perhaps not out of place to observe that one of the modes prescribed was "assessment on the property of the school district," which must have involved, in some cases at any rate, an assessment on Roman Catholics for the support of a Protestant school, and an assessment on Protestants for the support of a Roman Catholic school. In the event of an assessment there was no provision for exemption, except in the case of the father or guardian of a school child, a Protestant in a Roman Catholic school district, or a Roman Catholic in a Protestant school district—who might escape by sending the child to the school of the nearest district of the other section and contributing to it an amount equal to what he would have paid if he had belonged to that district. The laws relating to education were modified from time to time, but the system of denominational education was maintained in full vigour until 1890. An Act passed in 1881, following an Act of 1875, provided among other things that the establishment of a school district of one denomination should not prevent the establishment of a school district of the other denomination in the same place, and that a Protestant and a Roman Catholic district might include the same territory in whole or in part. From the year 1876 until 1890 enactments were in force declaring that in no case should a Protestant ratepayer be obliged to pay

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for a Roman Catholic school, or a Roman Catholic ratepayer for a Protestant school. In 1890 the policy of the past nineteen years was reversed; the denominational system of public education was entirely swept away. Two Acts in relation to education were passed. The first (53 Vic., c. 37) established a Department of Education and a board consisting of seven members known as the "Advisory Board." Four members of the board were to be appointed by the Department of Education, two were to be elected by the public and high school teachers, and the seventh member was to be appointed by the University Council. One of the powers of the Advisory Board was to prescribe the forms of religious exercises to be used in the schools. The Public Schools Act, 1890 (53 Vic., c. 38), enacted that all Protestant and Roman Catholic school districts should be subject to the provisions of the Act, and that all public schools should be free schools. The provisions of the Act with regard to religious exercises are as follows:— "6. Religious exercises in the public schools shall be conducted according to the regulations of the Advisory Board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place. 7. Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and, upon receiving written authority from the trustees, it shall be the duty of the teachers to hold such religious exercises. 8. The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided." The Act then provides for the formation, alteration and union of school districts, for the election of school trustees, and for levying a rate on the taxable property in each school district for school purposes. In cities the municipal council is required to levy and collect upon the taxable property within the municipality such sums as the school trustees may require for school purposes. A portion of the legislative grant for educational purposes is allotted to public schools; but it is provided that any school not conducted according to all the provisions of the Act, or any Act in force for the time being, or the regulations of the Department of Education, or the Advisory Board, shall not be deemed a public school within the meaning of the law and shall not participate in the legislative grant. Section 141 provides that no teacher shall use or permit to be used as text books any books except such as are authorized by the Advisory Board, and that no portion of the legislative grant shall be paid to any school in which unauthorized books are used.

(7)

Then there are two sections (178 and 179) which call for a passing notice, because, owing apparently to some misapprehension, they are spoken of in one of the judgments under appeal as if their effect was to confiscate Roman Catholic property. They apply to cases where the same territory was covered by a Protestant school district and by a Roman Catholic school district. In such a case Roman Catholics were really placed in a better position than Protestants. Certain exemptions were to be made in their favour if the assets of their district exceeded its liabilities, or if the liabilities of the Protestant school district exceeded its assets. But no corresponding exemptions were to be made in the case of Protestants. Such being the main provisions of the

explain?

(8)

RECORD.

In the Supreme Court of Canada.

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Case.

Judgment of Judicial Committee of Privy Council in both cases —*continued.*

Public Schools Act, 1890, their Lordships have to determine whether that Act prejudicially affects 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. Notwithstanding the Public Schools Act, 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 subscriptions; 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. 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 represented 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 members of the Church of England find themselves unable to partake of advantages which the law offers to all alike. (9) Their Lordships are sensible of the weight which must attach to the unanimous decision of the Supreme Court. They have anxiously considered the able and elaborate judgments by which that decision has been supported. But they are unable to agree with the opinion which the learned judges of the Supreme Court have expressed as to the rights and privileges of Roman Catholics in Manitoba at the time of union. They doubt whether it is permissible to refer to the course of legislation between 1871 and 1890, as a means of throwing light on the previous practice or on the construction of the saving clause in the Manitoba Act. (10) They cannot assent to the view, which seems to be indicated by one of the members of the Supreme Court, that public schools under the Act of 1890 are in reality Protestant schools. The legislature has declared in so many words that the public schools shall be entirely unsectarian, and that principle is carried out throughout the Act. (11) With the policy of the Act of 1890 their Lordships are not concerned. But they cannot help observing that, if the views of the respondents were to prevail, it would be extremely difficult for the Provincial Legislature, which has been entrusted with the exclusive power of making laws relating to education, to provide for the educational wants of the more sparsely inhabited districts of a country almost as large as Great Britain, and that the powers of the legislature, which on the face of the Act appear so large, would be limited to the useful but somewhat humble office of making regulations for the sanitary conditions of school-houses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort. (12) In the result their Lordships will humbly

RECORD.

