

No.

of 1927.

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

IN THE MATTER OF A PETITION OF RIGHT

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY, AND THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH, ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO.

(Suppliants) APPELLANTS;

AND

HIS MAJESTY THE KING,

(Respondent) RESPONDENT.

RECORD

LAWRENCE JONES & Co.,
16 St. Helen's Place,
London, E.C., 3.

For the Appellants.

BLAKE & REDDEN,
17 Victoria Street,
Westminster, S.W., 1.

For the Respondent.

In the Privy Council

ON APPEAL FROM THE SUPREME COURT OF CANADA

IN THE MATTER OF A PETITION OF RIGHT

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY, AND THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH, ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO,

(*Suppliants*) APPELLANTS;

—AND—

HIS MAJESTY THE KING,

(*Respondent*) RESPONDENT.

Record of Proceedings

INDEX OF REFERENCE

PART I.

No.	Description of Documents	Date	Page
1	Amended Petition of Right.....	April 17, 1925	1
2	Amended Statement of Defence.....	June 25, 1925	8
PROCEEDINGS AT TRIAL			
3	Opening Statements of Counsel.....	Dec. 24, 1925	12
4	Suppliant's Case Introducing Exhibits.....	Jan. 11, 1926	20
5	Argument Upon Objection to Suppliant's Evidence.....	Jan. 11, 1926	26

Exhibit No.	Description of Documents	Date	Page
6	Suppliant's Case Introducing Exhibits.....	Jan. 11, 1926	51
7	Further Discussion as to Evidence.....	Jan. 11-12, 1926	56
8	Suppliant's Case Introducing Exhibits.....	Jan. 12-13, 1926	77
9	Respondent's Case, Reference to Statutes.....	Jan. 13, 1926	136
10	Respondent's Case, Introducing Exhibits.....	Jan. 13, 1926	140
11	Reply Introducing Exhibits.....	Jan. 13, 1926	162
12	Exhibits Filed During Argument.....	Jan. 13, 14, 15, 18, 19 and 20, 1926	170

JUDGMENTS AND NOTICE OF APPEAL

13	Reasons for Judgment of Trial Judge, Mr. Justice Rose.....	May 13, 1926	177
14	Judgment of Mr. Justice Rose at Trial.....	May 13, 1926	224
15	Notice of Appeal.....	June 8, 1926	225
16	Reasons for Judgment of Appellate Division.....	Dec. 23, 1926	226
	Mulock, C.J.O.....		226
	Magee, J.A.....		232
	Hodgins, J.A.....		232
	Ferguson, J.A.....		241
	Grant, J.....		241
17	Order of Appellate Division.....	Dec. 23, 1926	248
18	Order of Appellate Division granting leave to Appeal.....	Jan. 31, 1927	250
19	Order of Mr. Justice Ferguson.....	Feb. 18, 1927	251
20	Reasons for Judgment of The Supreme Court of Canada.....	Oct. 10, 1927	378
	The Chief Justice.....		378
	Duff, J.....		403
	Mignault, J.....		419
	Newcombe, J.....		423
	Rinfret, J.....		378
	Lamont, J.....		425
21	Order of the Supreme Court of Canada.....	Oct. 10, 1927	435
22	His Majesty's Order in Council granting Special Leave to Appeal to the Privy Council.....	Dec. 20, 1927	436

EXHIBITS

Exhibit No.	Description of Documents	Date	Page
1	Report of the Minister of Education for 1923.....	March 15th, 1924	363
2	Correspondence between J. G. O'Donoghue and Dr. A. H. U. Colquhoun.....	1923-1925	368

Exhibit No.	Description of Documents	Date	Page
3	Sixth census of Canada..... (Note printed—see note.)	1921	355
4	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1857.....	July, 1858	290
5	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1858.....	July 1859	294
5A	Appendix "H" to Separate School Manual of 1863.....	1863	304
6	Historical Educational Papers and Documents of Ontario 1853-1868 (Vol. 3)..... Extract from circular.....	Jan. 15, 1848	265
7	Annual Report of the Normal, Model and Common Schools in Upper Canada, for the year 1849.....	Aug. 8, 1850	266
8	The Journal of Education for Upper Canada, Volume 2 for the year 1849..... (See note referring to extracts).	1849	266
9	Annual Report of the Normal, Model and Common Schools in Upper Canada for the year 1850.....	July, 29, 1851	267
10	Annual Report of the Normal, Model and Common Schools in Upper Canada for the year 1852..... (See note referring to extracts).	Dec. 31, 1853	267
11	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1853.....	Oct. 21, 1854	268
12	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1855..... (See note referring to extracts)	July 1856	287
13	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1863.....	July, 1864	307
14	Annual Report of the Normal, Model, Grammar and Common Schools in Ontario, for the year 1867..... (See note referring to extracts).	Sept. 16, 1868	316

Exhibit No.	Description of Documents	Date	Page
15	Regulations, Courses of Study and Examinations of the Public and Separate Schools, revised 1915..... (See note referring to extracts and Book of Pamphlets--Document 2).	1915	354
16	Report of the Minister of Education (Ontario) for the year 1896.....Jan. (See note referring to extracts).	1897	341
17	Report of the Minister of Education for the year 1908.....Feb. (See note referring to extracts).	3, 1909	343
18	Report of the Minister of Education for the year 1909.....Feb. (See note referring to extracts).	1, 1910	345
19	Regulations and Courses of Study of the Continuation Schools, 1914..... (See note referring to extracts and Book of Pamphlets--Document 3).	1914	345
20	Report of the Minister of Education for the year 1915.....March (See note referring to extracts).	1916	354
21	Courses of Study and Examinations of the High Schools, Collegiate Institutes and Continuation Schools, Revised 1924..... (See note referring to extracts and Book of Pamphlets--Document 4).	1914	370
22	Regulations, High Schools and Collegiate Institutes 1922..... (See note referring to extracts and Book of Pamphlets--Document 5).	1922	355
23	Journal of Education for the year 1873.....May	1873	332
24	Journal of Education for Ontario, for the year 1868.....	1868	317
25	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1861.....June	1862	300
26	Annual Report of the Normal, Model, Grammar and Common Schools for the year 1860.....May	1861	299
27	Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1862.....July	1863	304

Exhibit No.	Description of Documents	Date	Page
28	Duplicate of Exhibit 13. (Not printed).....		307
29	Public Accounts of the Province of Ontario for the twelve months ending 31st October, 1921.....	1921	355
30	Public Accounts of the Province of Ontario for the twelve months ending 31st October, 1922.....	1922	362
31 (Part)	Extracts from Argument of Hon. E. B. Wood before the Arbitrators under the B.N.A. Act.....		318
31 (Part)	Award of Arbitrators between Upper Canada and Lower Canada as to Division of debts, etc.....	Dec. 16, 1870	325
32	Journal of Education for Upper Canada for the year 1855.....	1855	272
33	Grammar School Manual 1866.....	1866	310
34	Trustees' School Manual 1864—not printed....	1864	307
35	Courses of Study, Public and Separate Schools 1924..... (See Book of Pamphlets—Document 6).	1924	370
36	Instructions to School Inspectors re Grants in Counties, 1924..... (See Book of Pamphlets—Document 7).	1924	370
36A	Instructions to School Inspectors re Grants in Districts, 1924..... (See Book of Pamphlets—Document 8).	1924	371
37	Journal of Education for Upper Canada for the year 1865.....	1865	308
38	Journal of Education for Upper Canada for the year 1867.....	1867	315
39	Journal of Education for Upper Canada for the year 1864.....	1864	307
40	Circular, Special Departmental Grants, Public and Separate Schools 1924..... (See Book of Pamphlets—Document 9).	1924	371
41	Estimates of the Province of Ontario for the fiscal year ending October 31st, 1922.....	1922	356
42	Circular of Instructions re Continuation Schools.....	May 1924	371

Exhibit No.	Description of Documents	Date	Page
43	Book containing Legislation and Educational Pamphlets between 1841 and 1845..... (Not printed.)	1841-1845	252
44	The Laws relating to Grammar and Common Schools in Cities, Towns and Villages in Upper Canada, 1855.....	1855	282
45	Common School Manual, 1861.....	1861	300
46	The Law of 1863 relating to Roman Catholic Separate Schools in Upper Canada..... (Not printed).	1863	306
47	Journal of Education for the year 1860.....	1860	296
48	Journal of Education for the year 1862.....	1862	302
49	Journal of Education for the year 1876.....	1876	335
50	Report of the Minister of Education (Ontario) for the year 1886.....	Dec. 31, 1886	339
51	Report of the Minister of Education for the year 1903.....	Jan. 1904	341
52	Journal of Education for the year 1872.....	1872	332
53	Correspondence re Dublin School.....	1915	345
54	Correspondence re Glen Nevis School.....	1915	347
55	Inspector's Report of Continuation School at Eganville Separate School 26th November, 1908.....		343
56	Documentary History of Education in Upper Canada (1865-1867).....	1865-1867	309
57	Report on a System of Public Elementary Instruction for Upper Canada by Eger-ton Ryerson.....	Mar. 26, 1846	252
58	Journal of Education for the year 1856.....	1856	288
59	Journal of Education for the year 1857.....	1857	289
60	Journal of Education for the year 1858.....	1858	293
61	Annual Report of the Normal, Model, Gram-mar and Common Schools in Upper Can-ada for the year 1854.....	Mar. 1855	270
62	Memorandum as to appropriations for and payments to School Boards in 1922.....		364
63	Departmental Memorandum regarding grants referred to in Exhibit 62.....		366

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CANADA

IN THE MATTER OF A PETITION OF RIGHT.

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY AND THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO,
(Suppliants) APPELLANTS.

10

—and—

HIS MAJESTY THE KING.

(Respondent) RESPONDENT.

Record of Proceedings

Part I

No. 1

AMENDED PETITION OF RIGHT

(Amended this 21st day of December, 1926, pursuant to direction of First Divisional Court given on argument of the appeal herein—

20

“E. HARLEY”

Senior Registrar, S.C.O.)

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Petition of
Right,
April 17,
1925.

TO THE KING'S MOST EXCELLENT MAJESTY

THE HUMBLE PETITION OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR SCHOOL SECTION No. 2 IN THE TOWNSHIP OF TINY AND OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO BY THEIR SOLICITOR, THOMAS F. BATTLE, OF THE CITY OF TORONTO, IN THE COUNTY OF YORK, SHEWETH

30

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Petition of
Right,
April 17,
1925

—continued.

1. That each of the Suppliants is a body corporate under and by virtue of "The Separate Schools Act," Revised Statutes of Ontario, 1914, chapter 270, section 21, subsection 3, and as such conducts and has for many years last past conducted a Roman Catholic Separate School in what is known as School Section No. 2 in the Township of Tiny, in the County of Simcoe, and in the City of Peterborough, in the County of Peterborough, Province of Ontario, respectively.

2. That under and by virtue of section 20 of 26 Victoria (1863), chapter 5, being an Act of the then Parliament of Canada entitled "An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools" each of the Suppliants is entitled to receive from and be paid by the Respondent a share in the fund annually granted by the Legislature of the Province of Ontario for the support of Common Schools and is entitled also to a share in all other public grants investments and allotments for Common School puposes then made or thereafter to be made by the Province according to the average number of pupils attending such school during the twelve next preceding months, as compared with the whole average number of pupils attending school in the said Township of Tiny, and in the said City of Peterborough respectively. 10

3. That said section 20 of 26 Victoria (1863), chapter 5, referred to in the preceding paragraph is in the words following:— 20

"Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments, and allotments for Common School purposes now made or hereafter to be made by the Province or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same city, town, village or township " 30

4. That by section 22 of 26 Victoria (1863), chapter 5, it is also enacted that: The trustees of each Separate School shall, on or before the 30th day of June, and the 31st day of December of every year, transmit to the Chief Superintendent of Education for Upper Canada, a correct return of the names of the children attending such school, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open; and the Chief Superintendent shall thereupon determine the proportion which the trustees of such Separate School are entitled to receive out of the Legislative grant, and shall pay over the amount thereof to such trustees. 40

5. That under and by virtue of section 106 of chapter 64 of the Consolidated Statutes of Upper Canada, 1859, being an Act entitled "The Upper Canada Common School Act," it was enacted as follows:

Section 106—It shall be the duty of the Chief Superintendent of Education and he is hereby empowered:

*In the
Supreme
Court of
Ontario.*
—
No. 1.
Amended
Petition of
Right,
April 17,
1925
—continued.

(1) To apportion annually on or before the 1st day of May all moneys granted or provided by the Legislature for the support of Common Schools in Upper Canada (now the Province of Ontario) and not otherwise appropriated by law to the several counties, townships, cities, towns and incorporated villages according to the ratio of population in each, as compared with the whole population of Upper Canada; but when the census or returns upon which such apportionment is to be made are so far defective in respect of any county, township, city, town or village as to render it impracticable for the Chief Superintendent to ascertain therefrom the share of school moneys which ought to be so apportioned, he shall make the apportionment according to the ratio in which by the best evidence in his power the same can be most fairly and equitably made.

10

20

6. That this Act of 1859 including section 106, as referred to in the preceding paragraph numbered 5 was in full force and effect in the year 1863 and in the year 1867 and continued to be the law applicable to the matters referred to therein for several years subsequent to 1867; and the grants annually made by the Legislature were so apportioned down to and including the year 1907—a period of over forty years.

7. That by an Act of the Imperial Parliament entitled "The British North America Act," being chapter 3 of 30 and 31 Victoria (1867) constituting the Dominion of Canada, including therein the Province of Ontario it was enacted by section 93 thereof as follows:

Section 93—In and for each province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

30

(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.

8. That the right of each of the Suppliants under and by virtue of the Act of 1863, chapter 5, sections 20 and 23 thereof, and further secured to it by the British North America Act, 1867, chapter 5, section 93, subsection 1, to a share in the fund annually granted by the Legislature of the Province of Ontario according to the average number of pupils attending its school as compared with the whole average number of pupils attending school in the said Township of Tiny and in the said City of Peterborough respectively was prejudicially affected by the following Acts of the Legislature of the Province of Ontario:

40

(a) 6 Edward VII (1906), chapter 52—The Department of Education Act, section 23.

(b) 7 Edward VII (1907), chapter 50, an Act entitled "An Act to amend the Department of Education Act," section 4, subsection 3.

(c) 9 Edward VII (1909), chapter 88, an Act entitled "The Department of Education Act," section 6.

(d) 10 Edward VII (1910), chapter 102, section 1.

(e) R.S.O. 1914, chapter 265, section 6—an Act entitled “The Department of Education Act.”

(f) 12-13 George V (1922), chapter 58, sections 2 and 3—an Act entitled “The School Law Amendment Act, 1922.”

(g) 14 George V (1924) chapter 62, section 2—an Act entitled “The School Law Amendment Act, 1924.”

(The various sections above referred to are set out in a schedule of extracts therefrom attached to this petition.)

9. Your Suppliants submit that so far as the said Acts purport to enact a different method for apportioning the share of the fund annually granted for Common School purposes to which the Separate Schools conducted by your Suppliants are or may be entitled other than the average attendance basis as enacted in the Separate School Act of 1863, chapter 5, and such different method results or may result in a smaller share of said annual fund being paid to your Suppliants than would be payable on the basis of average attendance of pupils the said Acts are *ultra vires* of the Legislature of the Province of Ontario. 10

10. That in and for the year 1922 out of the fund granted by the Legislature of Ontario for Common School purposes for the year 1922 there was paid to the various school boards or schools in Ontario according to the report for the year 1923 of the Minister of Education the amount of \$3,401,818 under various titles as follows: 20

(1) To Public and Separate Schools (p. 87 of report)	\$2,976,712 00
(2) To Continuation Schools (p. 90 of report).....	148,217 00
(3) To Collegiate Institutes and High Schools (p. 91 of report).....	276,889 00
	\$3,401,818 00

11. Your Suppliants submit that the said total sum of \$3,401,818 mentioned in the preceding paragraph numbered 10 was a fund granted by the Legislature for the support of Common Schools and for Common School purposes within the meaning of section 20 of 26 Victoria (1863), chapter 5, and that the schools conducted by your Suppliants were entitled to share in such fund according to the provisions of said Act, 26 Victoria (1863), chapter 5. 30

12. Your Suppliants further submit that as to Continuation Schools and Collegiate Institutes and High Schools above referred to in paragraph 10 hereof the same are Common Schools within the meaning of chapter 64 of the Consolidated Statutes of Upper Canada, 1859—an Act entitled “The Upper Canada Common School Act” and of chapter 5 of 26 Victoria, 1863—an Act entitled “An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools.” 40

13. Your Suppliants further submit that under and by virtue of the Act of 26 Victoria (1863), chapter 5, section 14, and of the British North America Act of 1867, chapter 3, section 93, subsection 1, the class of persons being Separate School supporters represented by your Suppliants are exempted from payment of all rates imposed for the support of Common Schools and that it is *ultra vires* of the Legislature of Ontario to impose or attempt to impose upon such persons payment of rates for the support of Common Schools now known and designated as either Continuation Schools, Collegiate Institutes or High Schools and which are not established and conducted by
10 your Suppliants.

14. Your Suppliants further submit that in so far as the Act of 34, Victoria (1870-1871), chapter 33, entitled "an Act to improve the Common and Grammar Schools of the Province of Ontario", and subsequent Acts respecting High Schools, including chapter 268 of the Revised Statutes of Ontario, 1914, sections 33, 34, 37, 38 and 39, an Act entitled "The High Schools Act," purport to impose upon the class of persons being Separate School supporters represented by your Suppliants payment of rates for the support of High Schools and Collegiate Institutes not established and conducted by your Suppliants, the same are *ultra vires* of the Legislature of the Province of Ontario.

20 (The various sections above referred to are set out in a schedule of extracts therefrom, attached to this petition.)

15. Each of your Suppliants further submits that it is, and in any event the Boards of Trustees of Roman Catholic Separate Schools in every city, town and village in the Province of Ontario are entitled as of right to establish and conduct in its Separate Schools the courses of study and grades of education that are carried on in such so-called Continuation Schools and Collegiate Institutes and High Schools and the fact is such courses of study and grades were established and conducted by certain Boards of Trustees of the Roman
30 Catholic Separate Schools from in or about the year 1841 up to and including the year 1915 when certain regulations were enacted by the Respondent under which the Respondent claimed and still claims the right to limit the range and grade of the courses of study and grades of education, all of which said regulations are in derogation of the rights of your Suppliants and are, it is submitted, invalid and *ultra vires*.

16. Each of your Suppliants further submits that the Respondent has no right nor authority as claimed to limit or confine the Common School courses of study or grades of education which may be established and carried on by either of your Suppliants in the schools conducted by your Suppliants
40 respectively.

17. That according to the last census of the Province of Ontario made in 1921 the population of the Province as of the year 1921 was 2,933,622 persons and according to the same census the population of the Township of Tiny for the year 1921 was 4,026 persons.

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Petition of
Right,
April 17,
1925
—continued.

18. That the share of the fund mentioned in paragraph 10 which should have been allotted to the Common Schools of the said Township of Tiny on the basis of the proportion of the population of the said Township as compared with the total population of the Province was \$4,669.00.

19. That the average attendance of the Common Schools including both Common Public Schools and Common Separate Schools of the said Township of Tiny for the year 1922 was 629 pupils, and the average attendance for the same period of pupils of Roman Catholic School Section No. 2 of the said township, being the school conducted by one of your Suppliants herein was 159 pupils.

20. That under and by virtue of the right granted your Suppliants by the Act of 1863, section 20, and more particularly referred to in paragraph 2 hereof, your Suppliant, the Board of Trustees of the Roman Catholic Separate School for School Section No. 2, Township of Tiny, was entitled in and for the year 1922 to such a share of the said sum of \$4,669.00 mentioned in paragraph 18 hereof as the average number of pupils attending your Suppliant's school, namely, 159 pupils compared with the whole average number of pupils attending school in the said Township of Tiny, namely, 629 pupils;

21. That by reason of the facts referred to in the preceding paragraph number 20 your said Suppliant was entitled as of right to be paid the amount of \$1,116 out of the said sum of \$4,669.

22. Your said Suppliant was unlawfully held to be entitled only to and was paid the amount of \$380 only out of the said sum of \$4,669 and thereby suffered for the year 1922, a pecuniary loss of \$736.

23. If notwithstanding your said Suppliant's submission and contention as set out above, it should be held that it is not entitled to a share of the sums of \$148,217 and \$276,889 paid respectively to Continuation Schools and Collegiate Institutes and High Schools as set out in paragraph 10 hereof, but is entitled only to its proportion of the sum of \$2,976,712 also referred to in said paragraph 10 hereof (which this said Suppliant does not admit but denies), then, and in such event your said Suppliant submits that on the said basis of average attendance as referred to in paragraph 19 hereof it was entitled to receive from and be paid by the Respondent for the said year 1922 the sum of \$1,027 instead of only the said sum of \$380, whereby it suffered a pecuniary loss for the year 1922 of \$647.

Your Suppliants therefore pray:

(1) That there be paid the sum of \$736 to the Board of Trustees of the Roman Catholic Separate Schools for School Section No. 2, Township of Tiny.

(2) That it may be declared that the Acts or parts of Acts following:

(a) Sections 36 (subsection 1) and 40 of 34 Victoria (1870-1871) chapter 33—an Act entitled "An Act to improve the Common and Grammar Schools of the Province of Ontario."

(b) Section 23, subsection 6, of 6 Edward VII (1906), chapter 52—an Act entitled “The Department of Education Act.”

(c) Section 4, subsection 3 and 4, of 7 Edward VII (1907), chapter 50—an Act entitled “An Act to amend the Department of Education Act.”

(d) Section 6 of 9 Edward VII (1909), chapter 88—an Act entitled “The Department of Education Act.”

(e) Section 1 of 10 Edward VII (1910), chapter 102—an Act entitled “An Act to amend the Department of Education Act.”

10 (f) Section 6 of chapter 265 of the Revised Statutes of Ontario, 1914—an Act entitled “The Department of Education Act.”

(g) Sections 33, 34, 37, 38 and 39 of chapter 268 of the Revised Statutes of Ontario (1914) and amendments thereto—an Act entitled “The High Schools Act.”

(h) Sections 2 and 3 of 12-13 George V (1922), chapter 98, an Act entitled “The School Law Amendment Act, 1922.”

(i) Section 2 of 14 George V (1924), chapter 82—an Act entitled “The School Law Amendment Act, 1924.”

20 prejudicially affect your Suppliants rights as granted by 26 Victoria (1863), chapter 5, and secured by the British North America Act, 30-31 Victoria (1867), section 93, and are *ultra vires* in so far as they affect the rights of your Suppliants.

(3) That it may be declared that your Suppliants and each of them have the right to establish and conduct courses of study and grades of education such as are now conducted in what are designated as Continuation Schools, Collegiate Institutes, and High Schools and that any and all regulations purporting to prohibit, limit or in any way prejudicially affect such right are invalid and *ultra vires*.

30 (4) That it may be declared that the class of persons being Separate Schools supporters represented by your Suppliants are exempt from payment of rates imposed for the support of so-called Continuation Schools, Collegiate Institutes and High Schools not established or conducted by your Suppliants or by other Boards of Trustees of Roman Catholic Separate Schools.

(5) That it may be declared that your Suppliants are entitled to such further or other relief as to your Most Excellent Majesty may seem meet or as the nature of the facts may warrant.

The Suppliants propose that the trial of this Petition shall take place at the City of Toronto.

40 Dated at Toronto this 17th day of April, 1925.

“I. F. HELLMUTH”

“T. F. BATTLE”

302 Bay Street, Toronto.

of Counsel for the Suppliants.

*In the
Supreme
Court of
Ontario.*

No. 1.
Amended
Petition of
Right,
April 17,
1925

—continued.

AMENDED STATEMENT OF DEFENCE

IN THE SUPREME COURT OF ONTARIO

No. 2.
Amended
Statement of
Defence,
June 25,
1925.

IN THE MATTER OF A PETITION OF RIGHT.

Between:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOL FOR SCHOOL SECTION No. 2 IN THE TOWNSHIP OF TINY AND THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH, ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO,

10

Suppliants.

—and—

HIS MAJESTY THE KING.

Respondent.

AMENDED STATEMENT OF DEFENCE.

His Majesty's Attorney-General for the Province of Ontario in answer to the Petition of Right of the above-named Suppliants and on behalf of His Majesty the King says as follows:

1. The Attorney-General admits the allegations contained in the first paragraph of the Petition of Right, but except as hereinafter expressly admitted the Respondent denies all other allegations in the Petition of Right contained and puts the Suppliants to the proof thereof. 20

2. The Attorney-General denies that any right of either of the Suppliants within the meaning of section 93 of the British North America Act, 1867, as claimed in the eighth paragraph of the Petition of Right, has been, or is, prejudicially affected by any of the several Acts of the Legislature of the Province of Ontario as in the said eighth paragraph alleged.

3. The Attorney-General denies that any of the said Acts in the said eighth paragraph mentioned prejudicially affects any right or privilege with respect to denominational schools which any class of persons had by law in the said Province on the 1st day of July, 1867, when the British North America Act, 1867, went into effect (hereinafter referred to as "at the Union") within the meaning of section 93 of the said British North America Act, or that any of the said Acts or any part thereof is *ultra vires* the Legislature of the Province as alleged in the ninth paragraph of the Petition of Right. 30

4. By a series of legislative acts from 1843 to 1863 inclusive, the law relating to the establishment, maintenance, regulation and control of Common Schools, including Separate Schools, in Upper Canada was from time to time altered; and at the Union the law governing the establishment, maintenance,

regulation and control of Roman Catholic Separate Schools was contained in an Act of the Parliament of Canada passed in 1863 (26 Victoria, Canada, chapter 5) and in an Act of the said Parliament entitled "The Upper Canada Common Schools Act" (Consolidated Statutes of Upper Canada, 1859, chapter 54) together with the Regulations in force made pursuant to the last-named Act.

*In the
Supreme
Court of
Ontario.*

No. 2.
Amended
Statement of
Defence,
June 25,
1925

—continued.

5. In and by the said Act of 1863 relating to Roman Catholic Separate Schools, which recites that it is just and proper to bring the provisions of the law respecting Separate Schools more in harmony with the provisions of the
10 law respecting Common Schools, it was, among other provisions for that purpose enacted that:

(a) The trustees of Separate Schools should perform the same duties and be subject to the same penalties as trustees of Common Schools (section 9);

(b) The teachers of Separate Schools should be subject to the same examinations and receive their certificates of qualification in the same manner as Common School teachers generally (section 13);

(c) All judges, members of the Legislature, the heads of the municipal
20 bodies in their respective localities, the Chief Superintendent and Local Superintendent of Common Schools and clergymen of the Roman Catholic Church, should be visitors of Separate Schools (section 23); and—

(d) The Roman Catholic Separate Schools (with their Registers) should be subject to such inspection as may be directed from time to time by the Chief Superintendent of Education, and should be subject also to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada (section 26).

6. The duties and penalties of trustees of Separate Schools, the qualification of teachers, and the rights and obligations of supporters of Roman Catholic Separate Schools in respect of the general conduct, management and
30 control of the said Separate Schools, were determined and prescribed at the Union by the said "The Upper Canada Common Schools Act" (C.S.U.C., 1859, chapter 54) and by the Regulations made and imposed in pursuance thereof by the Council of Public Instruction for Upper Canada then in force.

7. The only distinction in the law governing Common Schools in general at the Union and that governing the Roman Catholic Separate Schools related to religious instruction. In all other respects the law and regulations were the same. Any part of a legislative grant to which any school would otherwise be entitled which was not earned or was forfeited because the school was not conducted according to the School Law and Regulations remained the property
40 of the Province.

8. In 1896 the functions formerly vested in the Council of Public Instruction and in the Chief Superintendent of Education were suspended by an Act of the Legislature of Ontario (39 Victoria 16) and vested in a Department of

the Provincial Government called the Department of Education and the Minister of Education of the said Province respectively.

9. Subject to the limitation provided by section 93 of the British North America Act, the Legislature of Ontario may exclusively make laws in relation to education and the Attorney-General submits that the several Acts referred to in the Petition of Right and alleged by the Suppliants to be *ultra vires* of the Legislature are amendments to the School law made from time to time in the interests of primary education in the Province.

10. The Attorney-General submits that all of the said Acts are within the competence of the Province and that none of the said grants authorized by or made pursuant to any of the said Acts mentioned in the eighth paragraph of the Petition of Right are legislative grants within the meaning of section 20 of the Separate Schools Act of Upper Canada of 1863 (26 Victoria, chapter 5). 10

11. The Attorney-General denies that the total sum of \$3,401,818 mentioned in the tenth and eleventh paragraphs of the Petition of Right was or is a fund granted by the Legislature for the support of Common Schools and for Common School purposes within the meaning of section 20 of the above-mentioned Act (26 Victoria, chapter 5) as claimed in paragraph 11, or that the schools conducted by the Suppliants were entitled to share in such fund according to the provisions of the said Act, or that the Continuation Schools or Collegiate Institutes or High Schools, referred to in paragraph 10 thereof, are Common Schools within the meaning of the said Act or of the Upper Canada Common Schools Act (C.S.U.C., 1859, chapter 54) as claimed in the twelfth paragraph of the said Petition of Right. 20

12. The Attorney-General says that the High Schools of the Province are in substitution for the Grammar Schools of the late Province of Upper Canada as re-organized and modified by Ontario legislation from time to time. The said Grammar Schools were not "Common Schools" or schools within the meaning of "The Upper Canada Common Schools Act" but were Secondary Schools. Collegiate Institutes are High Schools having a prescribed number of teachers and pupils which, on complying with the Regulations of the Department of Education with respect thereto, may be raised to the rank of a Collegiate Institute. 30

13. The Attorney-General further submits that Continuation Schools, which were inaugurated in Ontario by an Act entitled "An Act respecting Continuation Schools" (1909, 9 Edward VII, chap. 90) are not Common schools, within the meaning of either the Upper Canada Common Schools Act or the Act relating to Separate Schools of 1863, but are intermediate schools for secondary education designed to give instruction in the courses of study prescribed for High Schools in order to relieve congestion or to provide High School education where not otherwise available. 40

14. The Attorney-General denies that under and by virtue of the above-mentioned Act of 1863 (26 Victoria, chap. 5, sec. 14) and of the British North America Act, 1867 (sec. 93) the Separate School supporters represented by the

Suppliants are exempted from payment of the rates imposed for the support of Common Schools or that it is *ultra vires* of the Legislature of Ontario to impose on such persons payments and rates for the support of Continuation schools, Collegiate Institutes or High Schools as alleged and claimed by the Suppliants in the thirteenth and fourteenth paragraphs of the Petition of Right. The Respondent submits that none of the said schools are "Common Schools" within the meaning of Section 14 of the said Act of 1863 (26 Victoria, chap. 5).

*In the
Supreme
Court of
Ontario.*

No. 2.
Amended
Statement of
Defence,
June 25,
1925
—continued.

10 15. The Attorney-General further denies that either of the Suppliants or the Boards of Trustees of Roman Catholic Separate Schools (Urban) is or are entitled to establish and conduct in Separate Schools the courses of study and grades of education that are carried on in Continuation Schools, Collegiate Institutes and High Schools, or any of them, as alleged in the fifteenth paragraph of the Petition of Right, and also denies that such courses of study and grades of education were ever established by law in connection with Roman Catholic Separate Schools prior to the 1st of July, 1867, as in said paragraph alleged.

20 16. The Attorney-General on behalf of His Majesty submits that the Suppliants are not entitled to any of the declarations or other relief as prayed in the Petition of Right and that the Petition of Right should be dismissed.

DELIVERED this 25th day of June, 1925, by Messrs. Tilley, Johnston, Thomson & Parmenter, Solicitors herein for the Attorney-General of Ontario.

PROCEEDINGS AT TRIAL.

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER of a Petition of Right.

Between:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOL FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY, on behalf of itself and all other Boards of Trustees of Roman Catholic Separate Schools in the Province of Ontario.

Suppliant.

—and—

10

HIS MAJESTY THE KING.

Respondent.

Tried at Toronto, December 24th, 1925, and January 11th, 12th, 13th, 14th, 15th, 18th, 19th and 20th, 1926, before The Honourable Mr. Justice Rose.

I. F. Hellmuth, K.C.
Thomas F. Battle

Counsel for Suppliant.

W. N. Tilley, K.C.
McGregor Young, K.C.

Counsel for Respondent.

*In the
Supreme
Court of
Ontario.*

No. 3.
Opening
Statements
of Counsel.

HIS LORDSHIP: Did you say you had arranged to get on with your case? 20

MR. HELLMUTH: Yes; counsel in the case going on at present kindly said that we might interrupt their proceedings for a few moments, my Lord.

I appear, my Lord, with Mr. Battle for the Petitioners. It is the Board of Trustees of the Roman Catholic Separate School for School Section Number Two in the Township of Tiny, on behalf of itself and all other Boards of Trustees of Roman Catholic Separate Schools in the Province of Ontario. The Respondent is His Majesty the King, represented by my friends Mr. Tilley and Mr. McGregor Young, appearing for the Attorney-General.

HIS LORDSHIP: I suppose you are about to supply me with some holiday literature? 30

MR. HELLMUTH: Well, I think we may perhaps do a little of that. I think it may take more than the holidays, perhaps. There are, my Lord, at least three branches or subjects that will come up for decision in this matter. The first is the question of the grants, legislative grants, for the Common Schools and Common School purposes.

HIS LORDSHIP: Common Schools?