In the Supreme Court of Canada,

Case.

Judgment of Judicial Committee of Privy Council in both cases —*continued.*

advise Her Majesty that these appeals ought to be allowed, with costs. In the *City of Winnipeg* v. *Barrett*, it will be proper to reverse the order of the Supreme Court with costs and to restore the judgment of the Court of Queen's Bench for Manitoba. In the *City of Winnipeg* v. *Logan*, the order will be to reverse the judgment of the Court of Queen's Bench and to dismiss Mr. Logan's application and discharge the rule *nisi* and the rule absolute, with costs.

[2229]

Canadian Order in Council, dated 15th August, 1893.

CERTIFIED COPY *of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the* 15*th August*, 1893.

The Committee on the recommendation of the acting Minister of Justice advise that pursuant to the provisions of the Act 54-55 Victoria, chapter 25, the Attorney-General of the province of Manitoba be notified that in accordance with an Order of His Excellency the Governor-General in Council dated the 31st day of July, 1893, a case touching certain statutes of the said province relating to education, and the memorials of certain petitioners complaining thereof was referred to the Supreme Court of Canada for hearing and consideration and that such case will be heard at the next ensuing sittings of the said court, to wit, on the third day of October next, or so soon thereafter as may be. The committee further advise that a like notice be sent to Mr. John S. Ewart, Q.C., of Winnipeg, counsel for the petitioners.

The Committee advise that the Attorney-General for the province of Manitoba and Mr. Ewart be requested to acknowledge the receipt of such notice respectively.

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

JOHN J. McGEE,

Clerk of the Privy Council.

Letter—President of Privy Council to Lieut.-Governor of Manitoba, dated 19th August, 1893.

OFFICE OF THE QUEEN'S PRIVY COUNCIL FOR CANADA,

OTTAWA, CANADA, 19th August, 1893.

SIR,—I have the honour to transmit herewith a certified copy of an Order in Council, No. 2103, dated the 31st July, 1893, with reference to the Manitoba school case, and I have to request that you will be good enough to acknowledge the receipt thereof.

I have, &c.,

W. B. IVES,

President of the Privy Council.

His Honour the Lieutenant-Governor of Manitoba.

Letter—Clerk of Privy Council to J. S. Ewart, dated 19th August, 1893.

OFFICE OF THE QUEEN'S PRIVY COUNCIL FOR CANADA,

OTTAWA, CANADA, 19th August, 1893.

SIR,—I have the honour, by direction of the President of the Council, to transmit herewith a certified copy of an Order in Council, No. 2103, dated the 31st July, 1893, with reference to the Manitoba school case, and I have to request that you will be good enough to acknowledge the receipt thereof.

I have, &c.,

JOHN J. McGEE,

Clerk of the Privy Council.

JOHN S. EWART, Esq., Q.C.,

Winnipeg, Man.

Letter—Same to Attorney-General of Manitoba, dated 19th August, 1893.

OFFICE OF THE QUEEN'S PRIVY COUNCIL FOR CANADA,

OTTAWA, CANADA, 19th August, 1893.

SIR,—I have the honour, by direction of the President of the Council, to transmit herewith a certified copy of an Order in Council, No. 2229, dated the 15th August, 1893, with reference to the Manitoba school case, and I have to request that you will be good enough to acknowledge the receipt thereof.

I have, &c.,

JOHN J. McGEE,

Clerk of the Privy Council.

The Honourable the Attorney-General of Manitoba.

RECORD.

In the Supreme Court of Canada.

Case.

Letter—Same to J. S. Ewart, dated 19th August, 1893.

OFFICE OF THE QUEEN'S PRIVY COUNCIL FOR CANADA,

OTTAWA, CANADA, 19th August, 1893.

SIR,—I have the honour, by direction of the President of the Council, to transmit herewith a certified copy of an Order in Council, No. 2229, dated the 15th August, 1893, with reference to the Manitoba school case, and I have to request that you will be good enough to acknowledge the receipt thereof.

I have, &c.,

JOHN J. McGEE,

Clerk of the Privy Council

JOHN S. EWART, Esq., Q.C.,
Winnipeg, Man.

Letter—Lieut.-Governor of Manitoba to Canadian Privy Council drted 22nd August, 1893.

GOVERNMENT HOUSE,

WINNIPEG, MAN., 22nd August, 1893.

SIR,—I have the honour to acknowledge the receipt of your communication of the 19th instant, transmitting a certified copy of an Order in Council, No. 2103, dated the 31st July, 1893, with reference to the Manitoba school case, and to say that I have caused copies of your communication and of the Order in Council referred to, to be transmitted to my Government.

I have, &c.,

JOHN SCHULTZ,

Lieutenant-Governor.

The Honourable
The President of the Privy Council,
Ottawa.

Letter—J. S. Ewart, to Clerk of Privy Council dated 23rd August, 1893.

WINNIPEG, MAN., 23rd August, 1893.

DEAR SIR,—I beg to acknowledge receipt of (1) your favour of 11th inst., with a copy of the Manitoba school case to replace the incomplete copy formerly sent to me. (2) Your favour of 19th inst., with a copy of Order in Council, No. 2103. (3) Your favour of 19th inst., with a copy of Order in Council, No. 2229.

Your obedient servant,

JOHN S. EWART.

JOHN J. McGEE, Esq.,
Clerk of the Privy Council,
Ottawa.

Letter—Attorney-General of Manitoba to Clerk of Privy Council dated 23rd August, 1893.

WINNIPEG, 23rd August, 1893.

SIR,—I have the honour to acknowledge receipt of your communication of the 19th inst., inclosing certified copy of Order in Council, No. 2229, dated 15th August, 1893, with reference to the Manitoba school case.

I have, &c.,

CLIFFORD SIFTON,

Attorney-General.

JOHN J. MCGEE, Esq.,

Clerk of the Privy Council,

Ottawa.

This is Exhibit marked "X" referred to in the Affidavit of John Skirving Ewart, sworn before me this 11th day of April, 1894.

(Signed) CHARLES O'CONNOR,

A Commissioner for taking Affidavits, &c.

"C."

In the Supreme Court of Canada.

In the matter of certain Statutes of the Province of Manitoba, relating to Education.

I, John Skirving Ewart, of the City of Winnipeg, in the Province of Manitoba, make oath and say :—

1. I acted as "Counsel" for the Roman Catholic minority of Her Majesty's subjects in the Province of Manitoba, upon the argument of this matter before the Supreme Court of Canada.

2. The printed book now shown to me and marked with the letter X. contains copies of the case in this matter, and all the documents thereby directed to be considered as part of the case (with the exception of the Statutes therein referred to).

3. Copies of the said book were used upon the hearing of this matter before the Supreme Court of Canada by all the Judges of that Court and by all the Counsel engaged in the argument as being the said case, and the documents thereby directed to be considered as part thereof.

(Sd.) JOHN S. EWART.

Sworn before me at the City of Ottawa, in the County of Carleton, in the Province of Ontario, this 11th day of April, A.D., 1894.

(Sd.) CHAS. O'CONNOR,

A Commissioner for taking Affidavits, &c.

IN THE SUPREME COURT OF CANADA.

TUESDAY the 20th day of FEBRUARY, A.D, 1894.

Present :—

The Honorable SIR HENRY STRONG, KNIGHT, Chief Justice.
The Honorable MR. JUSTICE FOURNIER,
The Honorable MR. JUSTICE TASCHEREAU,
The Honorable MR. JUSTICE GWYNNE,
The Honorable MR. JUSTICE KING.

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

Judgment dated 20th Feb., 1894.

The Governor in Council, by Order in Council bearing date the Thirty-first day of July, One thousand eight hundred and ninety-three, numbered 2,103, and passed 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, Chaptar 25, Section 4, having referred to the Supreme Court of Canada for hearing and consideration a Case touching certain Statutes of the Province of Manitoba relating to Education, and the memorials of certain persons complaining thereof, the questions so referred for hearing and consideration being 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 Sub-section 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 Sub-section 2 of Section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of Sub-section 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 ?