MR. HELLMUTH: The legislative grant for the Common Schools and Common School purposes. I use the expression "Common Schools" because the Act under which we are basing our claim in regard to that is Section 20 of

26 Victoria (1863), chapter 5—your Lordship will find the section set out in the Petition—and on the second page of the Petition that is set out, the language being:

*In the
Supreme
Court of
Ontario.*

No. 3.
Opening
Statements
of Counsel
—*continued.*

10 "Every Separate School shall be entitled to a share in the fund
"annually granted by the Legislature of this Province for the support of
"Common Schools, and shall be entitled also to a share in all other
"public grants, investments and allotments for Common School purposes
"now made or hereafter to be made by the Province or the municipal
"authorities, according to the average number of pupils attending such
"school during the twelve next preceding months, or during the number
"of months which may have elapsed from the establishment of a new
"Separate School, as compared with the whole average number of pupils
"attending school in the same City, Town, Village or Township."

Then, to find out exactly what that is—I mean, to make the computation—you have to turn to the Common School Act, which is section 106 of chapter 54 of the Consolidated Statutes of Upper Canada, 1859, and on page 3 that section is set out. Perhaps I might read it to your Lordship; it will be as short as stating it:

20 "To apportion annually on or before the first day of May all moneys
"granted or provided by the Legislature for the support of Common
"Schools in Upper Canada (now the Province of Ontario), and not other-
"wise appropriated by law to the several counties, townships, cities, towns
"and incorporated villages according to the ratio of population in each,
"as compared with the whole population of Upper Canada; but when the
"census or returns upon which such apportionment is to be made are so
"far defective in respect of any county, township, city, town or village as
"to render it impracticable for the Chief Superintendent to ascertain
"therefrom the share of school moneys which ought to be so apportioned,
"he shall make the apportionment according to the ratio in which by the
30 "best evidence in his power the same can be most fairly and equitably
"made."

HIS LORDSHIP: That means he is to apportion to the several—

MR. HELLMUTH: To the several townships, and so on. And then, turning back to the section which I have read to your Lordship, the Roman Catholic Separate Schools get the amount that the attendance upon that Roman Catholic Separate School in that particular township or district, as the case may be, bears to the total attendance of all children in the schools at that time. I may say that the grants were made on that basis for some considerable time—I am not going to give your Lordship the years in which
40 the changes were made—and what is now in effect is a different method of apportioning the amounts to the various schools, which appears in the schedule which your Lordship will find attached to the Petition. If your Lordship turns to the end, at the Appendix, you will find the section, 12-13 Geo. V. (1922), Statutes of Ontario, chapter 98, sections 2 and 3:

"2. The clause lettered g in subsection 1 of section 6 of The Department of Education Act is repealed and the following substituted therefor:

“(g) Subject to the Regulations to apportion all sums of money appropriated as a general grant for the rural Public and Separate Schools amongst such rural schools on the basis of the salaries paid to the teachers, the value of the equipment, the character of the accommodation, the grade of the teachers’ professional certificates, the length of their successful experience, the assessment of the sections and in the case of a Separate School, the assessment of the property of the Separate School supporters and any other circumstances which according to the regulations should affect such apportionment.”

10

Just shortly, my Lord, we quarrel with that. We say they had no right to pass any such Act varying the basis upon which these grants were to be made, and in—

HIS LORDSHIP: Why? What prevented their doing so? I do not quite understand what the dispute is.

MR. HELLMUTH: Because by the Act of 1863 we had to have it on the average attendance, and on nothing else. Then by the British North America Act—

HIS LORDSHIP: What crystallizes that Act of 1863? "

MR. HELLMUTH: I should have put the horse in that case before the cart, my Lord, but by the British North America Act (page 3 of the Petition), chapter 3 of 30 and 31 Victoria (1867), by section 93 it was enacted: 20

“Sec. 93. 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.”

HIS LORDSHIP: Oh, yes, I see.

MR. HELLMUTH: Now, in the case of the Township of Tiny the grant that we got—I am just illustrating that—was not one-half of what we would have had on the average attendance. I am just mentioning that as a “dollar” prejudice. 30

Then your Lordship will find, as I say, in the Petition and in the schedule all Acts, the Acts on which we rely and the Acts on which we can claim. The regulations are not set out in full; those will come before your Lordship in the evidence.

That is the first branch, if I may put it shortly, of our case.

HIS LORDSHIP: A declaration that the later legislation is invalid?

MR. HELLMUTH: Yes, my Lord. I was going to illustrate that. In the year 1922 there was some \$95,000 or \$96,000, which on the basis of the 1863 Act and the 1859 Act, as confirmed, we say, by Imperial legislation, the British North America Act, would have come to various Separate Schools, was not paid to them but was paid into Court. Since then there have been other years, but we are not going back in any way beyond 1922 in regard to any claim. Our claim commences in 1922. We are not asking for arrears, but from 40

1922 inclusive to date we are asking for the distribution on the basis as we say that it was fixed at the time—

HIS LORDSHIP: Oh, I see; this is not merely for a declaration that the Act is invalid.

MR. HELLMUTH: Oh, no.

HIS LORDSHIP: But it is for money which you say is due to you.

MR. HELLMUTH: Yes.

Then the next branch, if your Lordship will allow me to state it very shortly, is, we say that by Acts and Regulations the Separate Schools had been degraded, if I may use the expression, to primary schools. We are not permitted to teach in the Separate Schools to the extent that we claim under our initial Acts—the same Acts as those to which I have referred—we are entitled to teach, and we ask there that any legislation that limits the scope of the subjects or the teaching should be declared also *ultra vires* and invalid. I have stated that very, very briefly, my Lord; it is a matter that has to be gone into in some detail.

HIS LORDSHIP: Then on that branch is it just for a declaration?

MR. HELLMUTH: I think so, my lord, on that branch, yes. For instance, we attack the fact that we cannot have what are called Continuation Schools under certain circumstances; we attack the fact that we cannot teach what is taught in the High Schools—it does not matter what the particular nomenclature of these schools is, but that is our claim in general.

The third claim, my Lord, is this: we are taxed for these so-called High Schools, and we say that under section 14 of the Act of 1863 we are exempt from taxation for these High Schools. The 14th section of the Act of 1863 provides:

“Every person paying rates, whether as proprietor or tenant, who, by himself or his agent, on or before the first day of March in any year, gives, or who, on or before the first day of March, of the present year, has given to the clerk of the municipality notice in writing that he is a Roman Catholic, and a supporter of a Separate School situated in the said municipality, or in a municipality contiguous thereto, shall be exempted from the payments of all rates imposed for the support of Common Schools, and of Common School libraries, or for the purchase of land or erection of buildings for Common School purposes, within the city, town, incorporated village or section in which he resides, for the then current year, and every subsequent year thereafter, while he continues a supporter of a Separate School.”

Of course, I have to show that the High School of to-day is a Common School in the sense that these were Common Schools at the time of Confederation.

Now, my Lord, I think there are a number of points that are bearing on these three matters, and I do not want to say that these three are absolutely exhaustive, but those are the three salient matters or questions which will come before your Lordship in the determination of this matter.

HIS LORDSHIP: Mr. Tilley, have you anything which you can say usefully at this stage?

MR. TILLEY: I have nothing to add at this stage, my Lord. My friend has indicated the three headings that your Lordship will have to consider, and I agree with him that they cover in a general way all that—

HIS LORDSHIP: What statutes are to be most discussed? Perhaps it would be well that I should familiarize myself a bit with them.

MR. TILLEY: Your Lordship will find, I think, that the first statute in chronological order—it will not be the first one that we shall refer to, no doubt—but for the present purposes the first statute is the Common School Act, which will be found in the Consolidated Statutes of Upper Canada, either chapter 54 or 64. 10

MR. HELLMUTH: 1859.

MR. TILLEY: It is either 54 or 64 of the Consolidated Statutes of 1859—chapter 54, I think; that is the Common School Act. That Act contains various sections of greater or less importance in connection with the matters we are to deal with, with regard to the duties of the Chief Superintendent, the duties of the Local Superintendent and the duties of the School Boards—I think those are the main headings—and those sections work out a method of distributing the annual grant to Common Schools; that is, the Statute does not take up the grant and proceed by a group of clauses to indicate the way in which it is to be divided, but by picking up sections under the headings of the duties of these various boards or officers, do work out the solution. That was the statute law that applied to Common Schools generally, and the funds that were at Confederation—because, after all, that is the important date—the funds that were dealt with, again speaking very broadly, were, first, an annual grant of fifty thousand pounds, which was intended to be at that time the revenue, I think, from what was called the Common School Fund that was set aside as the proceeds of sale of lands under the statute law of the old Province of Canada, but I think at that time the income from the fund did not—in fact, I am sure it did not—equal the total amount of the grant, so that the income from the fund had to be supplemented to make up fifty thousand pounds. That was a general grant. In addition to that, your Lordship will see in the Common School Act, I think at about section 120, a provision for supplementing that annual allowance for Common Schools by certain additional sums from which certain deductions were to be made for specific purposes referred to in that section, and then the balance would also be divided along with the fifty thousand pounds. I am not pretending to state it accurately, but I think I am stating it generally so that your Lordship will be able, possibly, to consider it a bit before we come to the case again. 20 30

Now that was the fund that was referred to in the Separate School Act of 1863, and it is the Separate School Act of 1863 that my friend makes his stand on, and it is on section 20 of that Act. Under that section the money that comes to every municipality under this annual grant for Common Schools, when you have ascertained the amount that comes to the municipality, it is divided under the Separate School Act between the Separate Schools in that municipality and the Common Schools in proportion to their average attendance. We may have to discuss what “average attendance” meant, but, speaking generally, that was the basis of division. 40

Just to put the point just a little closer with regard to that, the Separate School Act did not in express terms—my friend may argue that it did by implication, but it did not by its express terms—attempt to control what a municipality would get as a municipality for Common Schools, but it did expressly say that when you had found the amount that it had by the Legislative Grant it was to be divided between the Common Schools that were Roman Catholic—called Separate, but nevertheless Common Schools—and the other schools in the municipality in proportion to attendance.

10 Now, that was the basis at Confederation, and the British North America Act by section 93 preserved to any class any denominational privilege they enjoyed by law at the Union, and we may take it that a school board represents a class within the meaning of that section; so that if the school board had by law a right at Confederation, having ascertained the right, it is perpetuated under the British North America Act.

HIS LORDSHIP: If what?

20 MR. TILLEY: If a school board—I mean a Separate School board—had by law vested in it a right—a legal right, I am speaking of now—at Confederation, that right could not be prejudicially affected—and of course to take it away would be to prejudicially affect it—that cannot be taken away from it; put it that way, shortly. So that my friend's point—I am not attempting to put it any differently from what he did, but as I understand it, my friend's point is this: he says at Confederation the trustees of a Roman Catholic Separate School had a share based on attendance in moneys that are the result of an annual grant by the Province to Common Schools, and they are Common Schools, and therefore their share in that is preserved.

30 My friend will be met, of course, with some difficulties that will be apparent to your Lordship when you look at it. First, we submit that there is nothing in that legislation that secures to Roman Catholic Separate Schools any vested right in the amount of money that shall come to a municipality for division amongst Common Schools. The Legislature could say that there should be none. Then if the Legislature can say that there shall be none, it follows that the Legislature can give money for other purposes that are not subject to that limitation or restriction; and really—it is possibly right that we should assist your Lordship in understanding what will have to be dealt with at this stage rather than at the end—really, your Lordship should know, I think, that in recent years, speaking very broadly, the Legislature has in effect, although possibly not covering it by as direct language as it might, made grants of money for specific things, and not grants generally in aid of Common Schools. That is, if they employ a teacher with a certain standing of certificate, 40 certain grade of certificate, or if they have manual training, and so on, that is, the grants have taken the form of assistance towards improvement and efficiency, and the grant is payable only if the requirements are lived up to by the school; so that it is not a grant for the general purposes of Common Schools, to support them, but it is a grant to bring about efficiency, and is not to schools generally, but the grants are to the schools that earn them.

Now, that is a broad distinction, and it would not be useful, I think, at this stage, possibly, to develop it any more than that. So the question is to be

*In the
Supreme
Court of
Ontario.*

No. 3.
Opening
Statements
of Counsel.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 3.
Opening
Statements
of Counsel
—continued.

determined whether the modern system of granting money is contrary to the provisions of the British North America Act and the rights then secured to Separate Schools. Your Lordship will find that the right that is conferred is a right on the school itself or its trustees. The Act does not in any way set up a system of schools differing from the Common Schools; they are and remain Common Schools themselves. It is only because they are Common Schools that they come into a share. Then the right that is conferred is a right on the particular school. My friend is bringing this action on behalf of a school section in Tiny Township, and then he brings it up on behalf of itself and all others. I am not raising any objection to that, of course, because it brings in the class, but there is no system of Roman Catholic Schools that is separate from the Common School system; the schools are all part of the Common School system or the Public School system, and it is because of that they get grants. 10

Then they say, "Our grant is to be based on attendance, and you cannot base what we get on something else than attendance," and what we say is that that is a method of dividing a general appropriation if made, but it cannot control the right of the Legislature to say that, if the grounds are improved, or if manual training is adopted, or if a certain standard of efficiency is brought about, we will assist in the additional expense that is involved in establishing these additional things, that it is not money you can use for your school just to support it, it is money that is paid, and it is earmarked for a specific purpose. 20

I do not know whether it is helpful to your Lordship to know that much about the dispute. I do not want at all to be pretending to tell more than Mr. Hellmuth has told about it, but I think that is what your Lordship will find at the bottom of things.

Then on the other question there is this: The two other branches—they really are two branches in a sense, although the rights are not entirely correlative; there are two branches of one question, in a sense. The supporters of a Roman Catholic Separate Common School by the Act of 1863 contributed to the Roman Catholic Schools, and thereby did not contribute, were allowed not to contribute, to Common Schools. Now, what my friend says, as I understand it, on that is this: "We were managers of those schools, we, the trustees, and as managers we had the right to say the extent of the education we would give in those schools. It was not subject to the control of the Legislature at all, or if it was, certainly they could not say that certain branches of education should not be taught there. That is, the course of study was for us to determine as trustees and managers of the school, and there was no limit upon that, and we could if we thought proper make a Common School or a Separate Common School of such a standard that it would be as good as your High School and as complete as your High School, and you cannot restrain us from doing that"— 30 40
when I say "you," I mean the Legislature.

Then they say, "It follows from the same argument, the same reason, that if you establish an additional system of schools that you call High Schools or Collegiate Institutes, Normal Schools, you cannot make us pay any of the cost of those schools in our taxes, because they are really teaching what we could go on and teach if we decided to do it."

So there are two branches to that: First, have they the right to so control

their schools, that is, these Common Schools? And, secondly, if they have that right do they escape paying any part of the cost of the schools that are established under legislation of a more advanced character than they choose to adopt? That is, they say, "Whether we actually teach these things in the school that we control, the fact that we have the power to do it makes it unnecessary that we should pay the cost of any person else's school, that is established to teach these subjects."

HIS LORDSHIP: I thought Mr. Hellmuth said that you were stopping the Separate School from teaching what it wanted to now.

10 MR. TILLEY: Well, that is the two branches; one is that we have the right to do it and that therefore you cannot stop us from doing it, and then secondly they say, whether we do or do not choose to go on and add to our school, you cannot make us pay for other schools of the advanced character.

HIS LORDSHIP: I understand.

MR. TILLEY: Now, just putting it broadly, we argue that the Legislature is in complete power with regard to the courses of study in these schools. There is nothing in the British North America Act or in any other statute law that imposes a limitation on the power of the Legislature to legislate as it thinks proper for schools in addition to the Common Schools of that day, and
20 there is nothing to prevent the Legislature from saying what subjects shall be taught in a Common School. These things, in our view, are all matters of great importance, because it is in the view of the Legislature as disclosed in the legislation important that schools shall be organized, so that there shall be proper attendance and proper combined effort, so as to have at minimum cost the advantages of higher education, and we will argue that the only right they have is with regard to what is a Common School, and that what is a Common School, where it starts, where it ends, is a matter for the Legislature, so long as the legislation is legislation affecting Common Schools, because all the schools come within that category; we now call them Public Schools, but the
30 original name was Common Schools. So if the legislation is legislation merely as to what constitutes a Common School in the sense of what courses of study are to be taken up in that school, where the education in that school ceases and is to be carried on in some school of a different grade or character, that is entirely in the hands of the Legislature.

I do not know that I can add anything more than that to the matter at this stage, but I agree with my friend as to the number of questions and as to their character; those are the three, I think.

HIS LORDSHIP: And also that those statutes will make nice holiday reading, I suppose.

40 MR. TILLEY: Your Lordship asks me about the statutes. I think there is the Common School Act that I have referred to, and then the Act of 1863, and your Lordship will find certain legislation in the Consolidated Statutes with regard to other schools that were in existence at Confederation, like Grammar Schools—they are now called High Schools. These statutes are in the Consolidated Statutes; there were some amendments made to them afterwards, but your Lordship will get the general scheme of the school legislation of the day by looking at those statutes. Then there is the subsequent legislation that

*In the
Supreme
Court of
Ontario.*

No. 3.
Opening
Statements
of Counsel
—continued

I think can be taken from the appendix to the petition, and that will indicate to your Lordship, if your Lordship studies it long enough, how the grants are divided.

HIS LORDSHIP: I may not know that by the time I come back.

MR. TILLEY: I am not saying it will be any weakness on your Lordship's part that it might take some time, but I know I have been studying it, and it takes a little time to find out.

HIS LORDSHIP: I think probably I shall wait for you to explain that to me.

MR. TILLEY: We are much obliged to your Lordship for letting us start 10 to-day.

MR. HELLMUTH: I want to say that in that respect I entirely agree with my learned friend.

MR. TILLEY: And the other counsel too.

(Adjourned at 3.30 p.m., Thursday, December 24th, 1925, until 11.00 a.m., Monday, January 11th, 1926).

No. 4.
Suppliant's
Case,
Introducing
Exhibits.

(On resuming at 11.00 a.m., Monday, January 11th, 1926):

HIS LORDSHIP: Are counsel ready in the school case?

MR. TILLEY: Yes, my Lord.

MR. HELLMUTH: Yes, my Lord.

If your Lordship will look at paragraph 10 in the Petition of Right, I wish to offer some formal proof of the figures in paragraph 10. Your Lordship will see the first item there is:

“That in and for the year 1922 out of the fund granted by the
“Legislature of Ontario for Common School purposes for the year 1922
“there was paid to the various school boards or schools in Ontario accord-
“ing to the Report for the year 1923 of the Minister of Education the
“amount of \$3,401,818.00 under various titles as follows:

“(1) To public and separate schools (p. 87 of Report, \$2,976,712.00

In the Report of the Minister of Education for the Province of Ontario for the 30 year 1923, at page 87, in the first column, under Legislative Grants, for the year 1922 the last item is \$2,976,712.00; that is, under the Public School Grants.

Then on page 90 of the Report, under Continuation Schools, the Legislative Grant is stated to be \$148,217.00.

On page 91, for Collegiate Institutes and High Schools, in the Legislative Grant, the last item that is stated to be for 1922 is \$276,889.00.

In regard to this report, my Lord; I do not want to take out the pages at all, and I was going to ask your Lordship in regard to these various reports and documents that will have to be put in, as we have only one copy, not of all, 40 but we have only one copy, and I would ask your Lordship if it were necessary that we might be allowed to take them out—

HIS LORDSHIP: You mean during the progress of the trial?

MR. HELLMUTH: Yes. Oh, of course they would have to be left in afterwards, but during the progress of the trial.

HIS LORDSHIP: Oh, I suppose so.

MR. HELLMUTH: I will put that report in, my Lord.

HIS LORDSHIP: Is there any dispute about such figures as you are giving me now?

MR. TILLEY: Those are the figures in the report, but I do not know what use my friend is going to make of them. I am not sure they are made up just quite in the way that my friend proposes to use them. Those are the official
10 figures in the report published, but I do not know that they are quite right.

HIS LORDSHIP: Well, that is what I was asking.

MR. TILLEY: I do not know that anything will turn on it, though. I have not really considered whether we would have to go into any evidence to explain the make-up of the particular figures. I think we will get the question of principle without much investigation of the details of the figures.

HIS LORDSHIP: What I meant to ask, really, was whether I am to take these figures as stated in paragraph 10 of the Petition as correct.

MR. TILLEY: Well, I could not agree to that, but I do not know that the question of principle is going to be affected by it.

20 HIS LORDSHIP: No, but there is a claim in the Petition for a definite sum of money for this particular school, which I suppose is founded upon the suggestion that these figures are accurate.

MR. TILLEY: I hope not to bother your Lordship about any details of that kind. The amount is not very large.

HIS LORDSHIP: Not of this particular school, it seems.

MR. TILLEY: No—\$95,000.00; but there will have to be something put in to show the make-up of those figures.

HIS LORDSHIP: Isn't that in the Report, Mr. Hellmuth?

MR. HELLMUTH: Yes, my Lord.

30 MR. TILLEY: No.

MR. HELLMUTH: The total of the grants to the Public and Separate Schools—the Legislative Grant, which is what I am dealing with now—is set out there. Of course, if my friend can show it is wrong, that is another matter, but that is the official report.

MR. TILLEY: I suppose the grant appears in the Statute.

MR. HELLMUTH: It is much larger than that.

HIS LORDSHIP: Which is larger?

40 MR. HELLMUTH: The statute grant—very much larger. As my friend has said, it is not really so much a question of the actual dollars and cents all through. My friend just mentioned the figure \$95,000.00, but, to explain to your Lordship, in the year 1922 \$95,000.00 odd, which it was said was not earned by the Separate Schools, and which under an Act which we will come to, lapsed and went into the Consolidated Fund; now, that \$95,000.00 was paid into Court, and as far as I know is still in Court for the year 1922, because the then Government were not apparently clear as to whether they would actually put it in the Consolidated Fund or put it in Court to be litigated in

*In the
Supreme
Court of
Ontario.*

No. 4.
Suppliant's
Case,
Introducing
Exhibits
—continued.

regard to. Now, this Tiny claim is part of that \$95,000.00. I don't know whether that makes it clear to your Lordship.

HIS LORDSHIP: More or less.

MR. HELLMUTH: Well, even "less" is an advantage.

MR. TILLEY: I assume my friend is proposing to show how the \$95,000.00 is made up, that is, what it is in fact, and how it comes to be treated as a surplus.

MR. HELLMUTH: Oh, I will have to do that as we go along, but I cannot do it all at once.

MR. TILLEY: I do not think it is safe to take any particular figure at the present time, although I am hoping that your Lordship will in time get to a question of principle without much difficulty, and if anything turned on the exact amount later, why, we could easily arrange that. It is a matter of getting the principle determined at the present time.

HIS LORDSHIP: In the meantime the Report is Exhibit 1.

EXHIBIT 1:—Report of the Minister of Education, Province of Ontario, for the year 1923.

MR. HELLMUTH: Then, my Lord, I have a letter from Mr. Colquhoun, the Deputy Minister, to Mr. O'Donoghue, who was then acting as solicitor for the plaintiffs in this claim or petition, of the 6th of May, 1923, with certain enclosures.

MR. TILLEY: Well, this is not evidence of the fact, surely. He is giving you such information as he has, but that is not evidence I can accept with regard to it. Dr. Colquhoun does not know anything about the matter.

MR. HELLMUTH: This is from the Deputy Minister of Education—and I submit to your Lordship that it is good evidence—enclosing a memorandum showing the apportionment of the legislative grants in the Township of Tiny for the year 1922: I submit that, coming from the Deputy Minister of Education, is proper evidence, my Lord.

HIS LORDSHIP: Oh, I don't know about that, if there is any question about it.

MR. TILLEY: I have not seen this before.

MR. HELLMUTH: It is in the Petition, set out in the Petition what they are.

MR. TILLEY: Not this letter.

MR. HELLMUTH: No, but I mean the figures are all set out in the Petition.

MR. TILLEY: It is a letter written to Mr. O'Donoghue from Dr. Colquhoun, informally giving him certain information, but I do not think that this is the right way for my friend to prove his case if anything turns on it.

MR. HELLMUTH: Then there is a letter from Mr. Colquhoun, a further letter, to Mr. Battle, dated January 21st, 1925, saying:

"Dear Sir:

"In reply to your verbal request to verify the statistics relating to "the Township of Tiny, covering school enrolment, average attendance, "and legislative grants, the accountants of the Department have checked "them up and state that the figures may be relied upon as quite correct,

"according to the official figures in the possession of this Department.
"The return in question is enclosed."

If that is not so, I call for those official figures in regard to that matter. This is from the Deputy Minister.

MR. TILLEY: Well, I have not the figures here. My friend has not asked me to produce them. I have not the figures here, of course. Subject to being checked, they may go in.

HIS LORDSHIP: Would there be any objection to this, subject to any right that you may ask later on to correct anything in it?

10 MR. TILLEY: No. What are the yellow sheets?

MR. HELLMUTH: The yellow sheet is the first letter to Dr. Colquhoun from Mr. O'Donoghue, dated May 7th, 1923, in which he says:

"Dear Mr. Colquhoun:

"If it will not be too much trouble, will you kindly give the names of
"the Public and Separate School sections in the Township of Tiny,
"County of Simcoe, the population of each section, the average attendance
"in each school as of January 1st, 1922, and the grants paid to each in
"the midsummer months of 1922?"

That is written by Mr. O'Donoghue, dated May 7th, 1923.

20 Then the reply from Dr. Colquhoun to Mr. O'Donoghue, dated May 8th, 1923, is:

"Dear Sir:

"In reply to your letter of the 7th instant, I enclose a statement
"showing the attendance and the grants paid in connection with the
"public and separate schools in the Township of Tiny, Simcoe County.
"There are no statistics in the Department showing the population of each
"section. However, I enclose the latest report of the Dominion Statisti-
"cian which gives, on page 34, the population of the whole section of
"Tiny as 4,026. You may also find the other statistics of some interest."

30 Then is enclosed a memorandum for J. G. O'Donoghue, K.C., showing the Legislative Grants apportioned in the Township of Tiny for the year 1922. Then follow all the Rural Public School sections in Tiny, and then the Separate School sections in Tiny, and the one in question, Separate School Number Two, Tiny, School enrolment, 214, average attendance, 159, and Legislative Grant \$380.00. Your Lordship will find in a moment that they come in the Petition.

Then there was a letter from Mr. O'Donoghue giving thanks, which is nothing at all, and then comes a letter to Mr. Battle, which I read, of January 21st. Mr. Battle took Mr. O'Donoghue's place in this litigation.

40 MR. TILLEY: Doesn't that last letter say there is some other enclosure, Mr. Hellmuth?

MR. HELLMUTH: I don't think it does.

EXHIBIT 2:—Letter, J. G. O'Donoghue to A. H. U. Colquhoun, May 7th, 1923.

Letter, A. H. U. Colquhoun to J. G. O'Donoghue, May 8th, 1923.

*In the
Supreme
Court of
Ontario.*

Suppliant's
Case,
Introducing
Exhibits
—continued.

Memorandum for J. G. O'Donoghue, K.C., showing the Legislative grants apportioned in the Township of Tiny for the year 1922.

Letter, J. G. O'Donoghue to A. H. U. Colquhoun, May 9th, 1923.

Letter, A. H. U. Colquhoun, to T. F. Battle, January 21st, 1925.

MR. HELLMUTH: Then, my Lord, the enclosure that was there was the census which he says he enclosed, the Dominion census. Enclosed in that Exhibit 2, my Lord, is the sixth census of Canada, which will now be Exhibit 3, 10 and it shows on the first page the population of Ontario for 1921, for the census year 1921—I see someone has marked it with a cross, but it won't make any difference—at 2,933,662. On page 34 the population of the Township of Tiny is shown for the year 1921 at 4,026. That will be Exhibit 3.

EXHIBIT 3:—Sixth Census of Canada.

MR. HELLMUTH: Your Lordship will appreciate, I do not want the whole of that census, necessarily, but just the parts to which I have referred.

HIS LORDSHIP: I understand.

MR. TILLEY: So far as it is relevant.

MR. HELLMUTH: Oh, yes, quite so, so far as it is relevant. 20

MR. TILLEY: I mean, so far as the census is relevant to anything here.

MR. HELLMUTH: Oh, yes, but it won't be necessary to extend the whole of it.

MR. TILLEY: Oh, no.

MR. HELLMUTH: Your Lordship may perhaps remember that when we opened this case the Thursday before Christmas reference was made to section 20 of the Act of 1863, by which it was provided—

MR. TILLEY: I have a copy in a convenient form of the Act of 1863 and the Common School Act, to which we will both be referring quite frequently, and I would like to have it understood as my property when the case is over. 30

MR. HELLMUTH: That section, my Lord, provided that:

“Every Separate School shall be entitled to a share in the fund
“annually granted by the Legislature of this Province for the support of
“Common Schools, and shall be entitled also to a share in all other public
“grants, investments and allotments for Common School purposes now
“made or hereafter to be made by the Province or the municipal authori-
“ties, according to the average number of pupils attending such school
“during the twelve next preceding months, or during the number of
“months which may have elapsed from the establishment of a new
“Separate School, as compared with the whole average number of pupils 40
“attending school in the same city, town, village or township.”

In the Journal of Education—

HIS LORDSHIP: Just a moment, Mr. Hellmuth—perhaps it will clear it up as we go along—when I was reading that Statute the other day I wondered what the connection might be between the fund spoken of there, that is, a

fund granted by the Legislature of the Province of Canada, and a fund granted by the Legislature of the Province of Ontario. I have no doubt you are going to bridge that gap, or attempt to, but I could not see it at the moment. This province, in this statute—

MR. HELLMUTH: There was a fund, of course, granted by Canada, called the Common School Fund.

HIS LORDSHIP: Perhaps I have not made it quite clear. This statute is a statute of the Province of Canada, so the fund they are talking of is a fund granted by the Province of Canada.

10 MR. HELLMUTH: That was Upper and Lower Canada.

HIS LORDSHIP: That was Canada.

MR. HELLMUTH: Canada was Upper and Lower Canada.

HIS LORDSHIP: Quite so, Canada was Upper and Lower Canada, but the Legislature of this province in that statute means the Legislature of the Province of Canada.

MR. HELLMUTH: Yes, my Lord.

His Lordship: Then when the Province of Canada ceased to exist, did not the right to share in a fund granted by the Legislature of the Province of Canada cease too?

20 MR. HELLMUTH: I submit not, my Lord; I submit not.

HIS LORDSHIP: Well, I have no doubt that will be dealt with as we go along, but it was a difficulty that struck me in reading that statute.

MR. HELLMUTH: Your Lordship will see when we come to the Confederation what rights were preserved by the British North America Act.

HIS LORDSHIP: Yes, but as I understand this Petition, at least one part of this Petition, the suggestion was that at Confederation the Separate Schools had under this statute of 1863 a right to share in funds granted annually by the Legislature of the Province of Canada, and that in some way the relevant section—it is 93, is it not?—of the British North America Act preserved to the schools or gave to the schools the right in future to share in any similar fund granted by the Legislature of the Province of Ontario.

MR. HELLMUTH: I think, my Lord, I will be able to satisfy your Lordship on that.

HIS LORDSHIP: Well, I did not know whether you wanted to set my mind at rest at this stage, or whether it is something that will come out as we go along.

MR. HELLMUTH: I think if your Lordship will let me deal with that after I have got in these documents—

HIS LORDSHIP: All right.

40 MR. HELLMUTH: What I want to put in now, my Lord, is the Journal of Education of the year 1862, at page 81 and following. This is a report by the Superintendent of Education, the late Dr. Ryerson, of the apportionment of the Legislative School Grant for Upper Canada for the year 1862. This is prior to the Act of 1863. I shall have to show your Lordship the previous acts later on. This is a report showing the apportionment.

*In the
Supreme
Court of
Ontario.*

No. 4.
Suppliant's
Case,
Introducing
Exhibits
—continued.

In the
Supreme
Court of
Ontario.

No. 5,
Argument
upon
Objection to
Suppliant's
Evidence.

MR. TILLEY: My Lord, I want to raise an objection at this stage. My friend has by his notice to us indicated that he proposes to use the Educational Journals and Reports, going back to Confederation and beyond, and my submission is that they have no bearing on the problem with which your Lordship has to deal, and that we must be careful to guard against using such material for the purpose of creating ambiguity in legislation rather than solving it. The statute under which my friend claims to be entitled to some other division than the division he has received is, of course, found in section 93 of the British North America Act, and under that section my friend must show that he has some right or privilege by law at the Union, and the way to ascertain whether he has a right or privilege by law is to examine the statutes that were in effect in 1867, and not to examine reports and publications of that time, possibly for the purpose of showing what practice may have existed or what may have been done by officials of the Department. That could have no bearing at all, because in the end we come back to the question, was the thing that was done authorized by the legislation? And until my friend comes to some point in his case where he says, "I claim that this language is ambiguous, and I propose to introduce evidence for the purpose of clearing up ambiguity," I submit it is quite improper to start putting in documents that are other than legislation dealing with the matter. 10

The question, your Lordship will see, turns entirely upon section 93; your Lordship will find that set out in the pamphlet I have given to you at page 74, and the section under which my friend claims here is subsection 1 of that section. That is, the other subsections of section 93 do not come into this litigation at all. His whole point here is that the legislation or something that has happened is *ultra vires*. I do not just quite know how he proposes to make his point in the end. If it is *ultra vires* I suppose he should return the money, but he claims that it is *ultra vires*, and he wants more. But, putting that to one side for the moment, subsection 1 of section 93 limits the whole matter to the rights and privileges that they have by law. 20

Now, the rights and privileges that my friend's class of people have by law at the Union will be found in the statute it will not be found in pamphlets or views expressed by authorities or divisions that they happened to make of a fund; it depends upon what division they wanted to have made at that time. And then my friend must show he is entitled to the same division to-day and he has the same fund to-day. If we start out by attempting to show what was done at the time, what articles were written at the time, and the views expressed, we could remain here a very long time, and in the end we will come back to the question, was that thing authorized by the legislation of the day? And therefore it does not help the legislation at all. 30

My friend has not opened the case to your Lordship showing what laws were in effect at the time. I would have thought it would be very helpful to have gone over the statutes so that your Lordship would have in mind the precise point that he is coming to, because we have a good deal of legislation with regard to this annual fund prior to 1867, and I think we should find out what the fund was at that time; but my friend has not started that way. He now proposes to put in certain actual divisions of money. Now, that does not 40

help at all. We must presume that in those days they divided the money as they were required to do. If they did not, well, we are not here to review them, but when we are through with an examination of how the money was divided we must go back to the statute to find out whether that was the way it should by law have been divided.