And the said Case having come before this Court on the Fourth day of October, in the year of our Lord One thousand eight hundred and ninety-three, the Honorable J. J. Curran, Q.C., Her Majesty's Solicitor-General for the Dominion of Canada, appeared to submit the said Case on behalf of the Crown, Mr. Ewart, Q.C., appeared to argue the said Case on behalf of the said petitioners and memorialists, and Mr. Wade, Q.C., appeared on behalf of the Province of Manitoba, but not to argue the said Case in the interest of the said Province, whereupon this Court directed the hearing of the said Case to stand over, and in the exercise of the powers conferred by 54-55 Victoria, chapter 25, Section 4, substituted for the Revised Statutes of Canada, chapter 135, Section 37, appointed Mr. Christopher Robinson, Q.C., to argue the said Case in the interest of the said Province of Manitoba, and the said Case coming on for hearing before this Court on the Seventeenth day of October, in the year of our Lord One thousand eight hundred and ninety-three, in the presence of Counsel aforesaid, whereupon, and upon hearing Mr. Ewart, Q.C., for the said petitioners and memorialists, and Mr. Robinson, Q.C., who appeared pursuant to the direction of the Court in the interest of the said Province of Manitoba, the Honorable the Solicitor-General and Mr. Wade, Q.C., not desiring to be heard, this Court was pleased to direct that the said Case should stand over for consideration, and the same having come before this Court this day, this Court did state its opinion on the said questions so submitted as aforesaid, and the opinion of the said Court, and the answers to the said questions, and the reasons therefor, will appear from the Judgments delivered by their Lordships, a true copy of which said Judgments is hereunto annexed.

All which is respectfully certified under the Seal of the Supreme Court of Canada.

(Sd.) ROBERT CASSELS,

Registrar.

I hereby certify that the foregoing document is a true copy of the original certificate issued in the above matter.

ROBERT CASSELS,

OTTAWA, *May* 10*th*, 1894. *Registrar.*

REASONS FOR JUDGMENT. "B"

RECORD.

In the Supreme Court of Canada.

IN THE MATTER of certain Statutes of the Province of Manitoba relating to Education.

Opinion of Chief Justice —*continued.*

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 and 55 Vic., chap. 25, section 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 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 Vic. (1870) chap. 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 sub-section 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 sub-section 2 of section 22 of the Manitoba Act or establish a system of "separate or dissentient schools" within the meaning of sub-section 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, effect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor-General in Council?

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. (1)

RECORD.

In the Supreme Court of Canada.

Opinion of Chief Justice —*continued.*

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 and 55 Vic., chap. 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.

(2) 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 minorty of the Queen's subjects in relation to education," in Sub-section 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 the right or privilege mentioned in sub-section 2 of section 22 of the Manitoba Act the same right or privilege which is previously referred to in sub-section 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 sub-section 3 of the British North America Act 1867, 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 Roman Catholic minority of the Queen's subjects in relation to education."

(3) It is important to contrast these two clauses of the Acts in question, inasmuch as there is intrinsic evidence 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.

(4) It will be observed that the British North America Act, section 93, sub-section 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, sub-section 2) of the Manitoba Act. (5) Again the same sub-section 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. (6) 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,

RECORD.

In the Supreme Court of Canada.

Opinion of Chief Justice —*continued.*

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 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 right of 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 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 legislature, 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 Sub-section 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 Sub-section 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, 8 cont

RECORD.

In the Supreme Court of Canada.

Opinion of Chief Justice —*continued.*

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, Sub-section 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.

(9)

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."

good (10)

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 differences 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 as far as possible to this, and 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 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 legislatures to interfere with separate or denominational schools to the prejudice of a Roman Catholic or Protestant minority.

(11)

First then let us consider the 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 sub-section 3 of section 93 of the British North America Act, be *ultra vires* of the legislature and of no constitutional validity.

oh!

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.

(12)

What is meant by the term "provincial authority"? The Parliament of the Dominion, as shown by the Manitoba Act, hold that it does not include the

(12 cont'd)

RECORD.

In the Supreme Court of Canada.

Opinion of Chief Justice —*continued.*

legislature, for in sub-section 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 subject to an appeal, when it merely attempts to recall its own acts, the terms used should be apt, clear and unambiguous. (13) To return then to the case 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. (14)

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 sub-section 1 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 remain unrepealed and in force, an appeal would lie to the Governor-General from any act or decision of a provincial authority affecting any of such rights or privileges of a minority, but there would be nothing to prevent the legislature 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. (15)

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 the Act of the Dominion Parliament which 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 sub-section 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, 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. (16) The second sub-section of Section 22 of the Manitoba Act is as follows:—"An

RECORD.

In the Supreme Court of Canada.

Opinion of Chief Justice —*continued.*

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."

17

I put aside as entirely irrelevant here the question whether it was not intended by this sub-section 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.

18

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 sub-section of Section 22. That we must assume, in 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.

19

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 sub-section, viz., those existing at the Union when belonging to a minority, either Protestant or Catholic.

20

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 sub-section 2 of section 22 of the Manitoba Act, have been intended to include the provincial legislature, for it is expressly distinguished from it, being mentioned alternately 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.

21

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

RECORD.

In the Supreme Court of Canada.

Opinion of Chief Justice—*continued.*

of the legislature, being limited to such as prejudiced the same class of rights or privileges. The wording of this sub-section 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 or to incapacitate it from 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 legislature 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.

22

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 favor 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.

23

That the words "provincial authority" in the third sub-section 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 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 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.

24

Again, why were the words contained in the third sub-section 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 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

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Opinion of Chief Justice —*continued.*

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 sub-section 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 sub-section 2 of the latter Act. This seems to me to show conclusively that the words "rights or privileges" in sub-section 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.

Certified true copy,

G. DUVAL,
Reporter, S.C.C.

Opinion of Fournier, J.

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, in the case of Severn v. the Queen [2 Can. S. C. R. 70] "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 consider 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 parallel 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 * * * * * * *	
(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.	(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 its 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 any provisions of this section and of any decision of the Governor-General in Council under this section.	(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 the provisions 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, had thrown the people into a strong and fierce agitation, inflamed religious and national passions 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 Rev. W. 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 Province of Canada.

Mr. Ritchot was instructed to immediately leave with Messrs. Black and Scott for Ottawa, in view of opening negociations 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 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 anthorised 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 authorised 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, Articles 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 monies for schools shall be divided between the several denominations *pro rata* of their respective populations."

Now, after negotiations had been going on, and despatches and instructions from the Imperial 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.* Winnipeg, 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 sub-section 1 of this section 22 are " which any class have by law or practice in the province at the union "—had in point no such right or privilege by law or practice with respect to denominational schools, and therefore that sub-section 1 is, so to speak, wiped out of the Constitutional Act of Manitoba, 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* confederation 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 articles 5 and 7 of the bill of rights, separate schools for the Catholics of Manitoba, and would make provision so that the moneys would be divided between the Protestant and Catholic denominations *pro rata* to their respective populations. Then 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 sub-sections 2 and 3 were inserted in the Act so that they might be protected by the Governor-General against any subsequent legislation 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 Sub-section 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 Sub-section 2 "an appeal shall lie from any Act of the Legislature" necessarily 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 unauthorised 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 Sub-section, 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,

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Opinion of Fournier, J. —*continued.*

that the Governor-General in Council has the right of entertaining an appeal by the British North America Act as well as by Sub-section 2 of Section 22 of the Manitoba Act. He has also the power of considering the application upon the 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 has arrived in the premises, the Dominion Government may then under Sub-section 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 Sub-section 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 Sub-section 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 the view expressed by Lord Carnavon 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, February 19, 1867, shows:—"Lord Carnavon.—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 the 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 Province, 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 Confederation."

This being so, the next point of enquiry 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 nothing to do with the enquiry 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." By referring to the legislation from the date of the Union till 1890, it is evident that the Catholics enjoyed the immunity of 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 ratepayer 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 Articles 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 *quâ* 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" 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 right, then I am of 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 Sub-section 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 Sub-section 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, 32 and 33 Vic., cap. 3 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 Sub-section 2 of Section 22 has a somewhat more comprehensive wording than Sub-section 3 of Section 93 of the British North America Act in relation to appeals in educational matters. A Statute does not vary or alter if it merely makes further provision, it is simply an addition to it. The Second Sub-section is wider but does not vary at all from the Third Sub-section of the 93 Section 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 Third Sub-section 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

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Opinion of Fournier, J. —*continued.*

there shall be an Appeal, it goes beyond the British North America Act, it does not vary it, it 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 18 No. 33a, 33b, 1893) we read at page 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 Sub-section 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 Sub-section 2 and appeal to the Government."