So my submission is that we are embarking here on an enquiry, and if we are to go through all these reports that we have been asked to bring, merely to pick out items of information that may be very nice to read as showing the history of this whole matter, they do not help us when we come to construe the statute. In fact, my submission is that they can only embarrass us when we come to construe the statute—the views of particular persons. Therefore, until my friend has gone into his legislation and has shown to your Lordship that there is some point upon which evidence is admissible—

HIS LORDSHIP: I see the point.

MR. TILLEY: Then I submit he should not embark on it at all, because we are only embarrassing the whole investigation that should be made, and in this particular case we are anxious to have a decision upon the rights as they then existed.

HIS LORDSHIP: What was the document you were tendering, Mr. Hellmuth?

MR. HELLMUTH: I was tendering a document which showed the apportionment that had been made, and I have not—although I shall, of course, in argument have to—referred to all the statutes upon which our claim is based. Those statutes do not have to be in as a matter of evidence at all.

HIS LORDSHIP: No.

MR. HELLMUTH: They prove themselves.

HIS LORDSHIP: Certainly.

MR. HELLMUTH: And I thought that your Lordship had at the opening—or it was referred to; that was my recollection—a statute of 1859, chapter 64 of the Consolidated Statutes, which was the Common School Act.

HIS LORDSHIP: Yes.

MR. HELLMUTH: And I do not at all accede to my friend's suggestion that we have got to look only at the statute of 1863. I quite agree with him that we have got to have a right by law, but our right by law is by the whole body of law in existence at that time, and if we have rights which were granted or in force at Confederation by reason of half a dozen statutes, and we had to go from one statute to another, nevertheless that was our right by law at that time, and it could not be taken away.

Now, what I want to show to your Lordship is that for forty-three years the division or apportionment of these grants was according to the plain meaning of that statute, that nobody questioned during that time the propriety of providing those grants according to the language of the statute, and I do not intend in any way to shirk dealing with those statutes, but I submit that I am entitled to show your Lordship what was done and how the grants were apportioned, and when first, as I shall have to come to, and then I shall have to deal with that legislation when the legislation of Ontario began to vary the method by statute of apportionment; and I am going to tender to your Lord-

*In the
Supreme
Court of
Ontario.*
No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

ship, not all of them, because that would be unnecessary, but a series of apportionments showing just how the Separate Schools, following exactly the provisions of the statutes then in force, both immediately prior to and after Confederation, did divide this money. The Journal of Education was the official communication—

MR. TILLEY: I am not objecting to that. I am not raising any point that that is not a Government publication.

HIS LORDSHIP: What Mr. Tilley, as I understand him, is saying is this: If you had a statutory right you had it; if you had a right by law you had it, and the province could not take it away from you; but he says showing what was done under the statute by error of the officer administering the statute does not show what your right was. 10

MR. HELLMUTH: Yes, my Lord. But if it had been shown that the statute has been invariably, for forty-three years, construed in a certain way as meaning a certain thing, I think, my Lord, that I am entitled to give that in evidence.

HIS LORDSHIP: I think that might be. But I should like, if possible, to know what statute and what construction the evidence is being directed to. I could understand the evidence then.

MR. HELLMUTH: All right, my Lord; I have no objection at all, if your Lordship thinks I had better deal with that first, I have no objection to so doing. 20

HIS LORDSHIP: Well, it is very difficult for me to pass upon the relevancy of that document that you have in your hand without knowing more accurately than I do what the contention is and the purpose for which it is tendered.

MR. HELLMUTH: The Common School Act, my Lord, of 1859, chapter 64—in the Separate School Act in the same volume, that is the Consolidated Statutes of Canada, 1859, your Lordship will find—

HIS LORDSHIP: That is the Consolidated Statutes of Upper Canada; but that means, as I understand it, statutes passed by the Province of Canada but more particularly relevant to the Province of Upper Canada. 30

MR. HELLMUTH: Yes, my Lord. I say, my Lord, that in that volume, chapter 65 is the Separate School Act. Of course it was subsequently amended by the Act of 1863 to which I have referred your Lordship.

MR. TILLEY: But repealed.

MR. HELLMUTH: Only in part.

MR. TILLEY: No, repealed in whole so far as affecting Separate Schools. It was not as to Coloured Schools and Protestant Schools, but the part relating to Separate Schools was entirely repealed.

MR. HELLMUTH: So that your Lordship may have it before you, the section that was then in effect— 40

HIS LORDSHIP: What is your page, Mr. Tilley?

MR. TILLEY: The repealed statute is not in that, my Lord. That is legislation in effect at 1857.

MR. HELLMUTH: Then, my Lord, section 33 corresponds—not entirely, as I shall show your Lordship—corresponds with section 20 of the Act of 1863, section 33. That section 33 is:

"Every such Separate School shall be entitled to a share in the fund annually granted by the Legislature of the Province for the support of Common Schools, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same city, town, village or township."

*In the
Supreme
Court of
Ontario.*

—
No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

Your Lordship will notice now that there is added in that section 20 this:

- 10 "And shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the municipal authorities." I mean, those words are added in the Act of 1863.

Now, that section 33 came from what was known as the Taché Act of 1855, 18 Victoria, chapter 131, section 13. And that, my Lord, was the law by which the Separate Schools were entitled to a share compared with the whole average number of pupils attending a school in the same city, town, village or township.

Then there are separate sections that have to be looked at in the Common School Act of 1859, chapter 64.

- 20 Then, my Lord, your Lordship referred before to section 106 of the Common School Act of 1859, by which it was the duty of the Chief Superintendent of Education to apportion annually on or before the first day of May all moneys granted or provided by the Legislature for the support of Common Schools in Upper Canada—your Lordship will see the words there:

"provided by the Legislature for the support of Common Schools in Upper Canada, and not otherwise appropriated by law to the several counties, townships, cities, towns and incorporated villages according to the ratio of population in each, as compared with the whole population of Upper Canada."

- 30 And then when the census returns were defective he had to do something to make the best apportionment he could.

HIS LORDSHIP: What was the number of that section?

MR. HELLMUTH: 106, my Lord.

MR. TILLEY: Page 54 in the pamphlet.

MR. HELLMUTH: So that your Lordship will see, if you read that section together with section 20 of the Act of 1863, there was a method by which the whole of the grants of the Legislature were to be apportioned to the municipalities themselves.

MR. TILLEY: Subsection 3 ought to be read with that.

- 40 MR. HELLMUTH: Subsection 3 is to direct the distribution of the Common School Fund.

MR. TILLEY: These are township moneys we are concerned with here.

MR. HELLMUTH: Yes, that is quite true, but the Common School Fund is not the Legislative grant. I am dealing now with the Legislative grant, my Lord.

MR. TILLEY: My friend will pardon me; the Common School Fund at that time was the Legislative Fund.

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

MR. HELLMUTH: No.

MR. TILLEY: Well, the Act says so; the Act may be wrong.

MR. HELLMUTH: The Common School Fund of the township was, as your Lordship will see as we come on, an amount that had to be raised by the township equivalent to the Legislative grant, and the two together made the Common School Fund.

Now, the distinction between the Separate School was that there was no necessity, no obligation on the Separate School in the township to raise any fund whatever. It was entitled to its share of the Legislative grant without any corresponding obligation such as existed in regard to the Common School, 10 to raise an equivalent amount.

Your Lordship will see section 123 defines it in this way:—

“The sum of money apportioned annually by the Chief Superintendent of Education to each county, township, city, town or village, in aid of Common Schools therein respectively, shall be payable on or before the 1st day of July, in each year, to the treasurer of each county, township, city, town and village in such way as the Governor-in-Council from time to time directs, and such sum, together with at least an equal sum raised annually by local assessment, shall constitute and be called the Common School Fund of such county, township, city, town or village,” 20 and so on.

Then by section 124:

“No county, city, town or village shall be entitled to a share in the Legislative School Grant”— that is what I am dealing with now, my Lord, as far as we are concerned

“—without raising by assessment a sum at least equal (clear of all charges for collection) to the share of the said School Grant apportioned to it; and should the municipal corporation of any county, city, town or village, raise in any one year a less sum than that apportioned to it out of the Legislative School Grant, the Chief Superintendent of Education shall 30 deduct a sum equal to the deficiency from the apportionment to such county, city, town or village in the following year.”

So that your Lordship will see—and that is a distinction which may as well be pointed out at the outset—the Common School, in order to get its grant, had to raise an equal amount locally, and the Separate Schools were under no such obligation. That your Lordship will find in the Supplementary Act of 1853. The Act of 1853, my Lord, is 16 Victoria, chapter 185, and that is supplementary to the Common School Act for Upper Canada. By section 4 it is enacted:

“That in all cities, towns and incorporated villages and school 40 sections, in which Separate Schools do or shall exist according to the provisions of the Common School Acts of Upper Canada, persons of the religious persuasion of each such Separate School, sending children to it, or supporting such school by subscribing thereto annually an amount equal to the sum which each such person would be liable to pay (if such Separate School did not exist) on any assessment to obtain the Annual

Common School Grant for each such city, town, incorporated village or township, shall be exempted from the payment of all rates imposed for the support of the common Public Schools of each such city, town, incorporated village or school section, and of all rates imposed for the purpose of obtaining the Legislative Common School Grant for such city, town, incorporated village or township; and each such Separate School shall share in such Legislative Common School Grant only (and not in any school money raised by any local municipal assessment) according to the average attendance of pupils attending each such Separate School (the mean attendance of pupils for winter and summer being taken) as compared with the whole average attendance of pupils attending the Common Schools in each such city, town, incorporated village or township."

10

HIS LORDSHIP: What is that chapter?

MR. HELLMUTH: Chapter 185, my Lord.

Your Lordship will see that although by this act there was an amount to be raised by the parties who got out the Separate School, that was dropped by the Taché Act, and even that obligation ceased to exist. It did not go into the municipal treasury.

20

MR. TILLEY: Of course, the words that my friend relies on in 1853 were dropped when the Act was amended later, and were not in the Act of 1863. That only shows what a maze we are going to get into if we commence following the apportionments from time to time in the various years according to the changing legislation.

HIS LORDSHIP: What was dropped from the later Act?

MR. TILLEY: The words in the 1853 section saying that they should not be bound to raise a similar sum.

HIS LORDSHIP: Those are not in the—

MR. TILLEY: Those are not in the 1863.

30

MR. HELLMUTH: No, they are not in the 1863 at all, nor are they in the 1859.

MR. TILLEY: No.

MR. HELLMUTH: They are not in either. I did not propose, my Lord—my friend had noticed—I did not propose to put in any of those old apportionments. The first apportionment that I proposed to put in was one of 1862, which was after the Act of 1859.

MR. TILLEY: And before the Act of 1863.

MR. HELLMUTH: Well, it is quite true, but while the Taché Act, which, with the exception of the words I have read, was in similar language to section 33 and section 30 of the Act of 1863, was in force.

40

Then, my Lord, I was going to show your Lordship that from that date, that is, just prior to 1863, and from Confederation, there had been at various times, in 1877 and in 1897, no change in the method of apportionment or distribution; and then I was coming to the Acts which did make that change. I just sent, my Lord, for the Statutes of 1877.

HIS LORDSHIP: How soon after Confederation was any Act dealing with the subject passed?

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

MR. HELLMUTH: 1877, my Lord.

HIS LORDSHIP: Nothing till 1877?

MR. HELLMUTH: Oh, there were Acts; when we come to the other branch of the case, there were in 1871 and 1874 Acts dealing with High Schools.

HIS LORDSHIP: I do not mean that, but dealing with the distribution of—

MR. HELLMUTH: There was 1877, my Lord, consolidation, and then 1886.

HIS LORDSHIP: Oh, yes; that was not what I was wondering. I was wondering how soon after Confederation there was an Act touching the method of distributing the Legislative Grant. 10

MR. HELLMUTH: Nothing till 1877. Chapter 206, my Lord, is the Separate School Act, the Revised Statutes of Ontario of 1877, in chapter 206, section 37; I think that is in the identical words of the Statute of 1863:

“Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Public Schools”—

your Lordship will understand, the Common Schools; the nomenclature is changed to Public Schools

“—and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same city, town, village or township.” 20

The change there, my Lord, I think, is “Public” for “Common.”

I am giving your Lordship the Separate School Act. I am going back to the same section in the Public School Act. In 1887, that is the Revised Statutes of Ontario, chapter 227, section 59 repeats, I think, in exactly the same language, the section that I read in the 1877 Statute. 30

Then, my Lord, in 1897, the Revised Statutes of 1897, in chapter 294, section 62 repeats in identical language what we had in the Statutes of 1877 and 1887. Your Lordship will find before we get to 1914 that a change was made.

In regard to the Public or Common Schools, your Lordship will find in the Statutes of 1874, 37 Victoria, chapter 28, section 129, a corresponding section to 106 in the Act of 1859, which reads:

“It shall be the duty of the Chief Superintendent of Education, and he is hereby empowered: 40

“1. To apportion annually, on or before the 1st day of May, all moneys granted or provided by the Legislature for the support of Public Schools in (and not otherwise appropriated by law) to the several counties, townships, cities, towns and incorporated villages, according to the ratio of population in each, as compared with the whole population of Ontario.”

I have it in 1887, my Lord, that is the Revised of 1887, chapter 129, section 136, which is a little different in its wording, but not in its effect, I would submit:

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

10 "All sums of money voted by the Legislative Assembly for the support of Public and Separate Schools shall be apportioned annually, or before the 1st day of May, by the Minister of Education to the several counties, townships, cities, towns and incorporated villages, according to the population in each, as compared with the whole population of Ontario, as shown by the last annual returns received from the clerks of the respective counties, cities and towns, separated from the county, of which apportionment due notice shall be given to the clerks of the municipalities concerned."

Your Lordship will see there is no change in the method there.

MR. TILLEY: Some very important words are not there, I think—the words, "not otherwise appropriated by law" are not expressly mentioned.

MR. HELLMUTH: No; we shall have something to say about that.

HIS LORDSHIP: "Not otherwise appropriated by law to the counties," and so on; that is the whole expression.

MR. TILLEY: As there?

HIS LORDSHIP: No; as in 1859.

20 MR. TILLEY: Your Lordship has, I think, probably not got quite what I think is the reading of that:

"Apportion annually, on or before the first day of May, all moneys granted or provided by the Legislature for the support of Common Schools in Upper Canada, and not otherwise appropriated by law, to the several counties"—

that is, apportion to the several counties.

HIS LORDSHIP: You are reading it as if there was a comma in there.

30 MR. TILLEY: I do not see how your Lordship can get it otherwise—to apportion annually to the several counties in accordance with the population in each.

HIS LORDSHIP: I suppose that is what it does mean.

MR. TILLEY: I think it must mean that, and the history of it would indicate that, because where that expression first appeared it was used, "not otherwise appropriated by this Act." Here it appears, "not otherwise appropriated by law." I think the break comes—that, I think, is a phrase—I think the break comes after the word "law." Otherwise you have no main direction.

40 HIS LORDSHIP: There is none in the Statute as I have it. There is no comma in the Statute itself, and that is what misled me. I found it difficult to understand what they meant by "appropriated by law to the counties" and so on.

MR. TILLEY: I think it is apportioned to the counties in accordance with the population in each; I think my friend and I agree on that.

MR. HELLMUTH: I do not think there will be much difficulty about that, but there may be some difficulty about "not otherwise appropriated by law." I think it had already been appropriated by law to us.

MR. TILLEY: Well, of course, we are now back to 1859.

*In the
Supreme
Court of
Ontario.*
No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

MR. HELLMUTH: However, I wanted to just trace the history, my Lord, of this, till we come to where the change occurs in the method of apportionment. Your Lordship will appreciate that we do not concede for one moment that any change, if there were a change, made in these Acts which I have recited to your Lordship, and which continued, we submit, the method of apportionment which prevailed at Confederation. If, however, they are construed as making any change, we submit that change could not be made if it were in any way prejudicial to us. We have a fixed method by which we could find out what amount or what grants would come to us—

MR. TILLEY: In the township. 10

MR. HELLMUTH: In the township or in the city or in the village.

MR. TILLEY: There is nothing in the Act of 1863 to say that a township or a city or any other municipality shall receive a certain amount from the Chief Superintendent. The Act of 1863 says, find the money that is in the township, and then there are certain rights, but the Act of 1863 does not at all limit or control the Legislature of that day as to how much would be appropriated to a township. The only thing that the 1863 Act said was, each school in the township must get a share of township money based on average attendance, if it is township money. The original apportionment is not confirmed by that Act. 20

MR. HELLMUTH: If my friend would look at section 22 of the Act of 1863 I think he would find that he would get something there. Section 22, my Lord, is:

"The trustees of each Separate School shall, on or before the 30th day of June, and the 31st day of December of every year, transmit to the Chief Superintendent of Education for Upper Canada, a correct return of the names of the children attending such school, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open; and the Chief Superintendent shall thereupon determine the proportion which the Trustees of such Separate School are entitled to receive out of the Legislative Grant, and shall pay over the amount thereof to such trustees." 30

The Superintendent has to determine the proportion.

MR. TILLEY: Certainly.

MR. HELLMUTH: And the Superintendent has a method—I do not want to argue it now, but the Superintendent has a method by which he can easily, having got the figures of the population of Ontario and the figures of the population of the various townships, cities and towns, determine what is coming to that Separate School, on the average attendance of pupils in both schools, because there is an obligation also in the Common School Act to send in returns of the average attendance of schools. 40

HIS LORDSHIP: That was section 22 you were reading?

MR. HELLMUTH: Yes, my Lord. Section 20 is on average attendance; section 22 is what to do.

Now, my Lord, as far as I can find, the first statute subsequent to the Act of 1863 which purported to vary the average attendance apportionment

of the Legislative Grant to Separate Schools was passed in 1906—that would be forty-three years after—and that Act is 6 Edward VII, chapter 52, section 23, the Department of Education Act. If your Lordship will look at page 3 of the schedule to the Petition of Right, this is the section:

“23. It shall be the duty of the Minister of Education and he shall have power:

“(1) To apportion all sums of money voted by the Legislative Assembly as a general grant”—

10 I just pause there, my Lord, for a moment; they now make general and special grants

—“for Public and Separate Schools among the several cities, towns, incorporated villages and townships, except townships in the territorial districts, according to the population in each as compared with the whole population of the Province, as shewn by the last annual returns received from the municipal clerks;

“(2) To apportion all sums of money voted by the Legislative Assembly as a special grant”—

20 we never had anything before of general and special grants; they were grants —“for rural Public and Separate Schools among the several townships according to the population of each as compared with the population of all the townships in the Province.”

Your Lordship will bear in mind that before you gave it to a city or township, incorporated village or any other municipal district, you gave it as compared with the whole population of Ontario. Now they say it is according to the population of each as compared with the population of all the townships in the Province,

“not including the territorial districts, according to the last annual returns received from the township clerks;

30 “(3) To divide the total of the amounts so apportioned to each city, town, incorporated village and township between Public and Separate Schools according to the average number of pupils attending such schools respectively, during the next preceding calendar year, or during the number of months which may have elapsed from the establishment of a new Public or Separate School as compared with the whole average number of pupils attending school in the same city, town, village or township;

40 “(4) To see that the money so apportioned to the Public Schools of every city, town and incorporated village is paid to the treasurer thereof, and that the money so apportioned to the Public Schools of each township is paid to the treasurer of the county in which such township is situated, on or before the 1st day of July in each year, as the Lieutenant-Governor in Council may direct;

“(5) To direct the county inspector to distribute among the Public School sections of each township under his jurisdiction, subject to the Regulations of the Department of Education, all sums apportioned as aforesaid to the rural Public Schools therein, on the basis of the salaries paid to the teachers, the character of the accommodations, and the value

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

of the equipment, after providing a minimum grant for each such school which is equipped as required by the Regulations of the Department of Education. All such grants shall be payable by the township treasurer to the order of the treasurer or secretary-treasurer of the board of trustees on the inspector's order. Notice of such distribution shall be given by the inspector to the trustees concerned."

Now, my Lord, I am not quarrelling because they could not do anything that they liked with regard to the Public Schools, but they have attempted to do the same thing, as you will see by section 6, with the Separate Schools:

"(6) To distribute among the Separate Schools of each township, 10
subject to the Regulations of the Department of Education, all sums apportioned as aforesaid to the rural Separate Schools therein, on the basis of salaries paid to the teachers, the character of the accommodations, and the value of equipment, after providing a minimum grant for each such school which is equipped as required by the Regulations of the Department of Education; to give notice of such distribution to each Separate School Board concerned and to pay to the board of each Separate School the amount apportioned thereto as aforesaid, on or before the 1st day of July in each year, as the Lieutenant-Governor in Council may direct; 20

"(7) To apportion under the provisions of such regulations as may be made by the Department of Education, all sums of money voted by the Legislative Assembly for assisting Public and Separate School boards in poor rural districts to pay teachers' salaries."

That may not be a matter that is important.

Your Lordship will not misunderstand the fact that the Separate Schools are also subject to regulations, by its own Act, but the submission that I would make to your Lordship, so that your Lordship may have my point of view, at all events, in mind, is this, that no regulations can affect our grant. We may be compelled to abide by certain proper regulations, may be entitled 30
to mandamuses to compel us to do so, but they cannot take away our grant in any way, because that is fixed by an original statute.

MR. TILLEY: Even if you do not obey the regulations?

MR. HELLMUTH: Even if we do not obey the regulations, they cannot take away our grant. I think I can give your Lordship authority for that.

There are minor details there, my Lord, that I am not going to stop and argue. I just want to give your Lordship the salient features of the Acts we object to; and, of course, that Act, as your Lordship will see, is superseded by a subsequent Act, but it was a gradual change of system altogether in the distribution and apportionments of these grants. 40

The next Act is an Act of 1907, 7 Edward VII, chapter 50, section 4, subsections 3 and 4, and they are set out on page 7 of the schedule.

Subsection 3 is:

"(3) Subject to the regulations of the Department of Education, to apportion all sums of money voted by the Legislative Assembly as a general grant for the rural Public and Separate Schools in the organized counties and districts amongst said rural schools in the organized counties

and in the districts respectively on the basis of the salaries paid to the teachers, the value of the equipment, the character of the accommodations, the grade of the teachers' professional certificates, and the amount of the assessments.

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

10 “(4) The grant for the rural Public and Separate Schools in the organized counties shall be payable on or before the 1st day of August, as the Lieutenant-Governor in Council may direct, to the treasurer of each county, and through him (except when the county treasurer acts as sub-treasurer also) to the various township treasurers of the county, for payment to the respective Boards of Rural Public and Separate School Trustees upon the warrants of the Public or Separate School Inspectors concerned.”

That section, your Lordship will notice, makes the moneys payable to the treasurer of the municipality, and by the Act of 1863 it was payable direct, by section 22, it was payable direct to the trustees of each Separate School, and was to be paid over to them, not through anybody.

20 The next Act, my Lord, is that of 1909, 9 Edward VII, chapter 88, section 6, the Department of Education Act, page 8 of the Schedule. I should call your Lordship's attention to something that does not appear in the Schedule. By section 29 the Act of 1909 repealed the Act of 1906 and its amendment of 1907. I am just giving your Lordship those acts so that you may follow the course of the legislation there. Section 6 in the Act of 1909 is:

“It shall be the duty of the Minister and he shall have power,

“(a) To apportion all sums of money appropriated as a general grant for urban Public and Separate Schools among the several cities, towns and villages according to the population of each as compared with the population of all the urban municipalities in the Province according to the last annual returns received from municipal clerks.”

30 It makes a subdivision in regard to the apportionment, a subdivision of urban and rural, and takes the total population of the urban portions and then divides that; hence there is nothing of that kind in the Acts, of course, of 1859 or 1863.

Then it goes on:

“(b) To divide the amount so apportioned to each city, town and village between the Public and Separate Schools therein, according to the average number of pupils who attended such schools respectively during the next preceding calendar year.”

40 We get average attendance there, but your Lordship will see it is somewhat cut down, but we do not get average attendance on what we are entitled to get, that is, comparing the whole population with each particular district.

“(c) To pay, on or before the 1st day of August in each year, the grants so apportioned to the treasurer”—

I again call your Lordship's attention to this—

“of each city, town and village, for payment to the respective boards of Public Schools upon the warrants of the inspectors;

“(d) Subject to the regulations, to apportion all sums of money

*In the
Supreme
Court of
Ontario.*

No. 5
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

appropriated as a special grant for urban Public and Separate Schools among the several cities, towns and villages, on the basis of the grade of the teachers' certificates and the length of their successful experience.'

Your Lordship will see we have again general and special grants there, and general grants divided in one way on a basis, narrower perhaps, a basis of population, not, at all events, a basis of population provided for in the Act of 1859, and a special grant which is to be on the basis of the grade of the teachers' certificates and the length of their successful experience.

"(e) To pay on or before the 1st day of August in each year, the grants so apportioned to the respective boards of Public School trustees upon the warrants of the Public School Inspectors; 10

"(f) To pay, on or before the 1st day of August in each year the grants so apportioned to the respective boards of Separate Schools upon the warrants of the Inspector of Separate Schools;

"(g) Subject to the regulations, to apportion all sums of money appropriated as a general grant for the Rural Public and Separate Schools amongst such Rural Schools on the basis of the salaries paid to the teachers, the value of the equipment, the character of the accommodation, the grade of the teachers' professional certificates, the length of their successful experience, and the amount of the municipal or school assessments." 20

Now we have got that the question of the amount of the municipal or school assessments, which we say never had anything to do with our Legislative Grant, comes in there.

"(h) To pay, on or before the 1st day of August, in each year, the grant so apportioned to the rural Public and Separate Schools in counties, to the treasurer of the county, and through him (except when he acts as sub-treasurer also) to the township treasurers for payment by them to the boards of rural Public and Separate School trustees upon the warrants of the Inspectors of Public and Separate Schools." 30

There are other matters in that Act when we come to the other question with which it may be necessary to deal.

Then, my Lord, the next Act is the Act of 1910, 10 Edward VII, chapter 102, by section 1, an Act to amend the Department of Education Act of 1909. That Act your Lordship will find at page 11 of the schedule. That sets out:

"(1) Section 6 of the Department of Education Act is amended by adding the following subsections:

"(2) The Minister shall so divide the sums appropriated for the purposes mentioned in clauses (d) and (g) of subsection 1, that out of each of them there shall be allotted to the Separate Schools a sum which bears the same ratio to the whole sum appropriated as the average number of pupils who attended such schools during the next preceding calendar year bears to the whole average number of pupils who attended both Public and Separate Schools during that year and that the residue shall be allotted to the Public Schools, and, subject to the regulations, shall apportion among the Public Schools the sums so allotted to them, and 40

among the Separate Schools the sums so allotted to them on the respective bases mentioned in clauses (d) and (g)."

Your Lordship will see that has done away, so far as it can, with any territorial division, to which each Separate School in a territory is entitled, and it is taking all the schools in bulk together, all the Separate Schools and Public Schools.

HIS LORDSHIP: I do not follow that.

10 MR. HELLMUTH: It says that the Minister shall divide the sums appropriated for the purposes mentioned, that out of each of them there shall be allotted to the Separate Schools—that is, the Separate Schools as a whole, my Lord—a sum which bears the same ratio to the whole sum appropriated as the average number of pupils who attended such schools during the next preceding calendar year bears to the whole average number of pupils.

HIS LORDSHIP: Oh, yes, but you are still where you were, are you not?

MR. HELLMUTH: Oh, no, my Lord.

HIS LORDSHIP: Perhaps a particular school might not be, but schools as a whole are, are they not?

MR. HELLMUTH: No, my Lord, they would not be at all, because there might be a section in which there was no Separate School at all.

20 MR. TILLEY: That would not make any difference.

MR. HELLMUTH: Well, I think it would make a very considerable difference. At all events, it is not the distribution provided for by the Act, if any particular school was affected by having a less amount given to it under that than it would have been entitled to. Assume, for instance, that in one township the Public School attendance and the Separate School attendance was exactly equal; in that particular section they would be entitled to one-half of the entire money allotted to that township. The school in that township, one school—or if there were three or four Public Schools and three or four Separate Schools—no doubt it has to be divided under the old Act according to the average attendance of the schools in a particular township or in a particular city. Each school has its right; it does not simply get its right because it is a Separate School in regard to all the other Separate Schools. It is the individual Separate School in a district which is entitled to share under the original grant. But, at all events, that is all we are dealing with, a portion of the money.

Then your Lordship will see that even when that is done, it says:

40 "and, subject to the regulations, shall apportion among the Public Schools the sums so allotted to them, and among the Separate Schools the sums so allotted to them on the respective bases mentioned in clauses (d) and (g)."

That is, equipment, teachers' salaries, and so on.

"(3) All moneys appropriated for any of the following purposes mentioned in clauses (L) of subsection 1, that is to say:

"(a) Fifth Classes;

"(b) Manual Training, Household Science, Art and Agricultural Departments;

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence.
—continued.

“(c) School Gardens;

“(d) Kindergartens;

“(e) Night Schools;

“(f) Free Textbooks;

“(g) Other educational purposes not specifically mentioned in clause (e).

which are applied for the purposes of primary education, shall be allotted, divided and apportioned as provided by subsection 2.

“(4) Primary education for the purposes of subsection 3, shall mean education in the Public or Separate Schools.”

We shall have something, my Lord, to question in that when it comes to the right to teach the other branches.

“(5) Any part of the sums appropriated for the purposes mentioned in subsections 2 and 3, and allotted to the Public Schools, as provided by subsection 2, which shall not be required to pay the amounts to which such schools shall be entitled on the respective bases mentioned in clauses (d) and (g) of subsection 1, shall lapse and become part of The Consolidated Revenue Fund, and in like manner any part of the sums allotted to the Separate Schools which shall not be required to pay the amounts to which such schools shall be entitled on the respective bases mentioned in clauses (d) and (g) of subsection 1, shall lapse and become part of The Consolidated Revenue Fund.”

That is where the \$95,000, my Lord, in 1922 was paid into Court, and prior to that it was paid into—but we are not going behind 1922 and making any claim now, but it went into the Consolidated since then; I think the amount, about \$100,000 a year, has gone into the Consolidated Fund, lapsed and has gone into the Consolidated Fund under that.

Then your Lordship will find in the Revised Statutes of Ontario, 1914, chapter 265, section 6, an Act entitled “the Department of Education Act,” which is really more or less a repetition and a consolidation of the Acts that I have given to your Lordship, the Acts that preceded this date, 1914.

Then the Act which I think is the last of that series up to 1922, is the Act of 1922, 12-13 George V, at page 23 of the schedule. That is the School Law Amendment Act, as it is called, chapter 98. By section 2 it was enacted that the clause lettered (g) in subsection 1 of section 6 of the Revised Statutes of Ontario, 1914, chapter 265, should be repealed and the new clause (g) substituted. The new clause (g) was the same as clause (g) of the Revised Statutes of Ontario, 1914, at page 14 of the schedule, with the following words added:

“and in the case of a Separate School”—
that is one of the necessities of earning this grant—

“the assessment of the property of the Separate School supporters and any other circumstances which according to the regulations should affect such apportionment.”

That clause was repealed, my Lord, in 1924, and another clause substituted. Section 3 of that clause, of 1922, was (jj), by section 3 it was enacted:

10

20

40

"Subject to the regulations and when approved by the Lieutenant-Governor in Council, to declare that for the purpose of the apportionment of the grants under this section the Public and Separate Schools in any village, or in a town having a population of not more than 2,000, shall be deemed rural Public and Separate Schools."

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

I should like your Lordship to understand, that is not the last statute, but it was the last statute at the time when this action was brought. The present statute, as far as we are concerned, is quite as objectionable, my Lord, as the Statute of 1922.

10 MR. TILLEY: You mean of 1924?

MR. HELLMUTH: Yes.

MR. TILLEY: Well, what do you mean by "when it was brought?" This is in April-June, 1925.

MR. HELLMUTH: Yes, but we are making a claim up to 1922. The other would follow, of course.

MR. TILLEY: I was not thinking about your money claim; I was thinking about—

MR. HELLMUTH: My Lord, I have not the slightest reason to object to bringing in the last statute, so I will give your lordship the Act. The Act of 20 1924 is 14 George V, chapter 82, the School Law Amendment Act of 1924; it is in the schedule at page 25.

MR. TILLEY: It is one that you attacked; that is why I mentioned it.

MR. HELLMUTH: Well, I was doubtful whether we could attack it in this action, but it does not make any difference. I was doubtful if we could go beyond 1922 as our action was framed, but it does not make any difference.

HIS LORDSHIP: Wasn't this schedule part of your Petition of Right?

MR. HELLMUTH: Yes, my Lord.

MR. TILLEY: I thought our main purpose was to have the legislation now in effect passed upon.

30 MR. HELLMUTH: Well, I would be very glad to have it. I was doubtful whether our claim being made for the legislation of 1922, as it was originally when this action was started in 1923—I mean, this claim was first started—whether we could go into the Statute of 1924, because whether we could or not, what would be decided in regard to 1922 would cover the legislation of 1924. However, my Lord, we have got it here.