"Lord Hannen: It has a right to appeal against *any* Act of the Legislature."

"Lord Shand: Even *ultra 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 Sub-section 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 opinion that Sub-section 2 of Section 22 of the 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 one 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 Sub-section 3 of Section 93 of the British North America 1867, or by Sub-section 2 of Section 22 of Manitoba Act 33, Vic. (1870) cap. 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 Sub-sections 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 Sub-section 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 Sub-section 2 of Section 22 of the Manitoba Act, "or establish a system of separate or dissentient schools" within the meaning of Sub-section 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.

Certified true Copy.

G. DUVAL,
Reporter, S.C.C.

Opinion of Taschereau, J.

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 hac 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 conclusive, 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 reason 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

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In the Supreme Court of Canada.

Opinion of Taschereau, J. —*continued.*

to intervert the order of the questions put to us, and to answer first the fourth of these questions, that is, whether sub-section 3 of section 93 of the British North America Act applies to Manitoba. To that question the answer, 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 operations 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 a difference in the law was intended. I cannot see any other reason for it and none has been suggested. True it is that words "or practice" in sub-section 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 sub-section 2 thereof so differently as it is from sub-section 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, anything 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 sub-section 3 of section 93 of the British North America Act: "Where in any Province a "system of separate or dissentient schools exist 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 claim to (*sic*) 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 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 been authoritatively 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 affected, there is no appeal. The rights and privileges mentioned in sub-section 2 of section 22 are the same rights and privileges that are mentioned in sub-section 1 that is to say, those existing at the Union upon which sub-section 3 provides for the interference in certain cases of His Excellency the Governor-General in Council, and it is as to such rights and 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 and 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 sub-section 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 the rights and 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*.

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 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 these 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 Statutes impugned, were as I read that Judgment, held to have been and to be *intra vires*.

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In the Supreme Court of Canada.

Opinion of Taschereau, J. —*continued.*

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 has 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 to convince 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 authorisation 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 been prejudicially affected, this legislation would be *ultra vires,* and it is settled 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 for ever 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 still be 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 would 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.

RECORD.

In the Supreme Court of Canada.

Opinion of Taschereau, J. —*continued.*

I will 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 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 Vic. (1870), ch. 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 sub-sections referred to or either of them ?—I would answer—No.

To No. 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 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 sub-section 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 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 sub-section 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of sub-section 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.

Certified true copy.

G. DUVAL,
Reporter, S.C.C.

Opinion of Gwynne, J.

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 :—

1. 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 sub-section 3 of section 93 of the British North America Act of 1867 or by sub-section 2 of section 22 of The Manitoba Act 33 Vic. (1870) c. 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 sub-section 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 sub-section 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools "within the meaning of sub-section 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 is 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.

The Petition then set forth the 22nd section of the Manitoba Act (33 Vic., chap. 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 believed their 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 Catholics or Protestants, 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. That 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 the 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 by and on behalf of the Roman Catholics of Manitoba for redress under sub-sections 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 or redress under sub-sections 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 sub-sections 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., chaps. 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:—

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 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 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 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 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, &c.

The pretension of the Petitioners therefore appears to be that the 22nd Section of the Manitoba Act entitled the Petitioners, notwithstanding the Judgment of the Privy Council in England in Barrett *v.* Winnipeg and Logan *v.* Winnipeg (1892, A.C. 445) 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 53 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, 53 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 53 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, 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 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 similiar 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 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 a school 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 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 represented 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 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 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 Lordship's 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 sub-sections are enacted 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 sub-section 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

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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 administrative capacity prejudicially affecting any such right that the Appeal is given by the second sub-section, and so likewise the remedies provided in the third sub-section relate to the same rights and privileges, and to the better securing the enjoyment of them. The second and third sub-sections 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 second sub-section and to the remedies provided in the third sub-section 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 second sub-section 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 (1892, A.C. 445.) in the following language:—

> At the commencement of the argument a doubt was suggested as to competency of the present appeal in consequence of the so-called appeal to the Governor-in-Council provided by the Act, but their Lordships are satisfied that the provisions of sub-sections 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 sub-section 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 sub-section of this section.

It has been suggested, however, that the rights and privileges whether conferred or recognised 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, and that therefore the right of appeal under sub-section 2 of the 22nd section against such repeal does not exist, notwithstanding the decision of the Privy Council in Barrett *v.* Winnipeg and Logan *v.* Winnipeg. 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 constitute 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 sub-section 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 affirmitive, 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 sub-section 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.

Certified true copy.

G. DUVAL,
Reporter, S.C.C.

Opinion of King, J.

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 sub-sections. The first sub-section 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 sub-section 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 sub-section 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 sub-section 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 under the section. In other words if the requisite remedy, either by Act of the legislature, or Act or decision of the 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 sub-sections, 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 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 sub-section 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 since been 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 seperate 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 Vic. cap. 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. 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, &c., 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

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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 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 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. Sub-section 1 of section 22 of the Manitoba Act differs from sub-section 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 (1892 A.C. 445) 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 the establishment of the province.

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

The 3rd sub-section of section 93, British North America Act, and the 2nd sub-section 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 nor did extend to cover "acts of the provincial legislature."

The addition in the 1st sub-section of the Manitoba Act of the words "or practice" and the addition in sub-section 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 sub-section of the British North America Act and that of the 2nd sub-section of the 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," etc., 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 sub-section 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 passsage 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 sub-section 2 does not relate to anything but what is *ultra vires* under sub-section 1. He says (p. 43) I cannot for myself frame the proposition which would lead to the inference that sub-section 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 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 lordship's, 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 this 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 sub-sections, 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

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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 sub-section 2. The full report shows that all the sub-sections of the two sections of the two Acts were exhaustively discussed.

In the judgment, their Lordships say that: Sub-sections 1, 2 and 3 of section 22 of the Manitoba Act 1870 differ but slightly from the corresponding sections of section 93 of the British North America Act 1867. The only important difference is, that in the Manitoba Act in sub-section 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 recognised 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 sub-section 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 sub-section 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 sub-section 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 sub-section 1 refers to rights &c. acquired before or at Union, while sub-section 3 in terms covers rights, &c. 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 sub-section 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 appeal 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 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 sub-section 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 sub-section, and of the words "or any Act of the legislature" in the 2nd sub-section, 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 sub-section 2 has the meaning suggested the entire series of limitations imposed by sub-sections 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 sub-section 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 sub-sections 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 Manitoba 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 summarises 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 Schools 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 assesments 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.

But does Man! act require more than a system or privilege of RC minority in relation"? NO!

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 schohls—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 sub-section 2, section 22, Manitoba Act, and sub-section 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 renders 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 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 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 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 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 the Union. It could not be said to be merely "the right to establish schools at their own expense, to maintain their schools by school fees or voluntary contributions, and

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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.: the support of a system of denominational schools for the minority, maintainable through compulsory rating of the persons and property of the minority, and, second, 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 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 enquiry at this point is whether a right acquired by law to maintain a system of separate schools had 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 ratepayers 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 differences as other than nominal, and 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 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 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 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 sub-sections 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 sub-section 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.

RECORD.

In the Supreme Court of Canada.

Opinion of King, J. —*continued.*

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 sub-section 2 of section 22 of the Manitoba Act, or establish a system of separate or dissentient schools within the meaning of sub-section 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.

Certified true copy.

G. DUVAL,

Reporter, S.C.C.

IN THE SUPREME COURT OF CANADA.

Certificate of Registrar of Supreme Court of Canada, Dated 11th April, 1894.

In the matter of certain Statutes of the Province of Manitoba relating to Education, and of the 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 Victoria, chapter 25, section 4.

I, Robert Cassels, Registrar of the Supreme Court of Canada, hereby certify that that part of the document hereunto annexed, marked A., from and inclusive of pages 4 to 32, as far as line 27, is a true copy of the Case in the above matter referred to this Court for hearing and consideration, and that the copies of the whole of said document were used at the hearing of this matter by the Court and Counsel. And I further certify that the document marked B., also annexed hereto, is a copy of the reasons for judgment delivered by the Judges of this Court when rendering judgment, as certified by George Duval, Esquire, the Official Reporter of this Court. And I further certify that the document marked C., also annexed hereto, is a copy of an affidavit of John Skirving Ewart, filed in my office in this matter.

Dated at Ottawa, this 11th day of April A.D. 1894.

ROBERT CASSELS,

Registrar.

In the Privy Council.

(No. 51 of 1894.)

ON APPEAL FROM THE SUPREME COURT OF CANADA.

In the matter of CERTAIN STATUTES OF THE PROVINCE OF MANITOBA RELATING TO EDUCATION.

Record of Proceedings.

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