HIS LORDSHIP: Well, you claim in your Petition first payment of \$736; and, secondly, a declaration that certain Acts, including the Act of—

MR. HELLMUTH: 1924.

40 HIS LORDSHIP: Including section 2 of the Act of 1924, prejudicially affect your rights, and the fiat of the Lieutenant-Governor is a fiat to try that question.

MR. TILLEY: I thought my friend was passing over that point. That is one of his attacks.

MR. HELLMUTH: Then, my Lord, I will deal with that Act of 1924—it is the last one, at all events—14 George V, chapter 82, section 2, entitled "The School Law Amendment Act, 1924." Section 2, subsection 1, is:

"2. (1) The clause lettered (d) in subsection 1 of section 6 of The

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

Department of Education Act is repealed and the following substituted therefor:

“(d) Subject to the regulations to apportion all sums of money appropriated as a special grant for urban Public and Separate Schools among the several cities, towns and villages having regard to the value of the property liable to taxation for school purposes, the expenditure of the board upon education, and to such other consideration as in the opinion of the Minister, should affect such apportionment.”

HIS LORDSHIP: That regulates the portion of the grant that is to come 10 into any individual municipality, doesn't it?

MR. HELLMUTH: Yes, my Lord; Urban Public and Separate Schools—

MR. TILLEY: For urban municipalities. It does not touch this school, that part.

MR. HELLMUTH: No. but we are suing on behalf of all others. We want to know whether it affects urban. I do not think any objection can be taken to that at this stage.

HIS LORDSHIP: Well, I was not intending to start that discussion. What I mean is that it does not touch the share of a Separate School in the moneys distributed in the municipality in which that Separate School is; it 20 touches only the amount of money in which the Separate School is to share, doesn't it?

MR. HELLMUTH: All sums of money appropriated as a special grant. Of course, we say there could not be a special grant.

HIS LORDSHIP: I understand that.

MR. HELLMUTH: Then your Lordship will see it leaves whatever the considerations—in fact, the Minister can apportion it as he likes, practically, I mean, subject to the expenditure, and so on, and such other considerations.

HIS LORDSHIP: Yes.

MR. HELLMUTH: Then we come to this next: 30

“(2) The clause lettered g in subsection 1 of the said section 6 as re-enacted by section 2 of The School Law Amendment Act, 1922, is repealed and the following substituted therefor:

“(g) Subject to the regulations to apportion all sums of money appropriated as a general grant for rural Public and Separate Schools among such rural schools having regard to the value of the property liable to taxation for school purposes, the attendance at the schools, the expenditure of the board upon education, and to such other considerations as in the opinion of the Minister should affect such apportionment.”

It is exactly the same in regard to rural: 40

“(i) A statement showing the amount apportioned to every rural Public School and to every Separate School under clause g shall be laid before the Assembly within ten days after the commencement of the Sessions held in the year next after that in which the apportionment takes place.

“(3) The clause lettered jj in subsection 1 of the said section 6 as

enacted by section 3 of The School Law Amendment Act, 1922, is repealed."

HIS LORDSHIP: Perhaps that would be a convenient time to adjourn. Adjourned at 1.07 p.m. until 2.20 p.m.

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

On resuming at 2.20 p.m.:

MR. HELLMUTH: I omitted, my Lord, just one section that I could not find at the moment in the Consolidated Statutes of 1897, Chapter 291, the Revised Statutes of Ontario, 1897, chapter 291, the Educational Department
10 Act. Section 6 of that Act is:

"It shall be the duty of the Minister of Education, and he shall have power:

"To apportion all sums of money voted by the Legislative Assembly for Public and Separate Schools among the several counties, townships, cities, towns and incorporated villages according to the population of each as compared with the whole population of the Province as shown by the last annual returns received from the municipal clerks,"

etc. It is just following on the same way as it did in 1877, 1887 and 1897.
20 Then, my Lord, I propose now to show the way in which this apportionment was made, not taking, of course, every year, which would be unnecessary, but the year after the Taché Act was in force immediately prior to the Act of 1863, and then following in about ten-year periods, taking 1867 and 1868 immediately following Confederation, how the apportionments were made as shown in the Journal of Education, which sets out the full way in which the apportionments were made.

HIS LORDSHIP: That is what Mr. Tilley suggested was not admissible unless to help in interpreting some ambiguous section of the Act, as I understood it.

30 MR. HELLMUTH: Well, I propose to show that during the course of forty-three years the distribution was, as we submit it should have been, by the Act, that that was the distribution that was followed for a course of forty-three years.

MR. TILLEY: That the Act was followed.

MR. HELLMUTH: Yes.

MR. TILLEY: It ought to have been, if it was not.

MR. HELLMUTH: That may be, but I am going to tender, my Lord, evidence to show what was done under that Act, as the invariable interpretation placed upon it, at all events, by the Department there, for forty-three
40 years. I tender that in evidence to show how the Separate Schools and the Public Schools shared in the grants during those years.

HIS LORDSHIP: Well, I do not quite grasp the relevancy of that. You have statutes saying that the fund, or a fund, shall be distributed in a certain way; then this is evidence to show that it was distributed in that way?

MR. HELLMUTH: Yes, my Lord, for forty-three years.

HIS LORDSHIP: Is there any question about that?

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

MR. TILLEY: I assume that the Acts were valid, the Acts that were in force were valid. My friend's interjection that he proposes to show the departmental interpretation is just the thing that I submit is objectionable. It is not the only departmental interpretation that got to the Courts, and the Courts sometimes agreed and sometimes did not with the departmental interpretation.

MR. HELLMUTH: It is not only that it was the departmental interpretation, but it is what was presented to the Legislature by the Superintendent of Education as the manner in which he had apportioned that fund, and I want to show by this that the Legislature understood exactly from time to time how that fund was apportioned, and the meaning and intention of the Act; and I submit that it is evidence to show what was done over that course of time in regard to the distribution. The apportionment was to be made by the Superintendent, as your Lordship will perhaps remember, by section 106. 10

HIS LORDSHIP: Yes.

MR. HELLMUTH: And he had to report, and he did report.

HIS LORDSHIP: I do not yet grasp the relevancy of what he did after 1867, at any rate. Supposing in 1868 the Superintendent thought your rights were exactly what you say they are, and supposing the Legislature thought the same thing, will that affect the question as to whether, many years afterwards, the Legislature could reconsider its decision? 20

MR. HELLMUTH: Perhaps not, but what I would submit is that where the parties have for a very considerable period, such as I have mentioned, followed a definite course in regard to the apportionment and distribution, where the Act provided that the Superintendent should apportion in a certain way, where he reported that to the Legislature year after year in that way, that that, at all events, is evidence, if any question could possibly arise as to whether it was right or not, that would be evidence to show an interpretation that had been adopted by both the Legislature—that is the Crown—and ourselves during all that period. 30

HIS LORDSHIP: But what I do not grasp is the importance of finding that a certain interpretation was adopted at any time after 1867.

MR. HELLMUTH: After 1867, my Lord?

HIS LORDSHIP: Yes.

MR. HELLMUTH: Because I am going to show that at a later date another method and interpretation was adopted.

HIS LORDSHIP: I know; but what is the bearing upon the question as to the right given by the British North America Act of any discussion as to what interpretation was placed upon the earlier legislation at a time after the passing of the British North America Act? 40

MR. HELLMUTH: Well, just at the moment, my Lord, I am asking to put in the apportionment that was made in 1862, when the Taché Act was in.

HIS LORDSHIP: I know; but you said, or I thought you said, that that was the first step in showing what had been done for thirty or forty years.

MR. HELLMUTH: Oh, no; from 1863 to 1907 it was a continuous following of the definite course.

HIS LORDSHIP: Yes. The discussion ranged over the whole period, and it occurred to me that whatever might be said about the years before or up to 1867, there would be difficulty in making anything done after 1867 relevant.

MR. HELLMUTH: Well, my Lord, I would be entitled to say that course was followed up till 1906.

HIS LORDSHIP: Why? What does that bear upon, that we have here?

MR. HELLMUTH: It bears upon this, that that was the acceptance of the law by the Province of Ontario for all those years. Surely that has some bearing on it.

10 HIS LORDSHIP: But the Province of Ontario during many of those years was acting under its own later statutes, wasn't it?

MR. HELLMUTH: No, my Lord, we say not. We say they enacted the statutes up to the one I last gave your Lordship, of 1897, they enacted statutes which repeated, if not in exactly, in effect, the Act of 1859 and the Act of 1863.

20 HIS LORDSHIP: Yes. But take the year 1878, for instance; they had revised the statutes in 1877; in 1878 presumably they were carrying out then their own statute of 1877 rather than giving effect in administration to a statute that had been in force when the British North America Act was passed in 1867.

MR. HELLMUTH: It was exactly the same, my Lord.

HIS LORDSHIP: It was exactly the same, I was going to say; but it was their own statute that they were administering in 1867.

30 MR. HELLMUTH: Of course, my Lord, if they had in 1877 enacted such a statute as we now have, or as was begun in 1906 or 1907, then we would have said they had no right to do it, but the mere repetition in their own statutes of a statute that was in force could not prejudicially affect us. In fact it in itself could have no effect upon us, if they enacted a statute. The statute of 1877 had no effect upon our rights at all, but as a matter of fact they repeated in that a clause which had given us rights, but in itself it had no effect upon us, according to our contention; but I think the very fact that they reenacted it in that way showed what their view was of the Statute of 1863 and 1859, those two sections to which I referred, that is, section 106 of 1859, and section 20 of 1863.

HIS LORDSHIP: I suppose this is only a first step in this case. I do not want to encumber the record with a great many documents that are irrelevant, but at the same time I suppose care ought to be taken to get in everything that any Court may think relevant.

40 MR. TILLEY: Not, my Lord, any Court; any Court that deals with it properly.

HIS LORDSHIP: Unless there is some great objection to it, it may protract the trial. Hadn't I better take this sort of thing subject to the objection?

MR. TILLEY: Well, my Lord, I would quite agree with that method of dealing with it if I thought that it was just this set of regulations or some one document, or two. But I have a wagon-load of books here, and I assume they are all to be required for some purpose, either connected with Government grants or connected with High Schools or Grammar Schools,

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

their courses of study, and Continuation Schools, their course of study, and the Common Schools, their courses of study; and I assume, and I think I am right in assuming, that this is just the commencement of a lot of material of the same kind, and while I would very readily agree to one or two things going in rather than take up the time that is involved in discussing them, when they are only documents from books, and so on, nevertheless I think it is going to spread out the matter without any help.

Now, we had the same sort of evidence in the Mackell cases; those were the cases where the question as to Regulation 17 came up; that is to say, whether the Ontario Legislature could prescribe the amount of time that could be devoted to French and the amount of time that could be devoted to English in these schools; and in order to establish a right by law at the Union, Mr. Belcourt, counsel for the Ottawa Separate School Board, put in a lot of evidence to show that French was being used in schools, and that there were teachers who could not teach in any language but French, at the Union, and that there were departmental rules that recognized the fact and prescribed that a knowledge of French grammar might take the place of a knowledge of German grammar which was required, and various other things of that kind—or English. Now, all that was put in for the purpose of saying, "This board by the Common School Act of 1859, which as to the powers of trustees was made the law in the Act of 1863 for Separate School boards, said these trustees have the right to determine the kind and character of the school that they will keep up, they had that right of management that involved determining the kind of school," and they said, "Here is evidence that it was being done and was being recognized, and we say it was being done under that section, as interpreting, so to speak, the departmental interpretation of the section."

When the matter was argued it was put very plainly to counsel in the discussion, "Now, it is not a question of what you did; the question is whether you were doing it by law." Therefore, it does not help to know, to ascertain the mere fact, that a certain thing was done. We must ascertain, was it done because there was a right by law to do it, or was it merely done? Is that all there is to be said for it? And it does not help us, really, to know only that it was done,

Now, when my friend has put in his regulation or his division, his apportionment, of 1862, I do not know what point is to be served by that, because that is before 1863; and there is not much change in language, but there is some change in language. Then between 1863 and 1867 is only four years, and how can my friend say any more than, "This is the way they thought the Act required them to divide it"? And he may say in addition, "I contend it was right."

Well, what I am saying is, I will assume that the Acts were carried out, such Acts as were in force from the beginning. If those Acts required it to be done in that way for forty years, well, they did, that is all; if they did not, and it was departed from, then it was a departure from the statute possibly not warranted. But how does it help at all, when your Lordship has got the interesting fact that certain school sections and certain townships got six

dollars and others five dollars and four dollars on this basis, how does it help us to determine what is to be determined here?

Now, your Lordship has had, since I raised the objection, a review of the legislation. It is quite plain that there are substantial questions to be discussed here with regard to the legislation, but are we going to add to the record not only the change made but practical illustrations of how it was done? I do not see that it adds a bit to this record, or that it can help your lordship or any other Court in the slightest degree to have practical illustrations put in in that way. The legislation is here, your Lordship sees; we have
 10 got provisions in later stages that where the assessment of a certain district is low they get some special consideration, and where they employ teachers of certain grades they get other considerations. The question is, is that within the law or is it not?

I think we have a very important case, but that does not make it necessarily a very long case, or that we should have a very big record, and that seems to me all the point there can be to putting in this kind of material. We could go on doing this, and put in expressions of opinion of this official and the other, and correspondence to Dr. Ryerson asking him what ought to be done. I suppose in those days—of course, such a thing does not happen
 20 now—possibly he was judged by the political expediency of the day, a thing that would be unheard of now, but he would do that then; and are we to have these statutes construed by his correspondence or his reports, or by the way he divides money?

HIS LORDSHIP: I have not yet grasped how we can have it construed by any such material. If you take the Act of 1863, section 20, that has been referred to so much, you find that every Separate School shall be entitled to a share in the fund annually granted by the Legislature for the support of Common Schools. Now, I should think it would be quite interesting to know
 30 what that fund was, and how it was granted.

MR. TILLEY: Oh, yes, my Lord, and that is covered by legislation.

HIS LORDSHIP: Whether by legislation or not, one ought to find out what that means.

MR. TILLEY: Yes.

HIS LORDSHIP: "And shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made."

One ought to know, I should think, what other public grants, investments and allotments for those purposes there were.

MR. TILLEY: I am not begging that question at all; your Lordship, I
 40 think, will appreciate my objection is not aimed at that sort of thing.

HIS LORDSHIP: I understand.

MR. TILLEY: Those things will all emerge from the legislation that was either then in existence—well, then in existence—of the Province of Canada.

HIS LORDSHIP: Well, I was going to say, while I understand that there might be necessity for evidence from documents or other sources as to what those grants, investments and allotments and so on were, unless the statutes make it plain, I do not quite understand how the practice of an inspector, even

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence
—continued.

reported to, presumably known by, the Legislature, can affect the question as to what right or privilege with respect to any of those funds any class of persons had by law at the Union.

MR. TILLEY: That is my whole point. And may I say, it is not this point only, but it covers each phase of this case, because if this is material, then equally everything that the Department did with regard to school regulations, school books, courses of study, and all these things, they are equally material. I do not see how I can object to one and let in the others, or vice versa. But, in my view, where the expression is what they have by law, and we know that their rights are statutory—because this is all the result of the statute—it must be statute-made law; there is no common law right to anything. It is either to be found in the Statutes of Canada, or in the Constitutional Law, or the Act of Union, or the Quebec Act. It is to be found some place in the statute, because there is no common law with regard to the subject. 10

HIS LORDSHIP: Unless, conceivably, a statute being passed by a Legislature which knew of a long-established practice, was passed with reference to that practice.

MR. TILLEY: Your Lordship will find that the statutes here with regard to these funds and money are complete within themselves; there is nothing of that kind. If my friend had a statute that showed it was dealing with a fund that was not described in a statute, he would have to go elsewhere to find the fund, I quite agree, because he has not got it described in a statute; but there is no fund here dealt with that is not described in legislation. My friend has not referred to all the Acts that describe it, he has referred to some of them, but it is completely made the subject of legislative enactment, and it is not a case—and I quite agree, it would be a different case—if the Act professed to deal with something, let us describe it as the Educational Fund, hereafter to be divided thus and so. I quite agree, one would have to find the definition of "Educational Fund" either in some statute or else go somewhere else to find it; but that case is not this case at all. My friend is not putting this forward to show the money that was dealt with. 20 30

MR. HELLMUTH: That is one of the very purposes.

MR. TILLEY: Then my friend had not mentioned that. If my friend adds that to it, quite all right. I thought my friend was just showing the distribution of the fund.

HIS LORDSHIP: That is what I thought, too.

MR. TILLEY: Now, if my friend adds to that that there was something being dealt with, that I can only establish what it was by going to some departmental action to show what they dealt with pursuant to this statute, to show what the department deemed the statute to operate on as a fund, and I cannot get that from the Acts of Parliament, that is not defined in the statutes, then that is a different case. 40

HIS LORDSHIP: Yes, I should not have any doubt about that.

MR. TILLEY: Yes, my Lord; I would not object to that. But if my friend says he is putting this in because this fund that was divided, that he cannot ascertain what it was except by going to the way it was divided to prove what the thing divided was before division, that is a different question;

I do not think my friend will say that. If he does, I am afraid by the end of the case we will find that we have been wasting a good deal of time, if we proceed on that theory, because these things are all referred to in legislation.

10 MR. HELLMUTH: The first exhibit that I wanted to put in is an account from the Chief Superintendent, with a tabulated list showing the disposition of the entire Legislative Grant of that year. It shows it in detail, where it has all gone, and it totals it up in grand total, and it shows exactly where each portion of it has gone, so that it does show what was operated on of that grant, shows what the grant was, and how it was distributed. Now, that is a question of fact.

HIS LORDSHIP: Isn't the grant made by statute, or wasn't the amount of it fixed by statute?

20 MR. HELLMUTH: An amount was fixed by statute; a total was fixed by statute. Then he gives an accurate account of a fact, both what the fund was and how it was distributed during that time. Now, I submit that I am entitled to show as a fact how that grant of that year was distributed, and how under the duties that devolved upon the Chief Superintendent he reported to the Legislature what he had done with the moneys that had been granted as they were then granted to the Common Schools, the Separate Schools
30 having a right under the statute to their proportion or proportionate amount. I want to show that, what he did. It is there set out. Of course, it is impossible at this date to call the Superintendent, because he is not in existence, he has passed away.

HIS LORDSHIP: I do not think it makes any difference whether it is done by the Superintendent or done by a document. I cannot yet understand how what the Superintendent did will assist the Court in ascertaining what any class of persons had by law the right to insist upon his doing; and that, after all, is, as I understand it, the question that has got to be determined here.

30 MR. HELLMUTH: I think that what was done, as a matter of fact—I do not want to repeat it again—what was done, as a matter of fact, in the distribution of the fund granted by the Legislature at that time, is a matter which the Court is entitled to have evidence upon, as showing how he exactly followed the provisions of the statute.

HIS LORDSHIP: Well, Mr. Hellmuth, the statute says in words that seem clear enough what the Superintendent shall do. Supposing he did something different, and continued to do it from—you are beginning in 1862, are you not?

MR. HELLMUTH: Yes, my Lord.

40 HIS LORDSHIP: Continued to do it from 1862 until 1867; how can it be said that the fact that he had continued to disregard the statute or to misinterpret it from 1862 to 1867, had given any class of persons by law a right or privilege to have that mistake perpetuated? I cannot grasp that.

MR. HELLMUTH: Well, here are certain townships; there is a certain population of those townships; that grant is divided—it shows that at that period there were Separate School sections that were sharing in the grant in the way we say the statute should be interpreted. It is a difficult matter, perhaps, to take the abstract and not have the plain, concrete instances of

*In the
Supreme
Court of
Ontario.*

No. 5.
Argument
upon
Objection to
Suppliant's
Evidence.
—continued.

how this fund was in the year 1862 dealt with, which shows exactly the manner in which the statute is being carried out. I am not saying at all he departed—as your Lordship puts it, did it wrongly—but my submission is that he did it exactly as the statute calls upon him to do it, and it is an illustration of how a given fund of \$150,000 or \$200,000 was distributed amongst the various municipal districts, that is, the cities, towns and villages, with the proportions coming to the Separate Schools where they existed in such divisions. Now, I submit that is very helpful to have that.

HIS LORDSHIP: Then supposing that is what it shows, that he did make exactly the distribution that the statute told him to make? 10

MR. HELLMUTH: Yes, my Lord.

HIS LORDSHIP: How does that strengthen your case?

MR. HELLMUTH: Well, it is at all events a clear illustration of how the statute would be worked out. It is one thing to say abstractedly, "Oh, it is on average attendance, and so on," but when you get these various townships set out in that way and the proportions, you have a guide, it seems to me, a plain guide as to the interpretation that should be placed upon that statute.

HIS LORDSHIP: Can you give me a concrete instance of it, something that you want to establish?

MR. HELLMUTH: Yes, my Lord, I can. Now, for instance, in this he 20 says:

"Where Separate Schools exist, the sum apportioned to the municipality has been divided among the Common and Roman Catholic Separate Schools therein, according to the average attendance of pupils at both classes of schools during that year, as reported by the trustees."

Now, the first one gives the apportionment of townships. He takes the Township of Glengarry, Charlottenburg, \$713; ditto for Separate Schools, \$56; Kenyon, there is no Separate School; Loughiel, \$514; ditto for Separate Schools, \$68; total for county, adding the two together, \$2,434.

HIS LORDSHIP: Now, what emerges from that? 30

MR. HELLMUTH: Then he goes on and he shows through the cities in the same way, and the townships, and then he shows the grand total of the school grant for that period, making a total of \$159,500. He has divided every copper, I was going to say, of the school grant, and that is returned to the Legislature.

HIS LORDSHIP: Well, that is what he was bound to do, to divide the whole thing, wasn't he?

MR. HELLMUTH: Yes, my Lord.

MR. TILLEY: The summary at the end of that particular apportionment shows all these townships. First it shows the apportionment amongst 40 the townships and the school sections in the townships, and then it proceeds to show the apportionment to cities, towns and villages, and then, having got all of those, it commences the summary—that is what your Lordship was asking about—and then it gives all the counties in order with the amounts, and then it gives at the end all the counties, District of Algoma—I do not know how my friend describes that, because districts are not mentioned in his Act—that is \$298 for the District of Algoma, and then it gives certain grand

totals for the counties and districts, cities, towns and villages. Now, districts are not mentioned in the legislation at all. I do not know what help we get from things made up that way. I dare say the Superintendent did what was fair and right, and possibly observed the law, but it does not help us interpret the law.

10 HIS LORDSHIP: I do not see it. I think, if the objection is pressed, I must rule that this class of evidence is irrelevant unless it is tendered for one of the purposes that were mentioned in my discussion with Mr. Tilley. That is, to say, if it is tendered for the purpose of identifying the fund annually granted by the Legislature or the other grants, investments and allotments for Common School purposes referred to in section 20 of the Act of 1863, chapter 5, or for the purpose of showing that any class of persons had by law other than statute law some kind of right at the time of the passing of the British North America Act, I would receive it in so far as it tended to show the thing it was adduced for the purpose of showing; but if it is merely to show how the Superintendent administered the fund entrusted to him by the statute, and how he reported to the Legislature that he had administered that fund, I cannot see its relevancy, and I think I shall have to exclude it.

20 MR. HELLMUTH: In view of your Lordship's ruling, I tender this both on the ground of showing the administration of the fund of that year granted by the Legislature by the Superintendent, and his report to the Legislature of the manner in which he had apportioned and divided that fund amongst the various cities, towns and townships, including his division to the Separate Schools, and his report in regard to the manner in which this had been done. I tender, then, in the Journal of Education for 1862, at page 81 and following.

30 Then, my Lord, I tender the Journal of Education for 1867, at page 113, which is after Confederation, immediately after Confederation, the report of the Superintendent of Education with the full apportionment of the fund granted that year, showing its totals and its apportionment amongst both Separate and Public Schools in various municipalities throughout the Province; the Journal of Education for 1876, beginning at page 82, being in this case the return by the then Minister of Education, the Honourable Adam Crooks, showing the apportionment and the method adopted in regard to same, amongst the various townships, cities and towns, incorporated villages, and the grant for that year, being the year in which he as Minister of Education now was distributing the fund, the late Dr. Ryerson having resigned as Superintendent and not existing, and showing what was done as the member of the Government charged with that particular work. Then 1886—taking ten-year periods—the Annual Report—

40 MR. TILLEY: I do not think there was any Journal in that year.

MR. HELLMUTH: No, it is the Annual Report. Would you let me have that? I do not seem to have that.

MR. TILLEY: What is it?

MR. HELLMUTH: The Annual Report for 1886. This is the Annual Report of the Minister of Education for 1886, commencing at page 8 and running through several pages, I won't say how many pages. It shows the

cities and towns in some detail, also by the Minister of Education, and following the same course as had been adopted in the other reports.

Then I tender the Report of the Minister of Education for 1896—I might call your Lordship's attention to the fact that in 1886, page 9, the Minister in his Report deals with the exemption of the Roman Catholic Separate School supporters.

HIS LORDSHIP: Deals with the exemption?

MR. HELLMUTH: Yes, from any rate or anything of that kind; but if it does not matter what he said or did in the matter, I suppose it follows from the other ruling. I just wanted to point that out; he makes his statement in regard to the Roman Catholic Separate School supporters. And in connection, of course, with the apportionment, what I said to your Lordship before lunch was that while the Public or Common Schools had to earn their Legislative Grant by raising by assessment an amount equivalent to what that grant would have been, and failing that losing the proportionate amount of the grant—proportionate, I mean, to the amount that they failed to raise equal to the grant—the Minister points out that that does not apply to the making of the apportionment to the Separate School supporters at all. However, I merely want to say to your Lordship, there is more in the report of the Minister, when it comes down to dealing with the Separate Schools, than a mere statement of apportionment; there is his— 10 20

MR. TILLEY: View of the law.

MR. HELLMUTH: Well, I don't know whether it is his view of the law or not; it is his report to the Legislature at the time. It may be—I am not questioning your lordship's ruling, I do not do that, but I do want to point out that I have in this report something that is more than a mere matter of computation or the reason for the computation.

HIS LORDSHIP: I do not quite understand. My ruling was that certain bits of evidence tendered for a certain specific purpose were inadmissible. I have not dealt in any way whatsoever with those or other things tendered for any other purpose. I do not want the impression to be created in the minds of other judges when they hear this case at a later stage, that the ruling has gone farther than the ruling actually made and recorded on the notes. I have not ruled out all these Reports just because they are Reports, and because I have said that reports cannot be relevant. 30

MR. HELLMUTH: No, my Lord; and I do not wish in any way to attempt to take any advantage in that way of what your Lordship has said, and therefore it only seemed to me that it was the logical, if not the legal, conclusion, that when your Lordship held that what was done by the late Dr. Ryerson in the way of apportionment would not help in any way to the solution of what was the real right of my clients, it seemed to me that it would be equally clear that what the Minister of Education from time to time declared in his Report as to the exemption of Roman Catholic Separate School supporters from taxation, could be any stronger—because he might have been wrong, too, in his view in regard to that—but I do submit it is of very great importance, and that is why I want to press upon your lordship— 40

HIS LORDSHIP: Importance for what purpose?

MR. HELLMUTH: To show that the entire trend of the legislation, following that, as it did all that time, preserving what was assumed, at all events, to be the rights of my clients during all that period by the Legislature and by the Ministers.

HIS LORDSHIP: What you have got now is a Minister in 1896 telling what he assumes.

MR. HELLMUTH: Yes, my Lord. My Lord, I am not pressing to put it in at all; I am not attempting to argue one iota against your lordship's ruling. It has been ruled out subject to my objection, and that is all. I was only
10 saying that this would not, it seems to me, be any more admissible than what your Lordship has already ruled out.

HIS LORDSHIP: I should imagine that that was so.

MR. HELLMUTH: I do not want your Lordship to think that I was trying to put something in in that way, but I want to point out that I consider that those matters are of importance, and that I would be entitled to bring them before the Court.

I do not think I gave the page of that; it is 1896, page 107, and that runs on to page 113.

Then, my Lord, I have them for the years from then down to 1905, that
20 is, during the period when this grant was apportioned and distributed in a similar manner. I should have liked to shortly refer to them, but I have 1903—

HIS LORDSHIP: If you desire it, all those can be marked for identification.

MR. HELLMUTH: Well, I have given the start of them, and I think that that is practical identity.

HIS LORDSHIP: That is sufficient.

MR. HELLMUTH: I suppose, then, my Lord, the distribution made after the change in 1906, which did not come into effect until 1907, I assume that
30 those showing a different method of apportionment then made would fall within that ruling—that is an apportionment which we say was improper.

HIS LORDSHIP: I do not know; you are suing for your share of those, you are suing for your share, as I understand it, of some—

MR. HELLMUTH: No, my Lord; we are suing for our share on the basis of the Act of 1863 and the Act of 1859.

HIS LORDSHIP: Yes.

MR. HELLMUTH: Well, it does not make any difference what they did on any other time; we have got to show now—I think we have shown—what the
40 population of the Province was, what the population of the Township of Tiny was, and what the average attendance was in all the schools in Tiny. That has already gone in.

HIS LORDSHIP: Yes.

MR. HELLMUTH: And it does not make any difference how they distributed, if we did not in 1922 get what we say we were entitled to get.

MR. TILLEY: The claim is only in respect of 1922.

HIS LORDSHIP: Oh, it is only in respect of 1922?

MR. HELLMUTH: Yes, my Lord, we are only asking with regard to 1922.

*In the
Supreme
Court of
Ontario.*

No. 6.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 6.
Suppliant's
Case,
Introducing
Exhibits.
—continued.

HIS LORDSHIP: Then I do not suppose it makes any difference.

MR. HELLMUTH: No, I would think I had merely tendered to show the way in which these grants had been distributed since 1907 up to 1922, so far as the Township of Tiny is concerned; I cannot give you that at present, because I have not asked that. If we should be fortunate enough to be held to be right with regard to 1922, I have no doubt the Government will make good what we may have lost in 1923 and 1924, or else we will have another claim for it. What our claim is is set out in dollars and cents, but, my Lord, whether they actually had taken more than they were entitled to take, or had given to School Section No. 2 in the Township of Tiny less than it was 10 entitled to have, would not be the only matter, although that might be the only matter for an actual judgment; but what we would say, if they had the power to do it, if they had taken to themselves the power to alter the method of distribution so that it might hurt us in any way, that year or any other year, we would have the right—

HIS LORDSHIP: Quite so. Your Petition, as I understand it, is so framed as to entitle you to a declaration that the legislation is invalid for that reason.

MR. HELLMUTH: Yes, my Lord.

Now, my Lord, I desire to take up the first of the other branches in regard to the right to teach in the Separate Schools, before going into the question of 20 the exemption.

HIS LORDSHIP: To teach all subjects?

MR. HELLMUTH: All subjects, before going into the question of the exemption from rates for the Public or other schools.

In the Act of 1863, by section 7:

"The trustees of Separate Schools forming a body corporate under this Act, shall have the power to impose, levy and collect school rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of such schools, and shall have all the powers in respect of Separate Schools, that the trustees of Common Schools have and 30 possess under the provisions of the Act relating to Common Schools."

Then in the Common School Act of 1859, by section 79:

"It shall be the duty of the board of school trustees of every city, town and village respectively, and they are hereby authorized"—

then follow a number of authorizations, and subsection 8 of 79 is this:

"To determine (a) the number, sites, kind and description of schools to be established and maintained in the city, town or village; also (b) the teacher or teachers to be employed; the terms of employing them; the amount of their remuneration, and the duties which they are to perform; also (c) the salary of the local Superintendent of Schools appointed 40 by them, and his duties."

That makes it apparent, my Lord, that what we have to do is to find out what in 1867 or prior thereto were the powers of the Common School trustees in that respect, because similar powers and rights existed in the Separate School trustees.

Then, my Lord, if one turns to subsection 16 of section 27 of the Act of

1859, it is giving the duties of trustees in the Common Schools, and that section is:

"To permit all residents in such section between the ages of five and twenty-one years, to attend the school, so long as they conduct themselves in conformity with the rules of such school, and the fees or rates required to be paid on their behalf, are fully discharged, but such permission shall not extend to the children of persons in whose behalf a Separate School has been established, according to the Act respecting the establishment of Separate Schools."

10 HIS LORDSHIP: I cannot find that in section 16.

MR. HELLMUTH: Then, my Lord, in the Separate School Act, the Act of 1914, as far as this is concerned—I mean the Revised Statutes of Ontario of 1914, the Separate School Act, by section 45:

"It shall be the duty of every board and it shall have power to," and then subsection (d):

"Provide adequate accommodation and legally qualified teachers"—of course, I am not citing this as giving us any additional power at all, but just on this point—

20 "according to the provisions of this Act and the Regulations, for all children between the ages of five and twenty-one years of the supporters of the schools under the control of the board according to the annual enumeration of the assessors for the next preceding year."

HIS LORDSHIP: I find it difficult to follow that.

MR. HELLMUTH: Your Lordship will find that in an Act, 34 Victoria, chapter 33, by section 3; in the Public Schools but not in the Separate Schools, they have now every child from the age of seven to twelve years inclusive shall have the right to attend some school or be otherwise educated for four months in each year. I think now the age has been changed in regard to the Public Schools, from seven to fourteen—but I am not quite sure about that; 30 I will give your Lordship the reference. But what I want to point out to your Lordship is this, that under the Act of 1863, where the duties of the trustees are made similar—that is, the duty of the Separate School trustees—are made similar to the duties of the Public School trustees, the right to educate children from five to twenty-one could not be interfered with or cut down, and has not in words, although I will show your Lordship later, been attempted even in the Act there, but the education that would be fitting over ten or twelve has been refused, as I propose to show your Lordship.

40 Then, my Lord—my friend will probably have an objection here—I want to place before your Lordship what was sent out by circular from the Department in regard to the studies and character of the schools as shown on page—it was from the School Act of 1847.

MR. TILLEY: Did you say it was something from the School Act?

MR. HELLMUTH: It appears in the Historical Educational Papers and Documents of Ontario, printed by the King's Printer by order of the Legislative Assembly of Ontario, and it shows the circular that was sent to the mayors of cities and towns in Upper Canada on the School Act of 1847, because I am going to show, if I can, an increased curriculum, if I may use

In the
Supreme
Court of
Ontario.

No. 6.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 6.
Suppliant's
Case,
Introducing
Exhibits
—continued.

No. 7.
Further
Discussion
as to
Evidence

the expression, for the Common Schools from time to time. Now, that is a question of fact, I submit, what were the subjects of instruction in those Common Schools of the day. I want to submit this circular sent out.

HIS LORDSHIP: Is there any objection to that?

MR. TILLEY: Yes, my Lord, This is the other branch of the same objection that I raised before. The question is not what did they do, but what had they the right to do, and that is covered by legislation. In some respects, no doubt, there were rights conferred that could not be altered; in other respects rights were conferred expressly subject to alteration, and then in addition to both these classes there would be rights conferred that were not rights in connection with their denominational schools. The subject that my friend is now raising is one that in any event there would be a good deal to be said about whether it would be a right in connection with their denominational schools, but I can appreciate that that would be a broad question upon which your Lordship would want to hear all the evidence as to what were rights first, and then to determine whether they were rights in connection with the denominational schools which should be preserved. Therefore I do not address any argument with regard to that at the present time; I reserve that, but my submission is that on the legislation it is perfectly clear that this is not material evidence to be considered at all. 10

My friend has referred to one section of the Act of 1863. May I refer to one or two other sections? First, may I refer to section 13 of the Act, at page 69 of the pamphlet: 20

"The teachers of Separate Schools under this Act shall be subject to the same examinations, and receive their certificates of qualifications, in the same manner as Common School teachers generally; provided that persons qualified by law as teachers, either in Upper or Lower Canada, shall be considered qualified teachers for the purposes of this Act."

The latter part is not material at all.

That was the subject of a decision of the Privy Council, and nothing turns upon it here, but the teachers are subject to the same examinations and receive the certificates of qualifications the same as the Common School teachers generally. That was a new section in this Act of 1863. 30

Then if your Lordship will turn to section 26 you will find another new section in the Act of 1863; it is this:

"The Roman Catholic Separate Schools (with their registers) shall be subject to such inspection as may be directed from time to time, by the Chief Superintendent of Education, and shall be subject also to such regulations as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada." 40

So that your Lordship sees that whatever regulations fall within the ambit of powers of the Council of Public Instruction are regulations that are to be made under this Act with regard to Separate Schools, and those two sections possibly reflect as prominently as any sections in the Act—in fact, I think they are the main sections in that regard—what was meant by the recital in the Act of 1863 where it says:

"Whereas it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools, and to bring the provisions of the law respecting Separate Schools more in harmony with the provisions of the law respecting Common Schools."

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence.

So that in those two respects, first as regards teachers, which was new, and secondly as regards the regulations of the Council of Public Instruction, which was also new, regulations applying to these schools, schools were brought more in harmony with the Common Schools.

10 Now, if your Lordship will turn to the powers of the Council of Public Instruction, which will be found commencing at page 58, section 119, of the Common School Act—section 118 refers to the Council of Public Instruction, and then 119 is:

"It shall be the duty of such Council and they are hereby empowered"—

then I can pass over the first; the second shows that they are in charge of superior education. 2 is:

20 (2) "To adopt all needful measures for the permanent establishment and efficiency of the Normal School for Upper Canada, containing one or more Model Schools for the instruction and training of teachers of Common Schools in the Science of Education and the Art of Teaching.

"(3) To make from time to time the rules and regulations necessary for the management and government of such Normal Schools."

That is not material. Subsection 4 is the material one, at page 59:

"(4) To make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools, for the classification of schools and teachers, and for school libraries throughout Upper Canada."

30 Your Lordship sees—at least, I ask your Lordship to note—that that section is the section authorizing the Council of Public Instruction to make regulations, and therefore it is the section that is referred to in section 26 that I have read, in the Act of 1863; so that the classification of schools and teachers and the organization, government and discipline of Common Schools is entirely entrusted to that body, and therefore it is a body that would be entitled to say where University work would start, as to these schools, that is, where matriculation would be passed, and what schools should conduct the education up to that period, and where the Common Schools would stop, dealing with what were then called Grammar Schools, and also with any Intermediate Schools that might be established.

40 Now, that being so, why is it of any importance to ascertain what was done at any particular time?—because the organization of Common Schools and the work they are to do was a subject that might be changing at any time. The work of the Council of Public Instruction now devolves upon the Department of Education. At page 75 your Lordship will find it, an Act respecting the Educational Department of 1876. I need not read that, but it substitutes,—the Council of Public Instruction is now the Department of

Education, and exercises the powers of the Council of Public Instruction, and the Chief Superintendent in these Acts is now the Minister of Education; his functions are performed by the Minister of Education.

Now, what my friend says, as I understand his argument, is that under the Common School Act there was an obligation on the trustees to provide accommodation and teachers for all pupils from five to twenty-one; that is section 27, subsection 16. Now, may I just refer to the language in that:

“It shall be the duty of each school section, and they are hereby empowered”—

HIS LORDSHIP: What page is that? 10

MR. TILLEY: That is at page 28. Your Lordship will note, when it says school section, that is, these are the powers and duties of trustees of rural schools, not city schools. My friend suggests, as I understand him, that that creates the right and imposes an obligation on trustees that cannot be taken away, that they must provide in a rural school education for any person under twenty-one that he may need or want, I suppose, and we know that there are some fairly advanced people in education by the time they reach twenty-one. That can be the only argument, I think, that my friend can adduce from it, that as it says they must take in the pupils up to twenty-one, there is no limit on the education they are to provide if the pupil up to twenty-one can take it in. That is to permit all residents in such sections between the ages of five and twenty-one to attend the school, and I suppose that puts on them an obligation to permit them to attend the classes that by the regulation and the organization of the school are provided in the school, and it does not, surely, mean that if a pupil who is ready to matriculate wants to stay on in the rural school where his home is, there is an obligation, or a right, to provide that education there, contrary to the organization of the school under the Council of Public Instruction. 20

The other section to which he refers is subsection 8 of section 79; that is a section with regard to city schools. I do not know that my friend comes under it at all. 30

MR. HELLMUTH: Oh, yes; I am suing on behalf of all schools.

MR. TILLEY: I think my friend must get into the class before he can sue on behalf of the class.

MR. HELLMUTH: Well, let us understand that. I understood, certainly, that no objection was going to be taken on the question that any Separate School or any class of Separate Schools in the Province of Ontario was to be allowed in this action to make their claim, if they had it. If that is so, I would like to know, because I certainly understood when this matter first came up that there was not to be any question raised as to whether the Township of Tiny, if it were suing, or any other Separate School, could not urge any matter on behalf of urban Schools as well as rural Schools. 40

MR. TILLEY: Well, I have never heard that the question of urban as compared with rural was raised at all.

MR. HELLMUTH: If my friend is going to take that objection, I want to understand now that it is going to be taken, because I certainly understood,

and I think my colleague will bear me out, and my previous colleague, that no objection of that kind was to be raised.

HIS LORDSHIP: Well, they are in the class of schools; can't they sue on behalf of all schools?

MR. TILLEY: I do not know that they can sue on behalf, that is, to have the special rights of city schools determined. Now, they are certainly a Roman Catholic Separate School, and they can have any question that they are concerned with at all raised here. I am not raising any question about that at all, but when they ask to have the special statutory rights of city schools determined, I think it raises an entirely different point.

MR. HELLMUTH: Well, if it cannot be determined, I would beg leave to have a Petition of Right to have it determined, because we do not want to have another case of this length, and it was certainly understood that it did not matter what particular section we took; we could put in another city school just as well.

MR. TILLEY: If my friend will say he represents them all so that it is binding on them all, I am content.

MR. HELLMUTH: Well I do; I have no hesitation in saying that.

MR. TILLEY: My friend says he acts for them all. If that is so, I am content. But we must have it in mind, there may be some things for city schools and others for country schools.

MR. HELLMUTH: Oh, quite so.

MR. TILLEY: If your Lordship will look at section 79, subsection 8:

"To determine the number, sites, kind and description of schools."

That is at the bottom of page 43.

HIS LORDSHIP: That is the board of—

MR. TILLEY: Of an urban school. The nearest approach to that subsection in the rural school trustees' powers and duties is subsection 6 of 27, at page 29:

30 "To establish, if they deem it expedient, with the consent of the local Superintendent of Schools, both a female and male school in the section, each of which schools shall be subject to the same regulations and obligations as Common Schools generally."

Now, my Lord, all I have to say with regard to that in a broad way is this, that they may determine the number, sites, kind—that may be male or female classes—or any other kind, provided it falls within the regulations, the permissible regulations. But if the regulations say it is proper, you get the best educational effort, if you have the Common Schools carry on their work to a certain stage, and then other schools continue, so that the pupils more advanced are grouped in proper school accommodation where they are taught collectively, rather than attempt to interfere with the smooth working of the elementary school by attempting to carry on the secondary school work, that was for the Council of Public Instruction at that time, and it is now for the Department of Education; and all the right, assuming it is a right, that is conferred by the Act, and that is perpetuated, of a pupil twenty-one years of age to attend the school is to attend that school and get such education as that school provides, under the regulations, under the organization, and it is not

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence
—continued.

his privilege to say, "It becomes your duty to educate me, and I am a third-year student in Toronto University, or King's College," as it was then, "and I choose to come here to get that education." Now, such an attempt to work an Act could never have been contemplated, I submit, and it is contrary to the plain language, and we are not helped at all by finding, if we do find—at any rate, those of us who were more familiar with Country Schools, even in my day, knew that you would have some advanced pupils in school, and no doubt there was pride taken in the fact that some rural school was teaching some advanced work to a few pupils who could take it. Well, are we to go into it here to find out how many of them were, and where that was being done? 10
The point is, was there a right to organize? Was there a right to control? Was there a right to specify textbooks? And all these things. It is the same sort of question that we had this morning, just presented in a different way. Supposing my friend finds that some pupil was being trained in very advanced subjects—or pupils—that in some schools certain advanced work was being done, where possibly it could be conveniently done, or the teacher happened to have special interest in certain pupils and was carrying them on in advanced work; we are then presented with the question, was that a right by law of that school, or was it a practice that was going on? And we are not helped at all, I submit, by finding out what the curriculum of the day was in the partic- 20
ular schools, or the Minister's view about what rights they had. It comes back to what is the law. In all such matters I dare say that then, as now, there was a certain amount of give and take and working along so that schools would locally get what they liked, provided no harm was done to the general educational system. But here we have a section that is expressly put in the Act of 1863, and it is not left—

HIS LORDSHIP: Which section do you mean?

MR. TILLEY: The section that deals specially with the power to regulate of this Council of Public Instruction—they shall be subject to inspection and shall also be subject to such regulations as may be imposed from time to time 30
by the Council of Public Instruction for Upper Canada.

Now, your Lordship, my friend said that this point was touched on in some decision; I do not know which one it was. If my friend has any case I would have been glad for him to cite it before he closed what he had to say, because I should have liked to deal with it. It seems to me the point here is very much over again the point that was in the Mackell case that I referred to this morning.

HIS LORDSHIP: This particular Act is all new to me. I am afraid I have lost the last section you referred to.

MR. TILLEY: It is page No. 71, 26. May I just refer to one other 40
section, which may be of a little assistance on this? At page 68, at the end of section 9—my friend referred to section 7.

MR. HELLMUTH: Section 9 of which?

MR. TILLEY: The latter part of section 7 of the 1863 Act—I do not know quite what my friend's construction is of the latter part of section 7; I do not know whether my friend says the Separate School trustees shall have all the powers in respect of Separate Schools that the trustees of Common

Schools have and possess under the provisions of the Act relating to Common Schools; I do not know whether my friend makes the point that they were to have for all time the powers that Public School trustees then had.

MR. HELLMUTH: Certainly, yes, I make that contention.

MR. TILLEY: And no more?

MR. HELLMUTH: Well, I did not say that. You could give us more; you can give us privileges.

MR. TILLEY: Oh, yes, but your rights under the statute—my friend, I think, possibly may have to take one side or other of the point; that is to say, are they there guaranteed all the rights that were then or might there-
10 after be conferred upon Public School trustees, or were they given the rights that the Common School trustees then had, not to be enlarged, if the rights of the Public School trustees were afterwards enlarged? It is a peculiar sentence; it says that they shall have the powers in respect of Separate Schools that the Common School trustees have under the Common School Act.

Now, I assume from what my friend has said that what he contends is that the right given by law under that section is to have the powers then pos-
20 sessed by Common School trustees under the then Common School Act, and that their rights are not enlarged if the Common School trustees' rights are subsequently enlarged. However, I will pass from that, because I do not want to put that point so that it comes before my friend wants to deal with it; it may not have to be dealt with.

Then I come to section 9, the latter part of it:

“And they shall perform the same duties and be subject to the same penalties as trustees of Common Schools; and teachers of Separate Schools shall be liable to the same obligations and penalties as teachers of Common Schools.”

Now, as I submit, the whole matter comes to this: Were Common Schools not subject to appropriate regulation and control from time to time
30 as to the subjects that should be taught, and the extent to which education should be carried on in those schools, so that a division might be marked plainly between the work of a Common School and the more advanced work of a High School, Collegiate Institute, or an Intermediate School—because my friend says that by that Act they obtained the right to teach anything so long as the pupil was under twenty-one years of age. Now, my submission is that the Separate Schools were expressly made subject to the power to organize and control established courses of study, changing as times changed, and that all schools, including the Common Schools, could be classified, and therefore involving specifying the work to be done and where one should
40 stop and the other start.

HIS LORDSHIP: How does section 9 touch it at all? You referred to it; how does it touch that question?

MR. TILLEY: The latter part; that the trustees should perform the same duty and be under the same obligations.

HIS LORDSHIP: Yes.

MR. TILLEY: That is, the trustees, their duties and their powers with

regard to the school, that they are subject to the same limitations and restrictions—

HIS LORDSHIP: Well, it does not say so, does it?

MR. TILLEY: Does it not?

HIS LORDSHIP: No, it does not.

MR. TILLEY: "The trustees shall take and subscribe" an oath,

"And they shall perform the same duties and be subject to the same penalties as trustees of Common Schools; and teachers of Separate Schools shall be liable to the same obligations and penalties as teachers of Common Schools."

HIS LORDSHIP: Their duties, obligations and penalties are the same, but where does it say that they shall be subject to the same regulations? 10

MR. TILLEY: Well then, 26 says that the Roman Catholic Schools shall be subject to regulations imposed by the Council of Public Instruction, and they would have to obey them.

HIS LORDSHIP: The Roman Catholic Schools shall be subject to such inspection and shall be subject to such regulations—yes.

MR. TILLEY: Then I gave your Lordship the section which said that the Council of Public Instruction shall regulate them with regard to organization and management, and so on. 20

HIS LORDSHIP: Yes.

MR. TILLEY: And in the Mackell case it was definitely held—I do not know whether that is the case my friend had in mind, but if it is I think it is against him—it was held there that the courses of study in the Separate Schools were subject to the control of the Legislature or the Department, and the Legislature's requirement as to the time that could be spent in one language or teaching one language, must control, because they were subject to regulation in all respects, just like Common Schools; and they held that under that power it was possible to say, "You must not teach in French more than a certain time each day. The rest of the time must be in English." Now, 30 that was a control of the management of the school. Now, the argument presented was, just as my friend is putting it, that under section 7 it was said—I have the book that I had when the case was being argued at the Privy Council, and the expression Sir John Symons used was, "The latter part of this section is the very root of my case." That is the latter part of section 7, at page 68—they shall have all the powers in respect of Separate Schools that trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools. Then he turned to subsection 8, which my friend read, and he says under that subsection, which is at page 43, they have the right to determine the number, sites, kind and description of schools; 40 and he said they may establish a school to be educated in French under that, where they will have French teachers, and he said they were doing it at Confederation, and proof was given of schools that were conducted in French at that time, and they said that is a "kind" of school.

Now my friend says, "We want to do the same thing, we want to show that certain pupils were taught in advanced subjects in particular schools at that time"—I presume that is his point—or that some person said, "Under

the law as it stands you may go on and establish other classes," but that is far from saying that they are not subject to regulation; and what was decided in the Mackell case was that these schools—true, you may establish schools of various kinds, but you must keep within the regulations, because they are all subject to regulation.

It is possibly not very material, because I realize your Lordship will not want a detailed argument at this time—subsection 8 of 79, at page 43, which says to determine the number, sites, kind and descriptions of schools.

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence
—continued.

HIS LORDSHIP: What section is that?

10 MR. TILLEY: 8 of 79 of the Act, of the Common School Act of 22 Victoria, my lord. The Legislature of Ontario puts its interpretation on that section; it said, "To determine the number, sites, kind, grade and description of schools," such as male, female, infant, central or ward schools. It is in the provision for urban, and not for rural. I think it points, not to the extent of the education in the school, but to the organization of schools for the convenient handling of pupils where they are numerous, in a city, or may be numerous, and therefore they may have more divisions of the schools than in the rural sections.

20 HIS LORDSHIP: It shall be the duty of the board of school trustees for every city, town and village to determine the number, sites, kind and description of schools, the teachers, the amount of their remuneration, their salaries—the board of school trustees in Toronto, for instance, from the necessity of the case, would have to do all those things.

MR. TILLEY: Yes, because of the way the schools were organized. That does not say that they may establish a High School as part of their Common School, or a Continuation School.

HIS LORDSHIP: To determine the number, sites—

MR. TILLEY: I suppose the word my friend means is "kind."

30 HIS LORDSHIP: Kind and description of schools to be established and maintained.

MR. TILLEY: I suppose that he says a school giving a secondary education is a kind of school.

HIS LORDSHIP: The board of school trustees of a city, town or village—

MR. TILLEY: That is Public Schools, Common Schools.

HIS LORDSHIP: Yes; this is a Public School Act. Did that board have anything to do with Grammar Schools?

40 MR. TILLEY: Oh, no; there was law at the time—that is why I say I am not going over the whole subject; my friend will come to it when he comes to his Grammar Schools. I presume. There was legislation, and a Grammar School could be united with a Common School, and the joint boards became a joint board for the two schools.

HIS LORDSHIP: But that is not the board that is being talked about in this section.

MR. TILLEY: Oh, no.

HIS LORDSHIP: This is the board of school trustees appointed under the Common School Act.

MR. TILLEY: Under the Common School Act.

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence.
—continued.

HIS LORDSHIP: Then they may determine the number, kind, sites and description of—

MR. TILLEY: Of Common Schools, I should say.

HIS LORDSHIP: I should suppose so.

MR. TILLEY: Now, my friend seems to think, or he suggests, that that in some way gives him a right by law to determine the character of the school, "and though the Council of Public Instruction or the Department of Education or the Legislature should say the Common School shall teach such and such subjects, we by virtue of our right conferred by law and protected by the British North America Act have the right to say we will teach something in addition, and we will go beyond the curriculum of studies for Common Schools, and we will make this Common School such an educational institution that it will embrace work that the Department or the Legislature says is better done in a particular school called a Grammar School or a Continuation School." 10

Now, I submit that it comes back to the point that these are all schools that are subject to organization and regulation and control by the central authority, and their rights are rights to do things within the powers conferred from time to time, and those powers and duties may constantly change; as to a Separate School the same as a Common School, and therefore it does not help us to know what they in fact taught at the time. 20

There would be two questions: First, did they teach it as a matter of legal right conferred on them with respect to their schools? And if they did, was it a legal right that was not subject to change?

My submission is that it was not a legal right under these sections at all that my friend has referred to, and if it was, it was expressly subject to change, and the Council of Public Instruction or the proper central authority would be entitled at any time to change the curriculum or change the extent of education, add to it or take away, in the Common Schools, and whatever was done as to the Common Schools could be done as to the Separate Schools, and we are not advanced at all—this would be quite an inquiry, to go into what all the Common Schools in Ontario were doing at that time, or what the regulations then prescribed, when it all disappears, because it goes back to the one point, did they do it as a matter of law in respect to which no change can be made? It would be, I admit, rather surprising if we find that any such result as that comes out of the conferring of rights by the British North America Act, or protection of rights by the British North America Act. 30

My friend, when he proves there are certain things, will merely come back to the one point in the argument: where is the legislative authority for it? And if there is distinct legislative authority for it, is it a protected right by law? And we get back to the same subject. If the power was there, it is immaterial whether they exercised it or did not exercise it. If the power was there, it does not matter that not a single school was at that time exercising the privilege of teaching advanced subjects, doing High School work. It is entirely beside the question, as to whether it was an exercised privilege. The question is, was it a legal privilege and one that is not subject to any change? 40

My friend just points out that in these various sections there are other

references—I am not going into the whole subject, but the superintendents must get reports on the work done, and so on. I am not saying what they permitted to be done at the time, but if my friend proved that every school was teaching most advanced subjects I would have to bring it back to my submission to your Lordship, as to where is the legal right to do that, where is the legal right that cannot be changed?

HIS LORDSHIP: I have almost forgotten what it was you tendered, Mr. Hellmuth. It was a circular from the Department, wasn't it?

10 MR. HELLMUTH: My friend has gone so very fully into matters which I thought would probably have been argued at the close of the case, but which it seems to me it is advisable that I should perhaps deal with now, so that your Lordship would have before you not merely my friend's view of this Act and his interpretation of it, but that your Lordship should also hear what I may—perhaps not as forcibly—present from our point of view.

20 My first submission is, no regulation could be passed which would in any way prejudice the position we occupied at the time of Confederation; that a regulation would be just as much *ultra vires* as an Act. If the Legislature had said, "We will pass an Act cutting you off from teaching anything but reading and writing in the Public Schools," they might have done that so far as the Public School was concerned, but they never could do it to the Separate School. The Separate School of that day had a right, certainly so far as the urban was concerned—and I am sure that later our rights were just as great in the rural—to the kind and description of school; and if my friend had given to your Lordship what exactly was said in the Mackell case by their Lordships at the Privy Council, the exact language used, your Lordship will see that at page 5—the case is reported in 32 Dominion Law Reports, and at page 5—

HIS LORDSHIP: Isn't it reported in the Appeal Cases?

MR. HELLMUTH: Yes, my Lord.

30 HIS LORDSHIP: Do you remember the number? Is it 17?

MR. TILLEY: I have a print of it, and I am just getting it for your Lordship.

MR. BATTLE: It is in the Appeal Cases, 1917, at page 76.

MR. HELLMUTH: I just have this form from the library, my Lord, 32 Dominion Law Reports.

MR. BATTLE: It is 1917 Appeal Cases at page 76.

MR. TILLEY: Here is a pamphlet copy of it.

MR. HELLMUTH: In the judgment at page 5 in the Dominion Law Reports—

40 MR. TILLEY: About half way through the judgment.

MR. HELLMUTH: Their Lordships say, "Counsel for the Appellants"—that was for those who were attempting to claim that they could teach the French language in, or have their schools conducted in, French—

"Counsel for the Appellants naturally place great reliance upon these provisions, and in the wider aspect of their argument they contend that 'the kind of school' that the trustees are authorized to provide is a

school where education is to be given in such language as the trustees think fit.

“They urge that it was a right or privilege possessed with respect to Denominational schools in 1867 in determining the number and kind of schools to say within what limits the French language is to be used; for, according to their contention, ‘kind of school’ means a school where the French language, under the direction of trustees, may be used as a medium of instruction on terms not less favourable than the use of English. Their Lordships are unable to agree with this view. The ‘kind’ of school referred to in sub-head 8 of section 73 is, in their opinion, the grade or character of school, for example, ‘a girls’ school,’ ‘a boys’ school’ or ‘an infants’ school,’ and a ‘kind’ of school, within the meaning of that sub-head, is not a school where any special language is in common use.” 10

Now, my submission to your Lordship is that we are entitled under our Act to say what grade of school we have, and that any regulation which is put in effect which would limit that grade is a regulation which can have no more effect—or, indeed, less effect, if one could imagine that—than an Act of the Legislature, which would say, “You cannot teach this,” or “You cannot teach that; you can no longer decide on the grade of school.”

My Lord, it seems to me that here one should look at what is the whole purport of this Act of 1863. Take the preamble of the Act; the preamble of the Act is: 20

“Whereas it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools.”

Now, the whole purpose, reading the Act through, the whole purpose of that Act is that the Roman Catholics shall be entitled in the Separate Schools of that day to teach their children according to the requirements of their faith; that is to say, that those children shall not be brought up in the Public Schools, where there may or may not be either no religion taught, or a religion which is not the one that they believe in or prefer; and the children of that day in those schools where the trustees had a right—and, with your Lordship’s permission, unless your Lordship rules to the contrary, I am going to show that in those days there were in cities what are equivalent to Ward Schools, what are equivalent to Central Schools, now High Schools, and that there were the graded schools, the Common Schools of the day. 30

HIS LORDSHIP: There were what?

MR. HELLMUTH: The graded schools.

HIS LORDSHIP: What does that mean?

MR. HELLMUTH: That is, Ward Schools which were elementary, primary, primary Ward Schools, and then Central Schools, which were and are equivalent to the High Schools; I am prepared to show your Lordship that. 40

HIS LORDSHIP: Central Schools equivalent to High Schools?

MR. HELLMUTH: Equivalent to, my Lord. They were secondary Schools—let us use that expression. There were the primary Schools or the Ward Schools, and the secondary Schools. The Public School or Common School trustees decided upon, in cities and towns, how the various schools

should accommodate the pupils according to their intellectual requirements. That is to say, my Lord, in the Ward Schools or elementary Schools the minor or elementary subjects were taught, and from the Ward Schools the pupils as they advanced were drafted to the Central Schools, where secondary education was furnished. That was the case at the time of Confederation, as I can show your Lordship.

Now, the right of making regulations must be—and I think that is stated in the case, one of these cases that I will give to your Lordship—such as will not prejudice the existing rights that we had at the time of Confederation.

10 HIS LORDSHIP: That is obvious, yes.

MR. TILLEY: Unless the right is a right expressly regulatable.

MR. HELLMUTH: No.

MR. TILLEY: Well, I do not know how my friend can escape. If he has got a right expressly subject to regulation, it is a right—

HIS LORDSHIP: That can be regulated, yes, I suppose so.

MR. HELLMUTH: Yes, but you cannot say to us, "By a regulation we will so arrange that your child will get no practical Roman Catholic religious instruction after five years, or six years, or seven years, or nine years, or any number of years under twenty-one." That is my submission, my lord.

20 MR. TILLEY: I am not saying you can.

MR. HELLMUTH: If they can say to the Roman Catholic Separate School trustees, as soon as a child is able to read or write, and reaches twelve years, he must cease to have religious instruction—I say no such regulation can be passed. It is a prejudice; it is in a way saying, "The Separate School shall cease to function as soon as a child reaches any age that we choose to say is the limit of his instruction in the Separate School." Assume that they put it at twelve years, or assume that they put it at fourteen years—there can be no reason why they should not put it at six or seven or eight.

30 In that very case, my Lord, the Mackell case, their Lordships say, "The school must be conducted in accordance with the regulations."

MR. TILLEY: Is that later on?

MR. HELLMUTH: Yes.

"If, therefore, the trustees of the Common School would be bound "to obey a regulation which directed that education should, subject to "certain restrictions, be given in either English or French, the trustees "of the Separate Schools would also be bound to obey a regulation of the "same character affecting their schools, provided it does not interfere "with a right or privilege reserved under the Act of 1867, that is, a right "or privilege attached to denominational teaching."

40 Now, my Lord, it is denominational teaching of children beyond the years that these regulations would permit in subjects that were free to us to teach them, as I want to show your Lordship, prior to 1867, that my friend says they have a right to make. Now, I deny that entirely; I say they could not make any regulation now that would cut down the teaching, denominational teaching in denominational schools, which we had a right by law in 1867 to go on with and perform. If I am wrong in that, if the regulations and the right to make regulations, means all that my friend says, then he has a perfect

right to destroy the denominational schools altogether, because all he has to say is, "No child who is over five years old, no child who is able to lisp his A-B-C's, shall any longer be taught in the Public Schools." It must go that far. He can arbitrarily fix the period at which the Separate School must cease to exist, and he can cut it off at the very earliest period.

It must, therefore, I submit, be a matter to show to your Lordship what the Common and Separate Schools of the day of 1867 were doing, what kind of school and description of school and grade of school the trustees have a right under the Act to establish; and if they have that right, if they can say, then all this question of regulations, classification—I am not objecting to classification; the Minister of Education may say, "We are going to classify your school; we say one of your schools in this place should be classified so-and-so, the secondary school so-and-so, the other classified as a primary school so-and-so," but that does not mean that he can say, "We are going to absolutely decline to allow you to fix the grade of your schools"—the language used by their Lordships in the Privy Council—"We are not going to give you anything except a very, very primary school, in which we would cut off as early as possible denominational teaching." 10

I submit that the whole of the principle to be followed, to be adduced from the Mackell case, is that in regard to a language, it is something which does not at all—whether the English language or the French—they particularly say a language in which instruction is to be given is a matter about which you cannot say, "I will have a French school." Your Lordship will remember that in that case the idea was that they were entitled to give the instruction in French, and the regulations provided that certain instruction should be given in English. Well, one is not at all surprised at the decision which was given there. 20

That case is followed, my Lord, by another case of the Ottawa Separate School Trustees, vs. the City of Ottawa, which your Lordship will find also following, the very next case, in 32 Dominion Law Reports; that is the Ottawa Separate School Trustees vs. the City of Ottawa, and the Ottawa Separate School Trustees vs. Quebec Bank. 30

Therefore, what I submit to your Lordship is that it is material to show what was the status of the Common School and of the Separate School at the time of Confederation; that it is material to show that the school of that day, the Common School of that day, was both an elementary and a secondary school; it was doing both the elementary and the secondary work, and that in the regulations then in force and in effect it was in no way attempted to control the trustees in preventing them from giving their pupils—in fact, insisted upon the teachers', the trustees', providing for pupils in more advanced subjects and for teachers who could train them in those subjects, and that the Public School or Common School of that day was the school which was preserved to us as a Separate School—and that we could go further; we do not by any means concede that the limitation on education, that of necessity in the more or less sparsely peopled condition of Ontario in 1867 was to be the limit of education in the Common or Separate Schools of 1924 or 1925; but even in that early day, the Separate School is—may I put it this way, my Lord?—is 40

being emasculated, is being cut down from even the position that it occupied, the Separate School is even being degraded from the position it occupied in 1867, by the present regulations. That is to say, it is not allowed to teach what it could teach in 1867. Our contention is that we can go a good deal beyond what we actually were teaching in 1867.

MR. TILLEY: Even university work?

MR. HELLMUTH: No. My submission, to make it shortly, is this: We are entitled to prepare pupils for matriculation to the university, to prepare them for entrance upon the professions, and for entrance to the Normal School; 10 I am not asking for any university powers at all, but I am asking that what was done in the Common Schools in London and Toronto and elsewhere at Confederation, in the preparation of those pupils, shall be at least permitted to us now, although it may well be that in the class of subjects that we will teach they will be in advance—that is, the matriculation may be of a great deal higher standard to-day than it was in 1867—but the whole position, I submit—

HIS LORDSHIP: I thought that is what the Grammar Schools were doing at that time.

MR. HELLMUTH: No, my Lord. Now, that I can show to your Lordship 20 from the documents of the day, that the Grammar Schools in many, if not in most instances, were inferior in their teaching to the Common Schools of the day.

HIS LORDSHIP: Well, what put that idea in my head was that I was reading on Saturday these Consolidated Statutes, and I read a chapter about Grammar Schools—Chapter 63 in 1859—in which I found it stated that provision should be made for giving instruction in all the higher branches of the practical English and commercial education, and so on, so far as to prepare students for University College or any college affiliated to the University of Toronto, according to a certain programme, and so on. I took it then that the 30 Grammar School probably bore to the Common School something the relation that the Collegiate Institute does now, or the High School.

MR. TILLEY: It is just a change of name later on.

MR. HELLMUTH: I do not at all agree with my friend about the change of name.

MR. TILLEY: The Statute professed to do so.

MR. HELLMUTH: I know the Statute professed to do so, but your Lordship sees what was taught. That is what I wanted to bring before your Lordship, what was taught in the Common Schools of those days. What was pointed out, my Lord, was this: the Grammar Schools were for the wealthier 40 classes; they were very unpopular in those days.

HIS LORDSHIP: Weren't they free schools?

MR. HELLMUTH: No, only very few; that was the trouble. The Common School was the free school.

MR. TILLEY: No, the Common School was not a free school.

MR. HELLMUTH: The Common School became a free school.

MR. TILLEY: It became a free school.

HIS LORDSHIP: They were not free schools at this time.

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence.
—continued.

MR. HELLMUTH: The Common School was a free school compared with the Grammar School, my Lord, and could be made a free school; but the position was that at that time ten pupils were directed to be admitted in the Grammar Schools free, and as the reports show, there were never that number free, and there was a great deal of cry that it was simply the school for the wealthier classes—the classes against the masses, if you like to put it that way—and they were never popular at all. Your Lordship will see what became of these Grammar Schools. My submission is, they simply practically abolished the Grammar School and created the High School; but I did not want to go into that at the moment. All I am submitting now is that there never was a right—and I want to show what we taught—to say, “We will abolish denominational teaching in schools at a certain age.” We had a perfect right to go on from one age to another up to twenty-one, and teach along with our secular subjects religious teaching in these denominational schools, and that is what is being taken away from us, and that is our complaint. 10

Now, I submit, my Lord, that I am entitled to give in evidence what the Department directed to be taught in these Public or Common Schools of the period before Confederation and down to Confederation.

HIS LORDSHIP: Is it what the Department directed to be taught—that is the way you are putting it—down to Confederation? 20

MR. HELLMUTH: What the Department stated was the object of the school and what should be taught.

HIS LORDSHIP: You mean in this form of regulations?

MR. HELLMUTH: Well, there was a circular that I was just going to put in.

HIS LORDSHIP: Which was effective as a regulation of some sort?

MR. HELLMUTH: I am not, my Lord, limiting myself to show what was actually taught in these schools.

HIS LORDSHIP: It seems to me that there is a very great difference, or there may be a very great difference, between what was actually taught and what the regulations of some sort called for. 30

MR. HELLMUTH: There were no regulations in regard to Separate Schools.

HIS LORDSHIP: But it was Public Schools you were talking about, I thought. I thought you were going to endeavour to show that Public Schools at the time were fixed with a certain duty or right to teach certain matters, and that you, because of section 7, I think it is, of the Statute, had the same rights.

MR. HELLMUTH: Yes, my Lord. Then I say that the regulations had no prescription as to what was to be taught in the Common School at that time. There was no limitation or no regulation at all as to what could be taught; that was left to the local trustees, my Lord, at that time, as far as I have been able to find—not a single regulation in regard to what was or was not to be taught in the Common School, at that time, and no regulation as to what was or was not to be taught in the Separate School. 40

HIS LORDSHIP: Then what do you want to do—to show what was done?

MR. HELLMUTH: No, my Lord. I want to show what was taught, yes, my Lord, and what the trustees taught without objection at all, what they

taught because they were at liberty to teach what they liked, they were at liberty to teach, either in certain sections where there were only elementary pupils, elementary pupils, and in other sections where there were more advanced pupils—then, my lord, what was done was, when the trustees decided to teach a particular set or class of subject, there were authorized text-books by the Department from which they must teach. Your Lordship will see, they did not direct anything as to what they should teach, but when the trustees decided to teach Euclid—well, I won't say Euclid, I will say Algebra—I was saying, my Lord, that when they decided, we will say, to teach Algebra or

10 Trigonometry or Latin, there were certain text-books which the Department approved of, with the idea that there would be some kind of uniformity in the teaching in these schools. But as for directing that any particular school should teach anything particular, there was nothing of that kind, no regulation.

HIS LORDSHIP: I think it might perhaps be better if we stopped now, and I read these Privy Council judgments to-night.

—Adjourned at 5.00 p.m., Monday, January 11th, 1926, until 10.30 a.m., Tuesday, January 12th, 1926.

—On resuming at 10.30 a.m., Tuesday, January 12th, 1926:

HIS LORDSHIP: You had not finished on that point we were discussing,

20 had you?

MR. HELLMUTH: No, my Lord.

In the Mackell case, my Lord, the Ottawa case, in 1917 Appeal cases at page 70, the Lord Chancellor said:

“In order, therefore, to ascertain the true extent and limit of the powers conferred by this statute”—
speaking then of the Act of 1863—

“it is necessary to see what were the powers enjoyed by trustees of the Common Schools. These are to be found in another statute of Upper Canada, 22 Vict. c. 64, known as the Common Schools Act, 1859.”

30 Then he says, a little further on:

“Now it appears that at the date of the passing of the British North America Act, 1867, a statute was in operation in Upper Canada by which certain legal rights and privileges were conferred on Roman Catholics in Upper Canada in respect to Separate Schools, and so far as the facts of this case are concerned this was the only source from which the rights and privileges could have proceeded.”

So that one has to ascertain, my submission is, what were these rights in 1859 so far as Common Schools were concerned, and these were the rights that were extended to the Separate Schools by the Act of 1863 and were perpetuated by

40 the British North America Act of 1867; and in order that one may ascertain what was a Common School and the rights and privileges of the Common School at that time—

HIS LORDSHIP: 1867?

*In the
Supreme
Court of
Ontario.*
No. 7.
Further
Discussion
as to
Evidence
—continued.

MR. HELLMUTH: 1859, my Lord, of Common Schools, 1859, because they were not changed between that date. I mean, the Common School Act of 1859 contained what were our Separate School rights and powers in 1867. We had, the trustees had, by 1863 the same rights of Separate Schools as the trustees under 1859 had of Common Schools. Those rights of Common School trustees went back, my Lord, practically for a number of years prior to 1859. The Act of 1859, my Lord, repeated the language used in prior acts in regard to these rights.

Now, in regard to this particular matter which I am presenting to your Lordship to admit in evidence, it is a matter which will enable one to ascertain what was the Common School of that day, that is, prior to and up to 1867, and these circulars or instructions are specifically provided for in the Common School Act of 1859. Under section 106 of that Act, which section has been referred to before, it is the duty of the Superintendent, amongst other things, by subsection 5 of that:

“To prepare suitable forms, and to give such instructions as he may judge necessary and proper, for making all reports and conducting”—
I was just bringing your Lordship’s attention to this subsection 5 of 106, under which it is the duty of the Chief Superintendent—

HIS LORDSHIP: Yes, I read it last night; I have it in my mind. 20

MR. HELLMUTH: “To prepare suitable forms, and to give such instructions as he may judge necessary and proper for making all reports and conducting all proceedings under this Act, and to cause the same, with such general regulations as may be approved of by the Council of Public Instruction for the better organization and government of Common Schools, to be transmitted to the officers required to execute the provisions of this Act.”

So that the Chief Superintendent was to give the instructions that he thought necessary in order that matters might be carried out as he in his judgment thought wise. 30

My submission is, in order to ascertain what was the Common School of that day—that is, 1859, or practically to that, because it was under practically the same range of character through ’fifty—one wants to ascertain as a fact what the Common School of that day was doing, what the instructions were, and then my submission to your Lordship will be, that Common Schools of that day cannot be subsequently diminished to the detriment of the Separate School, that the Separate School has to-day all the rights and all the functions and incidents of the Common School of 1859 and prior thereto. And therefore my submission is that a circular which shows what the instructions were, properly issued by the Chief Superintendent—and your Lordship will find that the duties of the Chief Superintendent at a later date were vested in the Minister of Education, so that he occupied the same position as the Minister of Education occupies to-day in regard to this duty; and it would be immaterial, my submission is, however much they might have changed in regard to the now so-called Public Schools, the duties or rights that those schools had. They might have a perfect right to do that, but when we want to ascertain what the rights are of the Separate Schools, we have not to look 40

at what the Public School of to-day can do at all, we have to look at what the Public School of that period was entitled to do. That is my submission.

HIS LORDSHIP: I understand.

MR. HELLMUTH: Now, in the Petition of Right, by paragraph 12, we say:

“Your Suppliant further submits that as to Continuation Schools and Collegiate Institutes and High Schools above referred to in paragraph 10 hereof the same are Common Schools within the meaning of chapter 64 of the Consolidated Statutes of Upper Canada (1859)—an Act entitled ‘The Upper Canada Common School Act’ and of chapter 5 of 26 Victoria (1863)—an Act entitled ‘An Act to Restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools.’”

Then, if your Lordship turns to paragraph 15:

“Your Suppliant further submits that it is, and in any event the Boards of Trustees of Roman Catholic Separate Schools in every city, town and village in the Province of Ontario are entitled as of right to establish and conduct in its Separate Schools the courses of study and grades of education that are carried on in such so-called Continuation Schools and Collegiate Institutes and High Schools and the fact is”—

20 now, this is it—

“such courses of study and grades were established and conducted by certain Boards of Trustees of the Roman Catholic Separate Schools from in or about the year 1841 up to and including the year 1915 when certain regulations were enacted by the Respondent under which the Respondent claimed and still claims the right to limit the range and grade of the courses of study and grades of education, all of which said regulations are in derogation of the rights of your Suppliant and are, it is submitted, invalid and *ultra vires*.”

Now, that is denied in the Statement of Defence, and we are put to the proof.

30 Now, in regard to that, my submission is that it is open to us to show what were the regulations, whether by circular or otherwise, and what the facts are in regard to the courses of study and the range of subjects that were authorized and directed by the Superintendent under the Act of 1859 and prior thereto; and we go this far: we say that if we had that right at that time, that being the fixed date, that right could not be subsequently limited.

I might call your Lordship’s attention to the fact that in regard to the apportionment we also plead that that has gone on for forty years, and I am not reopening the matter, my Lord, and it is denied to them. I would have thought we could have proved that fact, when it is set up in our petition as a

40 course of conduct that has been followed for forty years, and is denied. We may be met some time with the question, “Well, there is nothing to make that allegation, there is nothing to show it at all, that that was the course that was followed for those years”; but here we have it now, and my submission to your Lordship is that I am entitled to show what the circulars were that were issued in 1850, and when the similar act was in force, and from then on, by the Superintendent under the duty that was imposed upon him and the

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence
—continued.

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence
—continued.

powers that were given to him in regard to the courses of study and conduct, to show what constituted the Public School of that day.

HIS LORDSHIP: Have you anything to add, Mr. Tilley?

MR. TILLEY: If your Lordship pleases, I would like to say a word or two in reply.

Just dealing with the last point that my friend raises, that is the point of the pleadings, what we say in answer to my friend's paragraph 15, oddly enough, is contained in the paragraph of the same number in our Statement of Defence, and it says:

"The Attorney-General further denies that the Boards of Trustees
"of Roman Catholic Separate Schools (urban) are entitled to establish 10
"and conduct in Separate Schools the courses of study and grades of
"education that are carried on in Continuation Schools, Collegiate
"Institutes and High Schools, or any of them, as alleged in the fifteenth
"paragraph of the Petition of Right"—

that is merely denial of their right. Then we say:

"and also denies that such courses of study and grades of education were
"ever established by law in connection with Roman Catholic Separate
"Schools."

Now, that is our whole point, and what my friend seems to overlook in 20
dealing with his right is, is this: His right is, if we are correct in our submission,
to have a regulated school, and it is not at all to the purpose for him to say
merely that the regulations of a particular date permitted or did not permit
any particular thing to be done in the schools. If it did, it was done under a
regulation, which regulation itself was subject to change at any time. The
Act did not make hard and fast for him the condition that existed in 1867, and
say, "Now, for all time, no matter what progress, or what people are supposed
to describe as progress, in education takes place in Ontario, your schools are,
hard and fast, subject to present regulations." Therefore, to go into an
enquiry as to what the regulations were at that time is only appropriate if my 30
friend is right in his contention that regulations then in force were made hard
and fast as to Separate Schools.

Now, that is directly contrary to the Mackell case. The Mackell case
points out in the judgment time and time again that it is a regulated matter,
subject to regulation, and these regulations may change.

The only provision that is really pertinent is the provision in section 26:

"The Roman Catholic Schools shall be subject to such inspection and
"such regulations as shall be prescribed."

That is, that is their right, to have a school thus regulated. Regulation was
not estopped in 1867. The right was to have a regulated school, subject to 40
regulation. I am not saying that we can regulate them out of any specific
right granted to them, but take the one right my friend refers to: He says, "We
are entitled to determine the grades." Well, let that be so, but the grades
they are entitled to establish depend upon the possible grades under regulation
from time to time in force. No one has said as yet that they shall not grade
their schools. All that has been said is, "When you are grading your schools
you must grade them in accordance with the regulations that are in force,"

and that is the right. So that it does seem to me that my friend has now put his case in the only way it can be put with regard to these matters of superior education. That is, he says, first, "If I find a regulation that permitted something to be done in Common Schools in 1867, though that regulation was changed the next year, as applicable to Common Schools, it cannot be changed as to Separate Schools, and that gives me a right by law." Then he says, "Failing to establish a regulation on the point, if I find that it was done in fact, that should be regarded as the same thing."

10 Now, the question is right at the threshold of our case, and if all this evidence goes in it can only go in on the supposition that we are seeking to ascertain what was the precise condition in 1867, on the theory that that condition could never be changed. My submission is that the language of the section is clearly to the contrary. Take the very section my friend last referred to, section 106, the next section to the one he read, subsection 6:

"To cause to be printed from time to time, in a convenient form, so many copies of this Act, with the necessary forms, instructions, and regulations to be observed in executing its provisions, as he may deem sufficient for the information of all officers of Common Schools."

MR. HELLMUTH: As he may deem.

20 MR. TILLEY: Yes, as he may deem—well, as may be deemed by some person, I suppose.

"And to cause the same to be distributed for that purpose."

That is, it is a broad section that puts it in the hands of the Superintendent to require returns to be made and information sent to him so that he can ascertain that the school from time to time is being carried on in accordance with the regulations. I am not saying that if I find an express provision that is special as to Roman Catholic Separate Schools in the Act of 1863, we can regulate that out of existence, but on the grading we have not regulated it out of existence; grading still goes on, and properly goes on, but it is grading 30 in a regulated school, and that is the only right they have; it is not a right to grade as they think fit, and change the character of the school. I press it because there is a lot of evidence upon it, and not because there is any limitation in what is being done or as to what was done then, but it is an enquiry that is perfectly useless unless my friend is right that they have a right to the schools with the regulations of 1867 or the practice of 1867, and that the provision in their Act of 1863, that they are to be subject to regulations, stops because the British North America Act is passed.

MR. HELLMUTH: I take issue at once with my friend in regard to—

40 HIS LORDSHIP: I thought Mr. Tilley was replying at that time. However, I shall be glad to hear anything you have to say.

MR. HELLMUTH: My submission is, my lord, that we cannot have a regulation which amounts to a prohibition of what we were teaching in that year.

HIS LORDSHIP: I understand that.

I find it difficult to make a general ruling at this stage as to the evidence that may properly be given upon this question as to the kind of education that the trustees of the Separate Schools were entitled by law to impart in 1867.

*In the
Supreme
Court of
Ontario.*
No. 7.
Further
Discussion
as to
Evidence.
—continued.

The contention of the suppliants, as I understand it, is that under section 7 of the Separate Schools Act of 1863, the trustees of Separate Schools were given all the powers that the trustees of Common Schools, whether trustees of township sections or trustees of schools in cities, towns and villages, had under the Common Schools Act of 1859; and so they say, for instance, the powers that the trustees of a township section had by section 27 (16) of the Act of 1859, to permit residents up to the age of twenty-one to attend the school, and the powers that the board of an urban school had under section 79 (8) to determine the number, sites, kind and description of schools to be established, and so on, are powers now, or are powers that were in 1867 exercisable by the trustees 10 of any Roman Catholic Separate School; and as the Chief Superintendent's duty under the Act of 1859 was to lay before the Council of Public Instruction such general regulations for the organization and government of Common Schools as he might deem necessary, and as he was under subsection 5 of section 106 to transmit the regulations of the Council of Public Instruction to the schools, and was to give his instructions, they say that you must look at the regulations and the instructions to ascertain what the rights of the trustees of the Common Schools were, and in fact, what the Common Schools themselves were. It is pointed out, of course, that in many places in the Act of 1859, the duty is imposed upon the trustees of proceeding according to regulations, and 20 it is pointed out very forcibly by Mr. Tilley that the regulations could be changed at any time; and it is suggested that the suppliants' claim cannot be valid unless it is held that a right which existed in 1867 by virtue of a regulation passed under the Act is one of those rights existing by law within the meaning of section 93 of the British North America Act and as such was perpetuated. Obviously, I cannot at this stage pass on the question as to whether a right existing in 1867 under a regulation which at that time was subject to change is one of those rights that have been perpetuated—that would be almost to decide the case at this moment—and I think that, the contention on the part 30 of the suppliants being what it is, I ought to receive, whatever the law may be found to be, all such evidence as assists in arriving at a conclusion as to what rights were in 1867 under the regulations, made under the Act. It may be tedious and it may turn out to be useless—on that, of course, I neither form nor express an opinion at the moment; but I think, the contention being what it is, I ought to receive evidence answering that description.

I said it was difficult to rule generally, and it is difficult to rule generally because, as I understand it, Mr. Hellmuth does not expect to prove regulations establishing the right to impart any particular kind or grade of instruction, but he intends to show in one way or another what was done, and perhaps what the Superintendent instructed to be done. As to what was done, the 40 case is perhaps very like the case that I ruled upon yesterday, and there may be no very good logical reason for permitting evidence of what was done on this branch of the case and excluding what was done on the other branch of the case. Nevertheless, subject to keeping the evidence within some reasonable limits, I should be inclined to take, subject to objection, some evidence even of what was done. I hope it can be got in without making the record unduly large, because I am by no means sure that it is relevant; my impression

at the moment is that evidence of what was done by the schools is irrelevant, but, nevertheless, I think, so that everything may be before the Court that may be deemed requisite to a final determination of this case, I had better take, at all events, a reasonable amount of such evidence. It will all be subject to the objection, of course.

Now, Mr. Hellmuth, does that indicate to you my view sufficiently?

MR. HELLMUTH: I think so, my Lord. I will try to keep strictly within what your Lordship's ruling is. I may have to tender documents or evidence that your Lordship will think should not be received, because in my view of it—

10 HIS LORDSHIP: I did not intend to do more than express generally, and perhaps necessarily in a somewhat hazy way, the view that I have after the discussion. I thought that probably questions might arise as to specific documents at various stages, and that there would have to be specific rulings on them.

MR. HELLMUTH: My Lord, in the Report of Education in Upper Canada in 1857, at page 361, are the regulations, general regulations for the organization, government and discipline of Common Schools in Upper Canada, adopted after mature consideration by the Council of Public Instruction, authorized by the fourth clause in the thirty-eighth section of the Upper Canada School Act of 1850. Now, I have been unable to find any other regulations—if my friends have them, perhaps they would produce them—between that and 1859.

HIS LORDSHIP: This date was what?

MR. HELLMUTH: 1857, my Lord, the regulations of 1857; and there are no other regulations that I can find. As I say, if my friends have them—

MR. TILLEY: What is it?

MR. HELLMUTH: Page 361 of the Report on Education in Upper Canada of 1857.

HIS LORDSHIP: Oh, it is the Report of 1857?

30 MR. HELLMUTH: Yes, my Lord.

HIS LORDSHIP: The regulations were regulations, then, said to be in existence at that time?

MR. HELLMUTH: Yes, those are the regulations. What I am assuming, my Lord, in the absence of any other regulations, is that these were the regulations that were in force in 1859. I am going to put them all in, because of course they should go in. They show the character of the regulations, which are, if I may summarize it, regulations which do not interfere in any way with the discretion of the trustees in regard to the subjects to be taught or the grade, or anything of that kind.

40 The first section deals with the hours of teaching, which shall not exceed six, and so on, and then that every alternate Saturday shall be a holiday, that there shall be certain vacations, that all agreements between trustees and teachers shall be subject to the foregoing regulations, and no teacher shall be deprived of any part of his salary on account of observing allowed holidays and vacations.

Then section 2 deals with the religious and moral instruction and the opening and closing prayers.

*In the
Supreme
Court of
Ontario.*

No. 7.
Further
Discussion
as to
Evidence
—continued.

No. 8.
Suppliant's
Case,
Introducing
Exhibits

*In the
Supreme
Court of
Ontario.*
—
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

On page 363, in section 4, under the heading, "Duties of Teachers," this is stated:

"The sixteenth section of the School Act prescribes, in explicit and comprehensive terms, the duties of teachers; and no teacher can legally claim his salary, who disregards the requirements of the law."

Then they are to maintain proper discipline.

"The law makes it the duty of the Chief Superintendent of Education to provide the forms; and the Council of Public Instruction prescribes the following regulations for the guidance of the teachers in the conduct and discipline of their schools."

10

Then there are a number of subsections under that: they are to keep proper registers, to classify the children according to the books used, to study those books themselves, and to teach according to the approved method recommended in their prefaces; then they are to evince a regard for the improvement and general welfare of their pupils, and so on.

The next section of importance is section 6, "Duties of Trustees." Sub-section 1 is:

"The full and explicit manner in which the duties of trustees are enumerated and stated in the School Act renders it unnecessary to do more, in this place, than to make some explanatory remarks on the nature of the general duties of trustees, and the regulations subsisting between them and the teachers whom they employ. The law invests trustees with most important functions; they are a corporation, and as such, the ownership and control"—

20

HIS LORDSHIP: What are these? Remarks by the Superintendent, or are these regulations of the Council?

MR. HELLMUTH: The regulations, my Lord; these are the regulations.

HIS LORDSHIP: Of the Council?

MR. HELLMUTH: Yes. These are the regulations which have been approved; these are not the remarks of anyone. Continuing:

30

"The ownership and control of the school site, school house, and all the property attached thereto, are vested in them; they are to provide and furnish the school-house and premises, and apparatus and text-books for the school; and they alone have authority to employ the teacher. Their duties are, therefore, of the greatest importance, and they should be well understood."

Then they say what they should do in regard to a teacher, that they should select a competent teacher. The next is section 7, "Duties of School Visitors."

Now, your Lordship will observe that in that there is not the slightest attempt to lay down any grade or course at all. Somebody must at that stage have had the right to say what should be taught in the schools.

40

HIS LORDSHIP: Someone must at that stage have said.

MR. HELLMUTH: Yes, my Lord, that was the trustees.

HIS LORDSHIP: Well, I do not know that that means—

MR. HELLMUTH: Well, it may not. At all events, I submit to your Lordship that that is the only regulation in regard to the general regulations for

the organization, government and discipline of Common Schools in Upper Canada that was in force as a regulation—I am coming to the other thing—at the time of Confederation.

Now, that should be an exhibit.

EXHIBIT 4:—Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada, for the year 1857.

MR. HELLMUTH: My Lord, my friend has supplied me with the regulations, the general regulations in 1858.

HIS LORDSHIP: Is this in a report of 1858?

10 MR. HELLMUTH: This is in a report for the year 1858, on page 135. In that report the first part is very much the same as in the previous one. Until we get to page 141 there is very little change—there may be some, but nothing of any particular importance—but when we get to page 141 we have this:

“Section 7.—List of text-books prescribed for use in the Common Schools of Upper Canada.

20 “This list is as follows: List of text-books published under the direction of the Commissioners of National Education in Ireland—prepared by practical and experienced Masters—and recommended by the Council of Public Instruction for Upper Canada, to be used in Canadian Schools. “The Council of Public Instruction has also recommended Hodgins' “Geography and History of British America and the other Colonies, “and Lennie's English Grammar, and sanctioned the use of Kirkham's “English Grammar and Morse's Geography. The following is the list of “National school books, etc.”

Then follows a list, all of which I do not want to read to your Lordship; it is quite a long list. It commences with:

“First Book of Lessons.

“Second ditto.

“Sequel to Second Book.

30 “Third Book of Lessons.

“Fourth ditto.

“Fifth ditto. (Boys).

“Sixth, or Reading Book for Girls' School.

“Introduction to the Art of Reading.

“Spelling Book Superseded, by Professor Sullivan.

“English Grammar.

“Key to ditto.

“Epitome of Geographical Knowledge.

“Compendium of ditto.

40 “Geography Generalized, by Professor Sullivan.

“Introduction to Geography and History, by Professor Sullivan.

“First Arithmetic.

“Key to ditto.

“Arithmetic in Theory and Practice.

“Bookkeeping.

“Key to ditto.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

- "Elements of Geometry.
- "Mensuration.
- "Appendix to ditto.
- "Scripture Lessons, Old and New Testament.
- "Sacred Poetry.
- "Lessons on the Truth of Christianity.
- "Hodgins' Geography and History of British America.
- "Lennie's English Grammar.
- "Morse's Geography (Am. Ed.)
- "Kirkham's English Grammar (Am. Ed.) 10
- "Set Tablet Lessons, Arithmetic.
- " Ditto, Spelling and Reading.
- " Ditto, Copy Lines.
- "Map of the World.
- " Ditto, Ancient World.

And then a number of maps.

Then it repeats the duties of trustees—

HIS LORDSHIP: There is nothing very advanced in that, is there?

MR. TILLEY: My friend will come to the courses of study. Those are the books. He comes to the courses of study, and your Lordship will see— 20

HIS LORDSHIP: I mean, the books do not indicate anything—

MR. TILLEY: No, no. My friend will come to the courses of study.

MR. HELLMUTH: Not in this one.

MR. TILLEY: Oh, yes.

MR. HELLMUTH: My friend has referred me to page 153, which is headed:

- " 3. Order and Classification of Studies Prescribed
- " for the Common Schools in Upper Canada.
- " As observed in the Upper Canada Model School,
- " Toronto. 30
- "(Adopted by the Council of Public Instruction on the 31st Day of
- " December, 1858.)
- "(1) Table defining the course to be completed in the First or Lowest
- "Division."

Your Lordship will pardon me, I should like to read this part of it to your Lordship, because there are several divisions:

"Enunciation.—To be able to enumerate clearly and distinctly the elementary sounds of the English language.

"Spelling and Definition.—To be able to spell any word in the First and Second Book of Lessons, and to give the meaning in familiar terms. 40

"Reading.—To be able to read fluently and well any passage contained in the First and Second Books of Lessons, and to know the substance of such lessons.

"Writing.—To be able to form correctly and legibly all the letters of the alphabet, and combine them into simple words.

"Arithmetic.—To be able to read and write any combination of "more than FIVE Arabic"—

It ought to be "not more," but it is here printed "more"—

"more than FIVE Arabic numerals, and the Roman numerals to the sign of 500; to know the multiplication table and tables of money, weights, length and time; to be familiarly acquainted with simple addition, subtraction, multiplication, and division by factors.

"Grammar.—To be able to point out the nouns, pronouns, adjectives, verbs and adverbs in any common reading lesson; to know the number, gender and person of the nouns and pronouns.

10 "Geography.—To know the map of the world, map of America, map of Canada and other parts of British America.

"Natural History, Object Lessons.—To have a familiar acquaintance with the habits, uses, instincts, etc., of the most important animals of each class. Other object lessons may be used.

"Needle-work (for girls).—Under the direction of the female teacher.

"(2) Course of Study (Second Division).

"Reading.—To be able to read fluently and well any passage contained in the Sequel to the Second Book, or in the Third Book of Lessons, and to know the substance of such reading lessons."

20 MR. TILLEY: Wouldn't it be sufficient to say, the same sort of thing a little more advanced?

MR. HELLMUTH: A little more advanced. I am going to show your Lordship, it is just the same as appears in the Separate Schools afterwards. The next is:

"(3) Course of Study (Third Division).

"Reading.—Fourth and Fifth Books, in same manner as other books are used in lower divisions.

"Spelling and Definition.—Reading Books and Spelling Book superseded.

30 "Derivation.—Reading Books and Spelling Book superseded.

"Writing.—Text, and a bold running hand.

"Arithmetic.—Second Book of Arithmetic (National Series).

"Grammar.—Analysis and parsing of compound sentences in prose and verse; changes in construction, etc.; composition.

"Geography.—Mathematical, Physical and Political, with map sketching on the blackboard.

"Algebra.—(Colenso's) Part I.

"Euclid.—First six books.

"Mensuration.—Of Surfaces and Solids.

"Drawing.—Linear and Map.

40 "English Literature.—Spalding.

"Bookkeeping.—Elements.

"Human Physiology.—To possess a familiar acquaintance with the anatomy of the bones and skin, a general knowledge of the structure and uses of the muscles and organs of digestion, and to be familiar with the general principles upon which the healthy action and development of these various organs depend; circulation, respiration, nervous system, senses, etc.

*In the
Supreme
Court of
Ontario.*
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

"History.—General, English and Canadian.
"Singing.—Hullah's Vocal Music.
"Natural Philosophy.—In the Fifth Book of Lessons.
"Needle-work (for girls).—Under the direction of the female teacher.

Boys	Girls
"Trigonometry.	Science of Things Familiar.
"Elements of Geology.	Elements of Geology.
" ditto Zoology.	ditto Zoology.
" ditto Botany.	ditto Botany.
" ditto Natural Philosophy	Domestic Economy." 10

Then there is an asterisk, and this note at the bottom in regard to those subjects:

"Extra subjects to be taken up at the discretion of the school authorities;
"no two, however, during the same school term."

Perhaps that is not quite so elementary—Euclid and Algebra.

EXHIBIT 5:—Annual Report of the Normal, Model, Grammar and Common Schools, in Upper Canada, for the year 1858.

MR. HELLMUTH: Have you one for 1859?

MR. TILLEY: I do not know of one for 1859, but there is apparently in a pamphlet that I have, that is marked, "The Law of 1863 relating to Roman 20 Catholic Separate Schools in Upper Canada, together with Extracts from the Common School Acts, Departmental Regulations, etc., affecting the Roman Catholic Separate Schools, arranged with Notes and References," and issued in 1863, under the Department of Public Instruction for Upper Canada. There is an "Appendix H" at page 61, which has these same courses of study that my friend has just referred to. In fact, they are precisely the same as passed in 1858, but with this heading—the heading is the only thing that is material:

"Order and Classification of Studies Prescribed for the Common
"Schools in Upper Canada, as Observed in the Upper Canada Model 30
"School, Toronto, and applicable to Roman Catholic Separate Schools."

So that that additional heading, "Applicable to Roman Catholic Separate Schools," and issued by the Department.

MR. HELLMUTH: May I see that?

MR. TILLEY: Yes. If my friend is satisfied just to have the heading put on the notes, it will save putting in that book. Otherwise it is just the same—although I am quite willing to have it marked.

HIS LORDSHIP: I did not take down anything; if you will let me have the book—

MR. TILLEY: I will put it in if your Lordship wishes. 40

HIS LORDSHIP: I will make a note of it. The heading you read will be on the notes.

MR. TILLEY: These are pamphlets bound in books, my lord.

MR. HELLMUTH: It is just that appendix, isn't it?

MR. TILLEY: Just to get the title of the thing.

MR. HELLMUTH: My Lord, Appendix H will be part of the exhibit that Mr. Tilley is putting in.

HIS LORDSHIP: He was not putting in an exhibit at all. I thought he said that it was—

MR. TILLEY: It is exactly the same.

HIS LORDSHIP: I was just making a note of what the book was.

MR. HELLMUTH: Well, my Lord, I think perhaps if he does not put that appendix in, I ought to put it in. It shows what was applicable, at all events, to the Separate Schools at that time.

10 MR. TILLEY: Well, my friend has a copy of that, if he wants to put it in.

MR. HELLMUTH: Well, I do not want to use my book. It is a little Bible that I have with several things in it, and I do not want to tear it out.

MR. TILLEY: There are other pamphlets in that volume.

MR. HELLMUTH: So that Appendix H might go in as a—

HIS LORDSHIP: Well, how are you going to put it in? You are not going to cut this book to pieces.

MR. HELLMUTH: Well, has my friend any objection to our using his book?

20 MR. TILLEY: Yes. I have given the heading, and I say that is the heading in that pamphlet at that time to the same thing that you read.

MR. HELLMUTH: Well, if that is made clear, that will be quite different—the same thing that was in the exhibit that I put in.

MR. TILLEY: Yes.

HIS LORDSHIP: I had better make a note of what this does say, if the volume is not going to be available. You say the table itself in the appendix H is exactly the same as what Mr. Hellmuth has put in as Exhibit 5, is it?

MR. HELLMUTH: Yes, my Lord; when I was reading it out Mr. Battle was checking it with Appendix H.

MR. TILLEY: It is the same as this, my Lord.

30 HIS LORDSHIP: The Appendix H is the same as the order and classification of studies, commencing on page 153 of Exhibit 5, the heading having added to it the words, "and applicable to Roman Catholic Separate Schools."

MR. TILLEY: I notice it uses the word "prescribed." It says:

"Order and Classification of Studies Prescribed for the Common Schools in Upper Canada, as observed in the Upper Canada Model School, Toronto, and applicable to Roman Catholic Separate Schools."

HIS LORDSHIP: That is right; that is the same thing.

MR. TILLEY: That word is not "prescribed," is it?

HIS LORDSHIP: Yes—"order and classification of studies prescribed."

40 MR. TILLEY: I beg your Lordship's pardon.

MR. HELLMUTH: Then, my Lord, I want to give in evidence the circular which was sent out by the Superintendent of Education in regard to the general regulations for the government of city and town schools, sent out in 1848, when the Public Schools or Common Schools were carried on under an Act that was not dissimilar to the Act of 1859. It covers cities and towns.

MR. TILLEY: I do not know, I am sure, how 1848 is material.

HIS LORDSHIP: What is the bearing of that?

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. HELLMUTH: Because, my Lord, there was no change from then on, as far as I can find, in regard to what were the duties of the trustees in respect of the matters that were set out in that circular. If there was no change in regard to that matter down to 1859, that circular stood as the directions to the Common School trustees at that time.

HIS LORDSHIP: Well, possibly. I will take it subject to the objection.

MR. HELLMUTH: That, my Lord, appears in the Historical Educational Papers and Documents of Ontario, 1853-1868, Volume III, at page 196, and closing at the top of page 198. The part that I wish to refer your Lordship to—of course, the whole of the circular need not be read now—it is “General Regulations for the Government of City and Town Schools Suggested.” This is to the Mayors of Cities: 10

“In this system of free schools each board of school trustees will be able to establish its own system of school discipline; and, on the efficiency of that the character and success of the schools essentially depend. The board of trustees will, of course, determine the age at which the pupils will be admitted in each kind, or class, of schools, or in each department of a school comprising more than one department; the particular school which pupils in the different localities of a city, or town, shall attend; the condition of admission and continuance in each school; the subjects of instruction and the text-books to be used in each school, and in each department; as also the days and hours of instruction, and the regulations for the whole internal management of the schools under its care.” 20

MR. TILLEY: I do not know why my friend is putting in such material as that, 1848, under a different Act, when there was no power to compel these particular text-books, as there was later on.

HIS LORDSHIP: Wasn't there the power of regulating then as there was later?

MR. TILLEY: If my recollection is right, at that date there was no power to order the use of particular books or— 30

MR. HELLMUTH: I am not suggesting that they might not have had at a later date the power to direct text-books, but the other matters which are there set out are not at all—

MR. TILLEY: What Act is that under?

MR. HELLMUTH: Under the Act of 1847.

MR. TILLEY: There is no Act of 1847.

MR. HELLMUTH: I think, Mr. Tilley, you are mistaken in that.

MR. TILLEY: Yes, I have it. Chapter 19?

MR. HELLMUTH: 1847. 40

MR. TILLEY: I think there was no central authority to issue regulations at that time. The Act my friend refers to, 1847, by section 1 enacts:

“That each incorporated city and town in Upper Canada shall be a corporation for all Common School purposes, and the council of each city and the board of police of each incorporated town, shall be invested with all the authority and subject to all the obligations, in respect to all matters relating to the interests of Common Schools in such city or town,

"as is now, or may be hereafter conferred by law upon the municipal council of each district in Upper Canada."

That is, there were District schools at that time which were not Common Schools
Then it says:

"II. And be it enacted, that it may and shall be lawful for the council of each city and the board of police of each town aforesaid to appoint at its next or any ensuing meeting after the passing of this Act, by a by-law or vote of a majority of its members present at such meeting, a board of trustees not exceeding six in number, three of whom shall form a quorum for the transaction of business."

10

Then it says:

"That all the monies which may be raised in such city or town by assessment or rate bill, or which may be granted to such city or town for Common School purposes, shall be paid into the hands of the chamberlain or treasurer of the corporation or board of police of such city or town, and shall be expended under the direction of the board."

20

and so on. The school property is vested in the trustees. It says that it shall be the duty of the board of trustees for such city or town as aforesaid to take possession of and manage the school properly, and to do whatever may be expedient with regard to building and repairing the school buildings. They are to determine the site and description of schools which shall be established and maintained in the city or town, and whether such school or schools shall be denominational or mixed; the teacher or teachers to be employed, the terms of employing them, the amount of remuneration and the duties which they are to perform; to prepare, from time to time, and lay before the corporation an estimate of the sum required for salaries, and so on, and for apparatus and books. The board appoints and removes at pleasure—

HIS LORDSHIP: What board? The board of trustees?

30

MR. TILLEY: This board of trustees thus established. Then it says:

"Fourthly, to appoint and remove at pleasure, prescribe the duties, and fix the compensation of a Superintendent of Common Schools in each city or town aforesaid; which superintendent shall be subject to the obligations which are imposed by law on district superintendents of Common Schools, as far as is consistent with the provisions of this Act.

40

"Fifthly, to appoint, from time to time, for the special management of the affairs of each school within such city or town, and under such rules and regulations as they may deem necessary, a committee of not more than three persons for each school, who shall hold office for one year at a time, but may be re-appointed at the pleasure of the board of trustees; and which board of trustees shall also have authority to fill up any vacancies which may occur in such committee or committees, from death, removal or otherwise. Provided, always, that in denominational schools, the persons composing such committee shall be of the religious persuasion to which such schools belong.

"Sixthly, to exercise in general all the powers, and be subject to all the obligations with which trustees of Common Schools, generally, are invested, and to which they are subjected"—

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

I do not see what this has—

HIS LORDSHIP: Why are you reading these?

MR. TILLEY: Well, they have complete control, and there was no authority, apparently, to control them.

HIS LORDSHIP: Well, I do not know what Mr. Hellmuth was—

MR. TILLEY: There were no rules and regulations—

HIS LORDSHIP: I do not know what this—

MR. TILLEY: That is 1848.

HIS LORDSHIP: I do not know what this circular of 1848 which Mr. Hellmuth said the Superintendent sent out—

MR. HELLMUTH: To the mayors of cities and towns.

HIS LORDSHIP: I do not know what it professed to be.

MR. TILLEY: What it professed to be is an instruction to them as to their duties, which are exactly in accordance with the Act then in force; and my friend is assuming that it is a circular that remained in force until 1867, although the law had been changed.

HIS LORDSHIP: Although the Act was changed?

MR. TILLEY: Yes.

MR. HELLMUTH: I submit the Act was not changed, if your Lordship will look at what my friend read. By section 5, among other things:

“Thirdly, to determine the number, sites and description of Schools
“which shall be established and maintained in such city and town afore-
“said, and whether such school or schools shall be denominational or
“mixed.”

I just stop at the first part. Then, under 5, is:

“Sixthly, to exercise in general all the powers, and be subject to all
“the obligations with which trustees of Common Schools, generally, are
“invested, and to which they are subjected according to law, as far as is
“consistent with the provisions of this Act.”

And therefore you have got to go back to the Act that preceded it, which made them, these city and town trustees, in exactly the same position as Common School trustees were at that time—

HIS LORDSHIP: I thought these were Common School trustees.

MR. HELLMUTH: Yes, they were Common School trustees, of course they were, my Lord; they were Common School trustees, and the circular that I have put in evidence is one addressed, not to the rural trustees, but to the cities and towns, the mayor of the cities and towns in Upper Canada.

MR. TILLEY: My Lord, are we to go into circulars issued to trustees under other Acts, when, as I show by the Act itself, the persons to whom the circular was addressed had the power to make regulations and control the school, expressly given by the statute?

HIS LORDSHIP: It may be very misleading, that circular.

MR. TILLEY: That is the point.

HIS LORDSHIP: Without knowledge of the circumstances in which it was sent out. The Superintendent may have been most officious, of course, or he may have been exercising his powers.

MR. TILLEY: And he was telling them what was in the Act, anyway,

10

20

30

40

that is, what they were to do by the Act, because the Act expressly says exactly what my friend is reading; and it puts upon me the duty to go back to all the old statutes and come in and explain these circulars. I submit that no circular should be admitted at all unless it is under the Act that we are concerned with. There was a period there of twenty years from the time that my friend is dealing with now—a twenty-year-old circular.

10 HIS LORDSHIP: Of course, what Mr. Hellmuth is suggesting is that you have a continuing entity, a Common School, and the legislation changing from time to time, as legislation does, that you get the regulation, or the instruction, whatever it is, issued at an early date. You may assume he says that that instruction continues effective until repealed or revoked by another instruction or displaced by a later statute.

MR. TILLEY: I submit, my Lord, that there is no point at all to circulars issued under one statute, because the statutes have changed two or three times. This is 1847; there was a statute in 1849, there was another one in 1850, there was another one in 1853, and there was the Consolidation in 1859.

HIS LORDSHIP: Yes. But, for instance, if under the Act of—

MR. TILLEY: 1847.

HIS LORDSHIP: What chapter is it, by the way?

20 MR. TILLEY: It is chapter 19, if my memory is right.

MR. HELLMUTH: It is chapter 19, 10-11 Victoria, chapter 19.

MR. TILLEY: It is a statute which deals only with cities and towns, and was entirely superseded, and I thought it was not very material to examine it. I never examined it very closely.

HIS LORDSHIP: Well, if, for instance, under it the Superintendent had power to issue instructions—

MR. TILLEY: There is no power.

30 HIS LORDSHIP: Well, never mind; I take that as a hypothetical case. Supposing that in that year under that Act the Superintendent had power to issue instructions; then there comes along another act a year or two later, under which still he has power to issue instructions; he would not issue a new set of instructions.

MR. TILLEY: The books show they were issuing instructions every year.

HIS LORDSHIP: Oh, were they?

MR. TILLEY: They were constantly issuing instructions. They would send them manuals of the Act. This is one of 1864, Trustees' School Manual. It gives them the law and the regulations up to date, and these things were annual.

40 Then if your Lordship will bear this in mind, that the Educational Journal which my friend has been reading from, or was seeking to read from, these journals were state-aided, and were printed in the Department, and they were sent to school trustees. There was no time when the school trustees were kept advised of the law and regulations as they were then. In the documents we have here we can go back and get all sorts of letters and circulars issued at various dates. Well, I think we are only creating a perfect mess of things if—

HIS LORDSHIP: Oh, so do I, if—

MR. TILLEY: For instance, take this manual of 1864, that brings things

to date. These courses of study are all outlined in this manual of 1864; that is what governs them at that time. These were printed, the preface says, most of them—

HIS LORDSHIP: If in each year the Superintendent was issuing something which was complete in itself, so that the trustees might throw away the communication they had the year before, then I should say your point is perfectly well taken, and that there is no object in going into these ancient documents at all.

MR. TILLEY: Yes, my Lord. They give the statute law, the state of the regulations, prescribe textbooks, and so on. 10

HIS LORDSHIP: If that is so, I do not see any object in it.

MR. HELLMUTH: I have not got those books; they have not been furnished to us.

MR. TILLEY: My friend has been reading from one of them.

MR. HELLMUTH: What?

MR. TILLEY: That document H is of the very type for Separate Schools.

MR. HELLMUTH: Oh, yes, but I have not been furnished with any regulations at all. I have had to pick out what I could among the documents that I had. If my friend has any of these regulations and he will let me have them, I will use them. 20

MR. TILLEY: I did supply you with the—

HIS LORDSHIP: Just a moment. I do not know whether he calls them regulations or not, but instructions or manuals or whatever you like to call them; Mr. Tilley says that year by year the Superintendent would send out something which would be complete in itself so that the trustees did not need to go back to the book they got the year before, but might throw it away if they saw fit.

MR. TILLEY: I would not like to say it is done every year.

HIS LORDSHIP: Well, from time to time.

MR. TILLEY: Yes. I am taking here one manual, the Grammar School Manual of 1866, which gives the Consolidated Acts relating to Grammar Schools, together with Revised Programme of Studies and the General Regulations and Instructions for Grammar Schools, with a copious analytical index. 30

I have another one here, Trustees' School Manual, Consolidated Act, relating to Common Schools in Upper Canada, 1864, with a full Digest of the Decisions of the Superior Courts relating to school cases down to 1864, and Forms, General Regulations and Instructions for executing their provisions, with copious analytical index.

Then I have one some place, if I could put my hand on it, with regard to 40 Separate Schools.

I really cannot go back to all the circulars that were issued. I would have to make another investigation and see what happened, and examine the law as each circular was issued.

HIS LORDSHIP: That seems to me to be so, Mr. Hellmuth.

MR. HELLMUTH: My Lord, I do not at all concede, not having seen them, that these circulars or these regulations by any means exhaust the

question. I am putting in a circular which deals with the right of trustees to establish the kind and class of school. Now, it may well be—

HIS LORDSHIP: At a certain stage of the schools.

MR. HELLMUTH: Yes, my Lord, but I am not aware, with the exception of certain other documents I have got, that in any of these circulars there has been anything dealing with that particular question that is set out in this circular. That is to say, there may be circulars that deal with some of the questions of instruction, or methods of instruction, but as to the right of the trustees to decide upon the kind or nature of school, or that, I do not know
10 of them. I have not been, certainly, furnished with them.

HIS LORDSHIP: May I look at that form?

MR. HELLMUTH: Certainly, my Lord.

HIS LORDSHIP: Mr. Hellmuth, are you not attaching to that document, apart from this other question, an authority that is rather greater than it professes to possess? At page 190 of the book there is a statement as to the document that you were relying upon. What is said is that the Second Common School Act, framed by the Chief Superintendent of Education of Upper Canada, was designed to consolidate and systematize a comprehensive
20 scheme of education for cities and towns. The measure was designed for certain purposes, which they go on to elaborate. In January of 1848 the Chief Superintendent addressed official circulars to the heads of the municipal councils of districts, cities and towns of Upper Canada, on the provisions of the Common Schools Acts of 1846 and 1847, applicable to these municipalities respectively. These circulars were, first, to the wardens on certain matters that need not be referred to, and, secondly, to the mayors, on the provisions of the school law for cities and towns. Then you come to this circular which you were reading, which is the circular addressed to mayors, and it begins with a statement that the Act has been passed and will come into effect, and it goes
30 on to say that the Superintendent deems it his duty, with the view to promoting the objects of the Act, to explain to the mayors and through the mayors to the corporations and to the school boards, the origin and design of the Act, and to offer some suggestions as to the manner in which it may be most beneficially carried into effect. Then he goes on and describes the Act, and on page 197 is the part that you were referring to:

“In this system of free schools each board of school trustees will
“be able to establish its own system of school discipline; and, on the
“efficiency of that the character and success of the schools essentially
“depend. The board of trustees will, of course, determine the age at
“which pupils will be admitted,”

40 and so on. Now, that is not a regulation; that is the Chief Superintendent, who was Dr. Ryerson at the time, telling the mayors, and through the mayors the corporations and the school boards, what he believed the Act meant.

MR. HELLMUTH: Well, he was doing that under his duty under the Act of 1843.

HIS LORDSHIP: No, he was doing it, he says, with the view of promoting the objects of the Act:

“I deem it my duty to explain, through you, to the corporation

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

“over which you preside, and to the Board of Common School trustees
“which the corporation have appointed, and over which you also preside,
“the origin and design of that Act, and offer”—

not to make some regulations—

“offer some suggestions as to the manner in which it may be most bene-
“ficially carried into effect.”

Now, what he is doing, as I read it, is not laying down rules in virtue of
some authority; he is expressing opinions as to the meaning of the Act, and
he is offering suggestions as to how it should be carried into effect. I do
not think that that gets you very far, even if it was not subject to the objection 10
that Mr. Tilley raises to it.

MR. HELLMUTH: Well, my Lord, I would just like to call your Lord-
ship's attention to section 6 of the Act of 1843, under which he would be
entitled to do that:

“And be it enacted, that the Chief Superintendent aforesaid shall
“prepare suitable forms and regulations for making all reports and con-
“ducting all necessary proceedings under this Act,”—

this Act is an amendment—

“and shall cause the same, with such instructions as he shall deem neces- 20
“sary and proper for the better organization and government of Common
“Schools, to be transmitted to the officers required to execute the pro-
“visions of this Act throughout Upper Canada aforesaid.”

Now, that was only an amending Act of 1847, and it contained and carried
on the duties in regard to Common Schools, and he was merely performing
his functions, my submission is, under the general law as it then existed, and
whether you call them suggestions or instructions is immaterial, I would
submit; he had a perfect right—not only a right, but a duty—to what he
deemed necessary to follow them. That was the view in which I tendered
them, my Lord.

HIS LORDSHIP: At present I cannot see that it is relevant at all, but it 30
has been so much discussed that it ought to be available, I should think, and—

MR. TILLEY: The point is this, if your Lordship will permit me to say
so: back in those years there was a lot of literature issued in which the Superin-
tendent was encouraging the trustees to carry out the Acts and to avail them-
selves of privileges and so on, and showing the improvements in the legislation
from time to time. If we start upon it, we could put in enough literature
to keep us reading for two or three days. It is just general literature such
as your Lordship has there.

HIS LORDSHIP: The two or three days does not frighten me, in a case
like this. 40

MR. TILLEY: No, but it is not material. If it was material we should—

HIS LORDSHIP: When I look at that document in its surroundings in
the book, I cannot see that it is material in the least. However, it has been
discussed so much that I think I had better adhere to what I said in the
beginning, that it would be taken subject to the objection, because somebody
seeing the discussion in the notes may want to know what we were talking
about.

EXHIBIT 6:—Historical Educational Papers and Documents of Ontario, 1853-1868, Vol. III.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. HELLMUTH: My Lord, I tender now from the Annual Report of 1849 by the Chief Superintendent of Schools, that is Dr. Ryerson, his report to the Governor-General of Canada in regard to the classification of pupils and subjects taught in the Common School. It is at pages 6 and 7, that part. That is in the Common Schools in 1849—

HIS LORDSHIP: I thought you said 1859.

MR. HELLMUTH: 1849; gradual development from that time. We
10 have not gone backwards, we have gone forwards.

HIS LORDSHIP: From the last document, you mean, one year?

MR. HELLMUTH: No, my Lord, I mean—

MR. TILLEY: I must object to documents being put in in connection with matters that are not under the statutes we are concerned with at all.

HIS LORDSHIP: I know. That is the same point.

MR. TILLEY: Surely we must limit this sort of thing to what was done after 1855 or 1859—1859 was the consolidation; I do not know that there was any change; it was consolidation.

HIS LORDSHIP: The only possibility that I can see of relevancy of these
20 documents which were issued before the Act of 1859, would be this: If Mr. HELLMUTH was unable to find contemporaneous documents establishing the practice of 1859, but thought it could be inferred from documents a little earlier showing the existence of a state of affairs which presumably continued, then I should think perhaps there would be an excuse for these documents earlier than 1859; but if the condition of affairs subsequent to 1859 can be proved by contemporaneous documents, I do not see any object in having in these documents, which may be misleading.

MR. TILLEY: I fear they may be entirely misleading. The law was
30 changed; it was a period of great development, or an attempted great development, by Dr. Ryerson. He was struggling with the proposition all the time, and thought he was making advances, and I do not think any person would be more shocked than he would be to think that we were trying to get at the law of 1867 by going back to the pamphlets of 1849.

MR. HELLMUTH: My Lord, I submit that there was, as part of my case, not a retrogression but a development of the Common School, and that in 1849 the Common School courses of study and instruction were beyond what we would be permitted to do to-day, and we are not in any way curtailed by anything that had taken place between 1849 and 1867, that there was no curtailment of the right to courses of study between those periods, that there was
40 nothing at all to prevent a Common School, as it was then, teaching beyond what was necessarily set out in anything that was issued from the Department or Council of Instruction, that they were not in any way cribbed or confined to that, but when they did teach along those lines and to that extent, certain textbooks were prescribed. Now I want to show that the Common School from 1849 was developing instead of going back, and in 1867 the rights of the trustees of Common Schools were to train pupils up to the entrance

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

examination—I do not say it was done in every case, but in many schools I propose to show it was done at that time, without any let or hindrance, and then it was a Common School.

HIS LORDSHIP: Then I do not see why you do not show it, instead of giving evidence as to what the views or instructions of the Superintendent may have been many years before.

MR. HELLMUTH: Because, my Lord—if I may put it this way—the legislation of the various dates proceeded on what the legislators knew of the condition of things at that time; and I submit that that is most material, that they knew what the Common School of that day was doing, and they legislated in regard to it with that knowledge. These are reports that were returned to the Governor-General, as he was then, and to the House. This is a formal report of the Superintendent of Education. I tender that as— 10

HIS LORDSHIP: This is a report to the Governor or the Minister?

MR. HELLMUTH: It is a report to the Governor-General, the Earl of Elgin and Kincardine; it is the Annual Report of the Normal, Model and Common Schools in Upper Canada, for the year 1849. It is a report of facts, at all events, my submission is.

HIS LORDSHIP: Well, conceivably, in that view, that is admissible. It is pretty doubtful, but I will let it in. 20

MR. TILLEY: Would your Lordship just let me point out the way my friend is introducing this evidence? First, my friend started with this proposition, that in 1857 there were certain regulations applicable to Common Schools.

HIS LORDSHIP: Yes.

MR. TILLEY: Having stated that, then he stated that they knew of none after 1857 that affected the courses of study—I do not know whether he said textbooks, but courses of study. I produced one of the following year, and it turned out that my friends had that very course of study in their hands. 30

HIS LORDSHIP: For Separate Schools.

MR. TILLEY: No; Common Schools.

HIS LORDSHIP: No; they had the Separate School edition.

MR. TILLEY: No, no; they had it for Common Schools. What my friend said was, he did not want to use their copy. Now, if I had not produced those regulations of 1858, on the suggestion that none existed, we would have been back into these ancient documents on the theory that nothing had ever happened to prescribe anything, and that therefore we must go back to them to find out what these schools were. Now, we have the course of study as prescribed put in, adopted by the Council of Public Instruction of the day, and then we have the official statement that they are also applicable to Separate Schools. Now, on that theory the whole excuse that my friend would have had, had he been able to put these documents in without any suggestion that there were such regulations as those of 1858, the whole excuse for going back to ancient times has gone. We have shown exactly what the regulations were in 1858. 40

HIS LORDSHIP: That is what I thought at first; but the whole excuse

that Mr. Hellmuth is putting forward now is not gone, on that assumption. What he is saying now, as I understand him, is his: "I want to show what the Legislature, or the Government anyway, knew about what actually was being done in the schools, what the schools were, when it passed the legislation, the Acts, Acts not creating a new school but Acts as to the existing schools and modifying the law applicable to those schools"—mind you, I am not stating this as my view.

MR. TILLEY: I hope not.

HIS LORDSHIP: But, that being his contention about it, I think that
10 such a document as an Annual Report of the Superintendent to the Governor-General might be allowed to go in subject to the objection.

MR. TILLEY: My Lord, if we do that, we have twenty years of annual reports to put in and to study. There is an annual report every year, of course; the word "annual" involves that.

HIS LORDSHIP: Are you going to put in the other nineteen?

MR. TILLEY: I don't know; I don't know what we are going to do. I have to study the particular one he puts in, and find out if I have to put in some other—if I may use the word—gossip of the day. I do not know of
20 any case where we have attempted to ascertain—

HIS LORDSHIP: Well, your course of study rules that were put in as
Exhibit 5, those rules do not in words say to the trustees, "You may teach nothing beyond what is laid down here."

MR. TILLEY: I think it practically does. It says the course prescribed, and then at the end, there are certain advanced subjects—

HIS LORDSHIP: That is true, yes.

MR. TILLEY: And you may teach those, but not any two of them in one term.

HIS LORDSHIP: That is true.

MR. TILLEY: All that is material about it is that the schools were
30 subject to regulation with regard to such matters. There was legislative authority for that action, and it was taken. Now, can anything establish the grade of the school, the character of the school, better than to show what was done, as this does, what was done in the Model School at Toronto?

HIS LORDSHIP: Personally, I should think not; but—

MR. TILLEY: My lord, is there anything else that is material? Take the whole way this is being interjected; it strikes me as being very unfair. My friend is seeking for regulations, or professes to be, in reality with them in his hand—

MR. HELLMUTH: I do not think my friend is justified in making any
40 such remark. I had the Separate Schools regulations; I had not the regulations applying to 1854.

MR. TILLEY: My friend had the Separate School regulations, Appendix H, which are the Common School regulations, merely stating that they are applicable to Separate Schools; that is what my friend had.

MR. HELLMUTH: I did not have the regulations of 1864, or whatever date it was.

MR. TILLEY: It is in a pamphlet of 1864, but it is marked in his copy,

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

"Passed in 1858," as I noticed. That was leading to getting these things in on the ground that there is nothing in the interval to check it or stop it. Now we have got the regulations. Are we now to go back to find out what kind of schools and what degree of advancement they were in in 1849? I am not concerned with whether between 1849 and 1858, in that interval, it had been the scheme of the educational authorities of the day to bring the Grammar Schools to a better standard—it is clear from the correspondence and the documents that they were—to bring them to a better standard and a more definite standard, entailing bringing the Common Schools into some sort of standard school; but all that is during a space of time that is not material to us here. 10

HIS LORDSHIP: No; the only time that is material to us here—

MR. TILLEY: Is 1867.

HIS LORDSHIP: Is the day before the British North America Act came into force.

MR. TILLEY: Yes, my Lord. Now, we have for Common Schools and Grammar Schools what is described as the complete manual; they are not issued in the same year, but one is 1866, the other is 1864, and the other one that is in the bound volume is 1863. There we have them.

HIS LORDSHIP: Yes, but if it was capable of proof that the Act did not limit the powers, if it could be proved that the Act did not limit the powers of the trustees of the Common Schools to teach what they liked, to carry on their instruction to what point they liked, and that the regulations did not limit them, and that in fact they were carrying on their instruction to a very advanced stage, the foundation would be laid for the argument that Mr. Hellmuth wants to make; and, as I said this morning when I was trying to formulate a general ruling, while it strikes me that it is going to be very difficult, perhaps, to translate a course of conduct that was not interfered with into a right by law, I do think it better that the foundation for the argument should be before the Court, and for that reason I think that documents like this document that Mr. Hellmuth is tendering now should be taken subject to the objection, although there is, as Mr. Tilley has pointed out, the risk of its being misleading, and the fact that at the moment I cannot see its materiality. 30

MR. HELLMUTH: Well, your Lordship won't think because I am not answering my learned friend, as your Lordship is admitting it—

HIS LORDSHIP: I am admitting it subject to the objection.

MR. HELLMUTH: So I won't find it necessary to reply.

HIS LORDSHIP: Oh, no.

MR. HELLMUTH: The time will come, I suppose, when I will be allowed to answer some of these objections. 40

HIS LORDSHIP: Oh, yes; I do not think there is going to be any limitation of that kind.

MR. HELLMUTH: On page 6 of this report of 1849, paragraph V is:

"V.—Classification of Pupils, and Subjects Taught in the Schools.

"Table B also exhibits the classification of pupils, and the number "instructed in each subject or branch of study in the schools of each

10 “district in Upper Canada. It will be seen that there are five reading
“classes, in harmony with the five readers of the National Board of
“Education for Ireland—the first being the lowest, and the fifth the
“highest reading class. The returns of pupils in arithmetic include
“three divisions—those who are in the first four rules, those in the
“compound rules and reduction, and those in proportion and above.
“The same table shows the number of pupils in each district, in grammar,
“geography, history, writing, bookkeeping, mensuration, algebra,
“geometry, elements of natural philosophy, vocal music, linear drawing,
“and other studies, such as the elements of the Latin and Greek languages,
“etc., which are taught in some of the Common Schools. By referring
“to the bottom of Table B, the totals of the returns for 1848, under
“the same heads, will be found; and it will be observed, that under every
“head except one, there is an improvement in favour of 1849. The
“returns of 1848 showed a similar advance on those of 1847—the first
“year that this kind of educational statistics was every collected in
“Upper Canada. It is also gratifying to observe that the teaching of
“vocal music”—
well, that does not matter.

20 EXHIBIT 7—Annual Report of the Normal, Model and Common Schools
in Upper Canada, for the year 1849.

MR. HELLMUTH: Then, my Lord, I turn now to the report which he has
referred to there, of the previous year, which appears in volume II for the
year 1849, and in that at page 118—it is referred to in the same volume—on
page 118 of this second volume of the same report—this is the Journal of
Education, volume II, for the year 1849, but I am reading the report of 1847,
for the year 1847, at page 118. He says:

“VI.—Classification of Pupils and Subjects Taught in the Schools.

30 “This is an entirely new department of information, in respect of our
“Common Schools. The school returns have heretofore been confined
“to the number of pupils, the time of keeping open the schools, and the
“moneys raised for the salaries of teachers. Information extending no
“further, appeared exceedingly vague and unsatisfactory. It appeared
“to me quite as important to know the studies and attainments of pupils
“as to know their numbers. I therefore prepared and furnished blank
“forms of reports for that purpose. I cannot suppose that these forms,
“for the first time, have in all cases been filled up with entire accuracy,
“much less with completeness. I divided the reading classes into five,
40 “corresponding to the five reading books of the national series, intimat-
“ing, at the same time, that in schools where the National Readers are
“not used, the least advanced reading class of pupils should be returned
“in column No. 1, and the next best advanced reading class in column
“No. 2, etc., etc. The annexed Table B exhibits the number of pupils
“in the several studies pursued in the Common Schools, in all the town-
“ships of Upper Canada; and Abstract B presents a view of their totals

In the
Supreme
Court of
Ontario.

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

"in each district. These statistics afforded a clear but painful proof of
"the very elementary character of the Common Schools, and the absolute
"necessity of employing every possible means of elevating it. It will be
"seen from these tables that there were in Upper Canada, in 1847, in the
"first or lowest *Reading* class of the Common Schools, 19,525 pupils;
"in the second, 20,179; in the third, 21,428; in the fourth, 16,846; in the
"fifth or highest reading class, 8,126; that in the first four rules of
"*Arithmetic*, there were 18,741 pupils; in the compound Rules and
"Reduction, 12,527; in Proportion, and the more advanced Rules, 10,418;
"that in *English Grammar*, there were 13,743 pupils; in *Geography*, 10
"10,563; in *History*, 3,841; in *Writing*, 45,567; in *Bookkeeping*, 2,116;
"in *Mensuration*, 615; in"—

HIS LORDSHIP: Are we going to—

MR. HELLMUTH: Then I want to go on:

"in *Algebra*, 336; in other studies not enumerated above, 1,773. The
"1,773 reported as pursuing 'other studies,' seem to have been pursuing
" '*higher studies*,' for under this head in Abstract C will be found 41
"Common Schools in which Latin and Greek were taught, 60 in which
"French was taught, and 77 in which the elements of Natural Philosophy
"were taught. The number of pupils in these studies respectively is 20
"not reported."

Then he cites a report in this, from the State of New York, showing it
very much higher, and he says:

"The introduction of these studies into our Common Schools has
"been sanctioned by the Legislative department of the Government,
"and is approved of by the most distinguished and experienced men of
"our times, engaged in promoting the cause and advancing the interests
"of public instruction. The pupil who may now be seen solving a
"problem in geometry in one of our Common Schools, will, ere long, be
"found demonstrating the more difficult problems of political economy, 30
"or with a keen and animated intellect discussing the science of human
"government in our halls of legislation.' From what has already been
"done, I am satisfied the schools in Upper Canada may in four or five
"years be made as efficient and potent in all respects as those of the
"State of New York."

Now, he is reporting in 1847.

EXHIBIT 8:—Journal of Education for Upper Canada, Volume II, for
the year 1849.

MR. HELLMUTH: I think, my Lord, that in Exhibit 7, if your Lordship
will look at pages 24 and 25 you will see the studies and the number of pupils 40
set out, including those who in various schools were studying, and the kinds
of books used, and so on. For instance, there is history, modern and ancient,
bookkeeping; and then there is mensuration, national and various; algebra,
Bonycastle's and Day's; geometry, Euclid, and the elements of natural
sciences; the higher studies, Latin and Greek, and other studies. That is in
the table or schedule of subjects being taught at that time in the schools.

Then in the Report of 1850, also addressed to the Governor-General of Canada, on pages 18 and 19, and up to 21, he is dealing with the schools in cities, towns and incorporated villages, and on page 18 he says:

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

10 "The board of trustees in each city, town and incorporated village, "having the charge of all the schools in such municipality, is able to "establish and classify them in such manner as to meet the wants of all "ages and classes of youth. This is done by the establishment of primary, "intermediate and high schools. In some instances, this system of the "classification or gradation of schools has been commenced by establishing "a large central school under the direction of a head master, with assis-
"tants, having a primary and intermediate, as well as high school "department—the pupils being promoted from one department to another "according to their progress and attainments. In other instances the "same object is pursued by having one high school and intermediate "and primary schools in different buildings and parts of the city or town. "These schools can also be male, or female, or mixed, as the board of "trustees may judge expedient."

Then he quotes something from Massachusetts. Then he says:

20 "The importance of the classification of pupils in each school, and "the classification of schools in each city and town, cannot be over- "estimated."

Then he quotes again from that; this is a quotation which I shall not read, because it is a quotation from Massachusetts.

Then there is an appendix on the system of free schools by the superintendent, and he deals with some objections that are taken to what is called the free schools. At page 204 he says:

"But against this system of free schools, certain *objections* have "been made; the principal of which I will briefly answer.

30 "First objection.—The Common Schools are not fit to educate the "children of the higher classes of society, and therefore these classes "ought not to be taxed for the support of the Common Schools."

"Answer.—The argument of this objection is the very cause of the "evil on which the objection itself is founded. The unnatural and "unpatriotic separation of the wealthier classes from the Common School, "has caused its inefficiency and alleged degradation. Had the wealthy "classes been identified with the Common Schools equally with their "poorer neighbours—as is the case in Free School countries—the Common "School would have been fit for the education of their children, and "proportionally better than it now is for the education of the children
40 "of the more numerous common classes of society. In Free School "cities and states—"

HIS LORDSHIP: What does this bear on, Mr. Hellmuth?

MR. HELLMUTH: Well, he says here:

"It is also worthy of remark, that the board of trustees in each city and "incorporated town in Upper Canada has authority to establish male "and female primary, secondary and high schools, adapted to the varied "intellectual wants of each city and town; while in each country school

“section it requires the united means of intelligence of the whole population to establish and support one thoroughly good school.”

HIS LORDSHIP: It might be convenient to adjourn now.

Adjourned at 1.05 p.m. until 2.15 p.m.

On resuming at 2.15 p.m.:

MR. HELLMUTH: Still from the Report, my Lord, of 1850, Exhibit 9, in the appendix there, at page 309, in paragraph 12, he says:

“In cities, towns and incorporated villages, these boards of trustees, varying from six to sixteen members in each, are invested with larger powers than the trustees of school sections. Each board has the charge of all the Common Schools in the municipality, determines their number and kind, whether primary, intermediate or high schools, whether classical or English, whether denominational or mixed”—

at that time the boards could determine that—

“whether many or few, the amount and manner of their support.”

Then on page 310, about the middle of the page, he says:

“In regard to large central school houses in cities, towns and villages, after the noble examples of the boards of trustees in Hamilton, London, Brantford, Brockville and Chatham, etc., it is remarked in the last Annual School Report for the State of Massachusetts:”

and then he quotes what the School Report from Massachusetts said about them, which I need not read. I will read it if my learned friend wishes.

MR. TILLEY: I do not know how we are concerned with Massachusetts.

MR. HELLMUTH: No, we are not concerned with Massachusetts, but he says:

“In regard to large central school houses in cities, towns and villages, after the noble examples of the boards of trustees in Hamilton, London, Brantford, Brockville and Chatham, etc.”

and then he says, quoting:

“‘It may often be found more economical to bring all grades of schools into one building.’”

Then there are tables in this Report at page 75, Table B, which shows the subjects taught; and page 97, showing the text-books.

EXHIBIT 9:—Annual Report of the Normal, Model and Common Schools in Upper Canada, for the year 1850.

MR. HELLMUTH: Then in the Annual Report for 1852, at page 41, Table B gives a list of the higher subjects taught in the Common Schools and the pupils in them, number of pupils; and at page 43, Table C gives the text-books. Your Lordship will see that Latin, Greek and Euclid are among the text-books on those subjects, the subjects being referred to in the Table B.

Then in Appendix A, at page 132, he speaks of the Town of London, and he says in that:

"The board of trustees"—
that is, of the schools in London—

10 "deeming it proper to place within the reach of every class of the com-
munity, and of every child who might evince a taste and talent for a
"more extended range of studies than are generally pursued at common
"schools, facilities for the acquisition of literary and scientific attain-
"ments, equal to those afforded by the higher order of academies, directed
"the principal to introduce, in addition to the other studies, that of
"classics, and during the past year about twenty-five pupils have availed
"themselves of the advantages thus afforded in the abstract sciences."
Your Lordship will notice, he says the trustees have directed the principals
to do that.

HIS LORDSHIP: Yes.

EXHIBIT 10:—Annual Report of the Normal, Model and Common
Schools, in Upper Canada, for the year 1852.

MR. HELLMUTH: Then in the Annual Report for 1853, at page 21,
is Table B, showing the number of schools using text-books and apparatus;
and at pages 24 and 25 is Table C, showing the text-books, and, amongst
others, as I mentioned before, Latin, Greek and Euclid.

20 In the Appendix—I do not know whether it is I or 1, my Lord—at page
157, there are the selections from the general forms and instructions for
executing the provisions of the Common School Acts, 13th and 14th Victoria,
chapter 48; and 16th Victoria, chapter 185; and there is a programme for the
examination and classification of teachers of Common Schools, by the County
boards, prescribed by the Council of Public Instruction for Upper Canada.

I put that in, my Lord, because at that date, that is, at the time of Confed-
eration, the county boards were those who passed upon the qualification of
teachers. I shall show your Lordship that in the Act, but at the moment—
there are qualifications both for third class, second class and first class teachers,
30 and as far as I can understand, these teachers were taught in the Common
Schools.

MR. TILLEY: But what are you getting from now?

MR. HELLMUTH: I am only getting their qualifications, what they had
to do, what they had to know in order to get their certificates.

Take, for instance, the qualifications of a first-class teacher—

MR. TILLEY: The qualification of teachers, of course, is there, but I
did not know what point you were at. You were going on to say that you
understood they got their training some place; I do not know that that is very
satisfactory.

40 MR. HELLMUTH: It is not as far as my mere statement goes at all satis-
factory, but I hope to be able to show to your Lordship that the teachers at
that time were not necessarily obliged to get their certificates from the Normal
School at all, but could get their certificates by having their training in the
Common Schools. I think I can show that by some—

MR. TILLEY: Might I ask if your Lordship does not think that that is

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

going rather far afield, to say that teachers having certain qualifications and no rule as to where they are to be taught, involves the suggestion that the Common Schools teach to the teachers all that the teachers know, so the pupils are all in the same category?

HIS LORDSHIP: Mr. Hellmuth has said only that he hoped to show that the teachers could get their certificates.

MR. TILLEY: The only point of that is that the teacher can get such a high standard of education in the school, which involves the idea that the teachers and pupils in that school all reached the same standard.

MR. HELLMUTH: No; that some of the pupils in that school—not all, by 10 any means—that some of the pupils in that school, who go on to classes—

HIS LORDSHIP: Well, we have not come to that yet.

MR. HELLMUTH: No; I am just putting in the qualifications there that would be required at that time.

EXHIBIT 11:—Annual Report of the Normal, Model, Grammar and Common Schools, in Upper Canada, for the year 1853.

MR. HELLMUTH: In the Annual Report of 1855, the Report of the local superintendent in regard to Hamilton—

MR. TILLEY: Which superintendent? The Local Superintendent?

MR. HELLMUTH: Yes, the Local Superintendent; it is in this Annual 20 report with the report of the Local Superintendent, of what the schools are doing. At page 282 he says, dealing with Hamilton:

“Any child under twenty-one years of age, whose parents reside “within the city limits, and who is qualified for admission into the junior “class, can, by applying, gain an entrance into the Central School, and “can remain there, free of charge, until he has passed through the various “classes, and, if desirous, qualified himself for matriculation at the “University. The course of instruction includes reading, writing, arith- “metic, geography, grammar, history (Canadian, English and general), “history of English literature, linear drawing, vocal music, bookkeeping, 30 “human physiology, astronomy, elements of natural philosophy and “chemistry, algebra, Euclid and mensuration, natural history, botany and “geology, and the Latin, Greek and French languages.”

Then follows a general summary of the time devoted to each subject in the junior and senior sections of the first division, and it follows on:

“The teachers at present engaged in the City schools number thirty, “and include a principal, a classical master, a French master, a writing “master, a music school master, thirteen division teachers in the Central “school, and thirteen primary teachers.”

Then, my Lord, at pages 158 and 159, in the same Report, is Table G, which 40 is a table dealing with the Roman Catholic Separate Schools, and giving, amongst other things, the studies or subjects and the pupils engaged in those various studies; and they include such things as algebra, geometry and natural philosophy. The Common Schools are in the same. On pages 106 and 107 is Table D, showing the subjects and text-books in the Common Schools.

EXHIBIT 12:—Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada, for the year 1855.

*In the
Supreme
Court of
Ontario.*

MR. HELLMUTH: In the Annual Report of Education, my Lord, of 1857, at page 53, Table B shows the different branches of education in the Common Schools; at page 67, Table E, the number of Common Schools using the text-books and apparatus, and the nature; and at page 71 Table F shows the studies in the Separate Schools.

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

Then, my Lord, at page 328 is this Appendix F:

“The Normal and Model Schools for Upper Canada.

10 “No. 1.—Revised Terms of Admission into the Normal School,
“Toronto.

“(Adopted by the Council of Public Instruction for Upper Canada,
“on the 24th day of August, 1858.)”

Then follows what is necessary for admission to the Normal School—that is, the entrance—and perhaps one should say to page 332, but pages 330 and 331 contain the programme of the entrance examination, and also the course of study in the Normal School for Upper Canada, approved by the Council of Public Instruction on the 24th day of August, 1858.

In paragraph 2 of that, on page 329, is the following:

20 “That no male student shall be admitted under eighteen years of
“age, nor a female student under the age of sixteen years. (1) Those
“admitted must produce certificates of good moral character, dated within
“at least three months of their presentation, and signed by the clergyman
“or minister of the religious persuasion with which they are connected.
““(2) They must be able, for entrance into the Junior Division, to read
“with ease and fluency; parse any common prose sentence, according to
“any recognized authority; write legibly, readily and correctly; give the
“definitions of geography; have a general knowledge of the relative posi-
“tions of the principal countries, with their capitals; the oceans, seas, rivers,
30 “and islands of the world; be acquainted with the fundamental rules of
“arithmetic, common or vulgar fractions, and simple proportion. (3)
“they must sign a declaration of their intention to devote themselves to the
“profession of school-teaching, and state that their object in coming to the
“Normal School is to qualify themselves better for the important duties
“of that profession.”

Then follows the curriculum, if one might so term it, and the subjects that are required. That is in already as Exhibit 4.

40 Then, my Lord, the next one is the Annual Report for 1863. At Table B,
pages 34 and 35, your Lordship will see from that table that there were 20,991
pupils over sixteen years of age attending the Common Schools; there were
64,834 pupils given in the fifth class—you get this all from the table, but I just
had it summed up—that means beyond the entrance examination; that would
be, my Lord, beyond the entrance examination of the present day to the High
School; there are 64,834 pupils given in the fifth class; there were 3,864 pupils
in mensuration; 4,068 in geometry; 11,332 in natural philosophy; and 12,094 in
other studies, which your Lordship will remember in the Report of 1849 included

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

Latin and Greek. Those are simple computations from this table which can be easily verified.

Then at pages 44 and 45, Table F shows the number of pupils and the different branches of education in the Roman Catholic Separate Schools of 1863. Again, your Lordship will find that they have geometry and algebra, among other things, and natural philosophy.

In this same Report, my Lord, there is, commencing at page 153, the report of the Honourable Mr. Justice John Wilson, Local Superintendent at London. Near the foot of page 153, he says:

"I have watched with deep interest every effort of the board to estab- 10
 "lish, upon a firm basis, a system which might confer the benefits of a
 "sound liberal education upon the whole youth of the municipality—
 "open to all, adapted to the talents and wants of all. How far a design
 "so comprehensive and so noble in its aim has succeeded, I purpose now
 "to show. In the year 1850 the teachers employed were five—three
 "males and two females; the number of children entered during the year
 "was 598; the average attendance only 337. In 1855 when, according to
 "public records, the population of the city was over 16,000, the teachers
 "had been increased to twelve, and the number of children entered to
 "1,823—the average attendance to 726. Although; on enquiry, I learn 20
 "that the population is now no greater than in 1855, yet the pupils entered
 "during the past year have increased to 2,825, the daily average atten-
 "dance to 1,373, and the number of teachers employed to 22.
 "But if the Roman Catholic pupils were united now, as they were then,
 "with the general school system, we would have both the number of
 "pupils and teachers increased upwards of 100 per cent. in eight years,
 "while the gross population of the city remains as it was. This seems more
 "than the most sanguine friends of the cause would have hoped. It may
 "be asked from what source have the public schools derived such acces- 30
 "sions to their numbers. Were the children not attending the public
 "schools in 1855 uneducated? The reports furnished annually to the
 "Chief Superintendent of Education answer both questions, and adduce
 "conclusive proof of the efficiency of the present system. At the period
 "alluded to, there were large flourishing schools in many parts of the city,
 "established and conducted by private parties on their own account. It
 "may not be assuming too much to say that over 500 scholars were attend-
 "ing these schools about that time. Now there is scarcely a private
 "school of any consequence to be found, all having been absorbed in the
 "general system. Nearly all have availed themselves of the provision 40
 "made for them by the Board. If we add to these numbers the children
 "attending the Separate Schools, we find a larger proportion of the juvenile
 "classes enjoying the blessings of a good education in this city than in any
 "other town or city in the Province, and, as a consequence, no beggar
 "children have been found in the streets. In point of attendance, there-
 "fore, the citizens of London have good reason to be pleased with what has
 "already been done, since now the education of almost all the youth of
 "the city is under the care of a board elected by themselves, and by the

10 "efforts of this board the expansion of the means of teaching has nearly
 "kept pace with the influx of pupils requiring to be taught. An improve-
 "ment as striking has taken place in the manner of teaching, and in the
 "character of the instruction imparted, as that which I have noticed in
 "the attendance. At the period I first mentioned, there was nothing at-
 "tempted beyond the limited essentials of an English education. The
 "board was unwilling to be connected with the County Grammar School.
 "At the date secondly mentioned, which I look upon as the turning point
 "in our educational affairs in this place, something was added to the
 20 "English course, with a few boys in the elements of the Latin language,
 "forming merely a classical nucleus. This step was not favourably looked
 "upon, because it was said to be unnecessary, and the head-master's
 "time would be taken from the supervision of the school. The trial went
 "quietly on. Now the English course is at once extensive and thorough,
 "embracing every subject of importance to the mechanic, the merchant
 "or the professional man. The classical department has been extended
 "so as to embrace Latin, Greek and French, and made comprehensive
 "enough to qualify students for entering upon the study of any of the
 30 "learned professions, or to matriculate in any college or university in the
 "Province. That this branch of the institution has been highly prized by
 "the citizens, is evident from the number of students found in the various
 "classes. That it has been successfully conducted must be evident to
 "every one who has watched its progress as I have done. A few facts are
 "its best panegyric. The students of the Central School have for years
 "past competed with those trained in the best schools in the Province.
 "Young men educated here have been subjected to every test, stood
 "every examination, yet none of them have been rejected or 'plucked';
 "they have entered for the church, law, medicine. Within the last few
 "years eight young men of promise (two partly, six entirely, trained in the
 30 "Central School) have passed their preliminary examinations with the
 "highest credit, and entered upon the study of the legal profession; in
 "addition to these, many have been educated, it is said, above the business
 "to which they have devoted themselves; but this I deny, for neither the
 "mental powers nor moral sentiments can be too highly cultivated for
 "individual or public good; and we require more in this Province an intelli-
 "gent, educated, moral people, than a highly-educated upper class."

That is page 154.

MR. TILLEY: I suppose my friend will give us the qualifications to enter law at that time.

40 MR. HELLMUTH: Well, in answering my friend, let me say, my Lord, that if we had the right then to educate men for those professions, are we to be debarred from the right because the requirements for those professions now require more education than the Public School?

MR. TILLEY: That is, the Common Schools must advance so as to give the education. I do not know whether it would help your Lordship to know how far these schools can go now. We are spending a lot of time to enquire how

In the
Supreme
Court of
Ontario.

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

far they might continue their studies back in the 'forties and the 'fifties. To-day they can go as far as what is called the fifth form, which is the first year in the High School.

HIS LORDSHIP: Which is the what?

MR. TILLEY: First form in the High School.

HIS LORDSHIP: I do not know that that is what is troubling Mr. Hellmuth. It is the thought that you are asserting a right to stop them going so far that is bothering him more than the fact that you have stopped them—is it not?

MR. TILLEY: Well, I showed we stopped in 1858—that is when the stop 10
was put on—and they may go farther now than then, because at the present time they can take algebra, geometry, physiography, art, botany, zoology, agriculture, horticulture, Latin, French, German, manual training, household science, music, business practice, stenography—all these things in the Common Schools, and in the Separate Schools much beyond what it was in 1867; and I do not know of any twenty-one-year old student that has been turned away if he wanted the education.

MR. HELLMUTH: Your Lordship appreciates, what I submit is that they had no right to stop us at all. My learned friend asserted they could make a regulation and stop us where they liked. 20

MR. TILLEY: No. The question is, is the present law *ultra vires*? That is all.

HIS LORDSHIP: Yes—I was assenting to that proposition, perhaps, too rapidly. Doesn't the petition ask a declaration beyond that?

MR. TILLEY: No, I think not, my Lord.

HIS LORDSHIP: Yes. Clause 3, page 9:

"That it may be declared that your Suppliant has the right to
"establish and conduct courses of study and grades of education such as
"are now conducted in what are designated as Continuation Schools,
"Collegiate Institutes and High Schools and that any and all regulations 30
"purporting to prohibit, limit or in any way prejudicially affect such right
"are invalid and *ultra vires*."

MR. TILLEY: Prejudicially affect?

HIS LORDSHIP: Yes.

MR. TILLEY: Well, I thought possibly I was saving time, because the present course is certainly beyond what my friend is referring to now. Then, if it is on the legal right not to be stopped, is it material what they were actually teaching then? Certainly, I should not think it could be, unless it is something higher than what they are being allowed to teach now.

MR. HELLMUTH: I did not want, in a sense, to argue the case, but my 40
submission, my Lord, shortly, is this: If we were entitled in the Common Schools of that day, if the trustees were entitled in the Common Schools of that day to teach pupils to enter upon the learned professions and to matriculate in the universities, if the standard of those professions and the standard of matriculation in the university has gone up, there is nothing, I would submit, that would permit the Legislature or the Department to say, "You cannot advance with the advance of education generally in the Province, and you

cannot improve your Common School in any way." My submission is, you can improve your Common School so that it to-day can do the work that the Common School did in 1863.

EXHIBIT 13:—Annual Report of the Normal, Model, Grammar and Common Schools, in Upper Canada, for the year 1863.

MR. HELLMUTH: Then, my Lord, I come to the year of Confederation, the Annual Report for 1867; at pages 88 and 89, Table B shows the number of pupils over sixteen years of age in the counties, towns and villages, a total all told in those various municipalities of 31,132 pupils over sixteen years of age.

10 At the same place, that is page 88 or 89, it shows the pupils in the fifth class, that is beyond the entrance to the High School, beyond the entrance examination to the High School, in both the counties and the cities, towns and villages, a total of 72,987 in the fifth class. Then it also shows the number of pupils in the higher studies—that is at page 89, but I am just referring to those two pages together—pupils in the higher studies, there being in the counties, cities, towns and villages a total of 8,019. The pupils beyond entrance in various studies—I can give your Lordship the figures; for instance, in bookkeeping—

HIS LORDSHIP: Oh, well, I don't know that I need that.

MR. HELLMUTH: No, I don't think your Lordship wants that. Then on
20 page 102, Table F shows the number of pupils in the Roman Catholic Separate Schools and the different branches of instruction. That will be Exhibit 14.

EXHIBIT 14:—Annual Report of the Normal, Model, Grammar and Common Schools in Ontario, for the year 1867.

MR. HELLMUTH: Then, my Lord, so far as any regulations affecting Separate Schools are concerned, I have been unable to find any regulations from 1867 affecting Separate Schools until 1914. 1915 we complain of. There are regulations, of course, for Public Schools, but there are no regulations that I can find authorized for Separate Schools until 1914. I do not know that the
30 1914 is the one complained of, but we complain of the regulations purporting to affect Separate Schools in 1915; this is Regulations, Courses of Study and Examinations of the Public and Separate Schools, Revised 1915, printed by order of the Legislative Assembly of Ontario. On page 55, under the heading of "Form V, Syllabus of the Courses," under section 25:

"(1)—The courses in the subjects of the syllabus of Form V as set forth in Regulation 26 below, are classified in three groups, and shall
"be taken up as follows:"

Then under (c) in Group III, the second item on that page, as follows:

"(c) Courses prescribed for the Middle and Upper Schools of the
40 "High and Continuation Schools or Collegiate Institutes shall not be
"taken up in a Fifth Form under a Public or a Separate School Board,
"either during school hours or outside of school hours."

Then, my Lord, at the top of page 76:

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

I. FIFTH FORMS.
Counties and Districts.
Establishment.

"1. A Board which maintains a Fifth Form in accordance with the following regulations shall be entitled to its share in the special Legislative Grant to Fifth Forms in addition to its share in the General and the other Special Legislative Grants to Public and Separate Schools:

"(1) The Fifth Form shall not be situated in a High or a Continuation School District."

Your Lordship sees that means that a Public or a Separate School—and of course with regard to Public Schools we have nothing to say—a Separate School that happens to be in a High School District cannot have a fifth form. 10

Then subsection 2:

"(2) The subjects for the course of study shall be those prescribed for the junior or the senior diploma or for senior High School entrance."

When I say, "The Fifth Form shall not be situated in a High or a Continuation School District," of course I do not for one moment mean that the Roman Catholic Separate School Board could not teach that at their own expense and without being recognized in any way.

HIS LORDSHIP: I understand. 20

MR. HELLMUTH: I did not think your Lordship misunderstood me at all, but there would be no grant.

HIS LORDSHIP: If it is to get a grant it must not be situated in that way.

MR. HELLMUTH: No. I suppose there is nothing to prevent them teaching anything they like outside of the—

HIS LORDSHIP: Well, there was something you read.

MR. HELLMUTH: Yes, my Lord; it says, "Shall not teach it during school hours or outside of school hours."

MR. TILLEY: Yes, but that is the one at page 55. You are not saying that cuts out fifth form, are you? 30

HIS LORDSHIP: No, that was something else; I forget what it was.

MR. TILLEY: Page 55, courses prescribed for the Middle and Upper Schools of the High and Continuation Schools.

EXHIBIT 15:—Regulations, Courses of Study and Examinations of the Public and Separate Schools, Revised 1915.

MR. HELLMUTH: Your Lordship will find that what is now termed the Continuation School started in what was termed Continuation Classes, and they were Continuation Classes in the Public Schools. That is by the Public School Act (1896), 59 Victoria, chapter 70, section 8:

"8.—(1) Subject to the regulations of the Education Department the school corporation of any municipality or section in which there is no High School shall have power to establish a continuation class for pupils who have completed the course of study prescribed for Public Schools and who have passed the Public School leaving examination, and also to provide for such class suitable accommodation, and to impose such 40

"fees for tuition, upon the pupils in attendance who have passed the said leaving examinations, whether residents or non-residents of the municipality, as they may deem expedient.

"(2) The school corporation may admit to such continuation class pupils who have passed the entrance examination to a High School, but all such pupils who are residents of the municipality or section shall be exempted from tuition fees. Where non-residents are admitted such fees may be charged as the trustees may deem expedient.

10 "(3) The course of study for continuation classes shall be the course prescribed for the primary examination of the Education Department. Teachers of continuation classes shall possess at least the qualifications of an assistant in a High School, subject to the regulations of the Education Department in that behalf.

20 "(4) The Minister of Education may apportion to any school conducting continuation classes, out of any money appropriated by the Legislature for that purpose, a sum equal to the average amount per pupil paid by the Legislature towards the maintenance of High School pupils. The municipal council of any county may pay for the maintenance of such classes a sum equal to the legislative grant apportioned by the Minister of Education for such class or such further sums as may seem expedient."

Your Lordship will see that there was nothing in that Act directing a levy or collecting rates. Section 4 says:

"4.—Nothing in this Act authorizing the levying or collecting of rates on taxable property for Public School purposes shall apply to the supporters of Roman Catholic Separate Schools."

30 May I just here, my Lord, as we come to it—I do not want to omit through forgetfulness—your Lordship will find that these continuation classes, as I have said, are turned into or merged in or swallowed up by Continuation Schools, and then later on your Lordship will see that a Continuation School may become, I was going to say over night, but I might say *eo instanti*, under certain circumstances a High School, and then become liable for the taxes, the levying of rates for what was a Continuation School, and what becomes a High School. Of course, in this particular Act there was a provision that we should not be liable for any of those rates.

In the Report of the Minister of Education for 1896, at page 69, is a circular to the county and township councils, headed, "Amendments Made to the Public and High School Acts." The first section is:

40 "(1) Provision is made for 'Continuation Classes' in Public schools situated in a municipality in which no High School has been established. The object of these classes is to enable pupils who have passed the entrance examination to a High School, or who have finished a Public School course, to continue their studies as far at least as the second form of High School. Boards of trustees are at liberty to collect reasonable fees from pupils who have passed the Public School leaving examination; pupils who have passed the entrance examination only are to be admitted free. The trustees shall appoint for such classes a teacher with the

In the
Supreme
Court of
Ontario.

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*
—
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

“qualification of an assistant in a High School, unless the teacher in charge
“is reported by the Inspector as fully qualified to give the necessary
“instruction. The county council may aid such schools by a grant equal
“to the Legislative grant, or such further sum as it may deem expedient.
“The Minister of Education is authorized to pay for the maintenance of
“each pupil the average amount paid for High School pupils.”

I will put that in, my Lord.

HIS LORDSHIP: That does not do much more than state the Act, does it?

MR. HELLMUTH: Perhaps not, my Lord.

MR. TILLEY: That is all it professes to do.

MR. HELLMUTH: It says, “It enables the pupils,” and so on, “to continue
“their studies as far at least as the second form of the High School.” I
do not think that was absolutely set out before, my Lord.

MR. TILLEY: That says the object of it was.

HIS LORDSHIP: He says so, yes.

MR. HELLMUTH: Yes, it does. I do not propose it will do any harm.

HIS LORDSHIP: I do not suppose it will do any harm.

EXHIBIT 16:—Report of the Minister of Education (Ontario), for the
year 1896.

MR. HELLMUTH: Then in the Revised Statutes of Ontario of 1897 20
chapter 292, which is the Public School Act, that is continued—I have not the
section before me just now, but it is in the Act, my Lord; they repeated what
had been passed in 1896; it was the next year.

HIS LORDSHIP: They repeated what, do you say?

MR. HELLMUTH: They repeated the Act of 1896. It is just the same,
that section, my Lord, in the Revised Statutes of 1897.

Then, my Lord, the next Act is the Act of 1899, 62 Victoria, chapter 36,
which is “An Act to Improve the Laws Respecting Public Schools.” Section 8,
which I gave to your Lordship before, of the Public Schools Act is repealed,
and the following substituted therefor: 30

“8. (1) The school corporation of any municipality or section in
“which there is no High School shall have power to establish in connection
“with the Public or Separate School over which it has jurisdiction, such
“courses of study in addition to the courses already provided for the
“fifth form of Public Schools as may be approved by the regulations of
“the Education Department. The classes established under such courses
“shall be known as ‘Continuation Classes.’”

That is the first time the Separate Schools are mentioned in connection with
these Continuation Classes; they were not mentioned before, it was only
Public Schools. 40

HIS LORDSHIP: Are they on an equality there?

MR. HELLMUTH: Yes, my Lord, so far. Perhaps, my Lord, subsection
3 does not put that quite on a parity. Subsection 3 is this:

“No pupil shall be admitted to the course prescribed for Continuation
“Classes who has not passed the entrance examination to a High School

“or some higher examination, or whose qualifications for admission have
 “not been approved by the principal of the school and the Public School
 “inspector of the district in which the school is situated.”

So that he could not go there on mere Separate School approval.

MR. TILLEY: I do not follow what you mean there. Would you read the last words again?

MR. HELLMUTH: Yes. It is:

10 “No pupil shall be admitted to the course prescribed for continuation
 “classes who has not passed the entrance examination to a High School
 “or some higher examination, or whose qualifications for admission have
 “not been approved by the principal of the school and the Public School
 “inspector of the district in which the school is situated.”

MR. TILLEY: What difference does that make?

MR. HELLMUTH: Because we have our own Separate School inspectors, and why we should be subject to a Public School inspector—I am just pointing that out.

Then by subsection 2—I have read 3 to your Lordship—

HIS LORDSHIP: Subsection 2 of what?

20 MR. HELLMUTH: Subsection 2 of section 1. Section 1 is the one that amends. Subsection 2:

“The trustees of any number of school corporations, whether of
 “Public or Separate Schools, may, by mutual agreement, determine that
 “continuation classes shall be conducted in one only of the schools under
 “the jurisdiction of the corporations entering into such agreement, and in
 “all such cases the trustees shall have the same power to provide, by
 “rates levied on the taxable property of their respective sections, for the
 “tuition of pupils attending such continuation classes as they possess
 “under The Public Schools Act or Separate Schools Act, for the tuition
 “of pupils attending the schools under their immediate jurisdiction.”
 30 for such a Continuation School would not be a denominational school, your Lordship.

HIS LORDSHIP: Well, what is the point of reading that?

MR. HELLMUTH: About 3, my lord?

HIS LORDSHIP: No; 2.

MR. HELLMUTH: Because, my lord, that is providing for a continuation class in a Separate School in which both the pupils in the Public School and Separate School will continue together, but that continuation class will no longer—as I think I will show later by legislation—be a denominational school; there won't be denominational teaching in that.

40 HIS LORDSHIP: But they are not forcing it; it is being conferred.

MR. HELLMUTH: It is quite true, we are not being forced at all; we have the option, but we have only the option of making such a choice if we give up denominational teaching, as your Lordship will see later by some legislation that particularly so provides.

HIS LORDSHIP: Well, I do not get the point. The British North America Act says that you must not be prejudicially affected in any of your rights. Is offering you an advantage, if you think it is an advantage, of combining

*In the
 Supreme
 Court of
 Ontario.*

No. 8.
 Suppliant's
 Case,
 Introducing
 Exhibits
 —continued.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

with another school and thereby acquiring something or other, a prejudicial affecting of a right of yours?

MR. HELLMUTH: No, if we had no right to teach the subjects that are in a continuation—

HIS LORDSHIP: But this does not say that you shall not teach them on any other terms. It says:

“The trustees of any number of school corporations, whether of
“Public or Separate Schools, may, by mutual agreement, determine that
“continuation classes shall be conducted in one only of the schools under
“the jurisdiction of the corporations entering into such agreement, and 10
“in all such cases the trustees shall have the same power to provide, by
rates,”

and so on; but that does not mean that if there are a number of schools there must be only one continuation class in a place agreed upon.

MR. HELLMUTH: No, my Lord, not by itself; but your Lordship will see how that apparent gift to us was taken away, if it was a gift at all.

HIS LORDSHIP: Well, the British North America Act did not prevent that.

MR. HELLMUTH: Oh, no; but I want to bring before your Lordship the legislation that was passed in regard to these continuation classes which 20 finally became Continuation Schools. Our main grievance is that we had a perfect right in our schools to teach the subjects, which are made a gift to the Public Schools if they like, but were no gift to us at all, that we had that right. If we wanted to combine in that way it was our lookout. I admit we were not forced to do it by that Act at all, but your Lordship will see when you come to some further Act that—I was going to say what liabilities were imposed upon us in regard to any such Continuation School, being divorced from anything approaching denominational teaching.

HIS LORDSHIP: I could not at the moment grasp why you were referring to this section, because I could not see how it— 30

MR. HELLMUTH: When your Lordship comes to the further section—that is the first section, or first Act, dealing with that matter, so far as Separate Schools are concerned.

MR. TILLEY: May I interrupt before your Lordship parts with the book? My friend suggested—I do not know whether he is making that a basis of real claim or not—that there was some prejudice to the Separate School pupils owing to the requirement that there should be some certificate from the Public School inspector, and he said that their Separate School inspectors could not act, that it had to be the local inspector. Of course, the reason for that is quite obvious. The local inspector of Public Schools is a local officer, appointed 40 locally, and is on the local board of examiners, and therefore, as the Separate School inspector is one appointed by the central authorities and not the local schools, he would not be in a position to act. The Separate Schools have representation on that board of examiners, but it is not through the Separate School inspector; so there is a difference between the two inspectors, as to the field which they occupy, which really makes it necessary to have the local inspector act. I do not think any question has ever been raised about that.

MR. HELLMUTH: Then, my Lord, in 1901, 1 Edward VII, chapter 39—I am not going to trouble your Lordship further with that Act than to say that it practically restored the Act of 1896, and left out the Separate Schools, made it only applicable to Public Schools about these continuation classes, in the Public School Act.

Then, my Lord, by an Act, 2 Edward VII, chapter 41, which was an Act to Amend the Separate School Act, there was a special provision, by subsection 1 of section 2:

10 “The Separate School Board in any municipality or section in which
 “there is no High School shall have power to establish in connection with
 “the schools over which it has jurisdiction, such courses of study in addi-
 “tion to the courses already provided for the fifth form as may be ap-
 “proved by the regulations of the Education Department. The classes
 “established under such courses shall be known as ‘Continuation Classes.’”

Your Lordship will see now, the Public School Act has its provision for continuation classes, and the Separate School Act as amended has its provision for them too; and they correspond very closely with the—that is section 2, subsection 1, my Lord.

20 The next Act dealing with the matter is an Act in 1908, 8 Edward VII,
 chapter 67, which is an Act to Amend the Public School Act of 1901. This is
 section 1, subsection 1, and it provides that:

“Subsection 1 of section 8 of The Public Schools Act is repealed and
 the following substituted therefor:

30 “(1) Subject to the regulations of the Department of Education,
 “the school corporation of any municipality or school section in which
 “there is no High School shall have power to establish and maintain in
 “connection with the Public School over which it has jurisdiction, courses
 “of study in addition to and in connection with the courses already pro-
 “vided for the fifth form of Public Schools. The classes established under
 “such courses shall be known as Continuation Schools.”

The continuation classes become Continuation Schools.

Then in the Report of the Minister of Education for 1908, at the foot of
 that page, it is headed:

“The Reorganization of Continuation Classes. The Regulations of
 “1907 (Circular No. 37) are hereby rescinded.

“Under the following regulations, which are substituted therefor,
 “the Continuation Classes, grade A, of 1907, become Continuation Schools;
 “and the Continuation Classes, grades B and C, Fifth Classes.”

In order to obtain the legislative grants, on page 282 it says:

40 “I. Minimum Requirements.

“14. A Fifth Form which complies with the following conditions shall
 “be entitled to a share of the legislative grant to Continuation Schools and
 “Fifth Classes in accordance with the following regulations:

“(1) The Fifth Class shall be situated in a municipality or school
 “section in which there is no High School.”

*In the
 Supreme
 Court of
 Ontario.*

No. 8.
 Suppliant's
 Case,
 Introducing
 Exhibits
 —continued.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

EXHIBIT 17:—Report of the Minister of Education, Province of Ontario, for the year 1908.

MR. TILLEY: Is that a regulation or a statement of the law?

MR. HELLMUTH: It is a regulation.

HIS LORDSHIP: You read it as if it was a regulation.

MR. HELLMUTH: Yes, it is a regulation. I would give a further reference in this report, Exhibit 17, my Lord, at page 292, which is headed:

“Text-books Authorized for Use in Public Schools and High and
“Continuation Schools. (Circular No. 14.)”

Then it says:

“(2) (a) Books authorized for Public Schools may be used in the
“Lower School of High and Continuation Schools and Collegiate Institutes.

“(b) Books authorized for use in the Lower School of the High School
“may be used by pupils taking the corresponding subjects of the Fifth
“Form of the Public Schools.”

HIS LORDSHIP: I do not quite get the bearing of that on your case, Mr. Hellmuth.

MR. HELLMUTH: Well, that the same books that are authorized for use in the Public Schools are books that are authorized for use in the High Schools and Collegiate Institutes; the same text-books are used in both the High Schools, authorized to be used in both High Schools and Public Schools—no distinction made in that respect, that there is a different type of book or instruction in certain classes, the higher classes of the Public School and the lower classes of the High School.

HIS LORDSHIP: They are in the same thing, aren't they?

MR. HELLMUTH: Yes, they run over the same ground. It may come in this way, my Lord: If the Continuation School of—I was going to say of to-day; certainly of that time—is really teaching subjects which are common to the Public School in one sense, they would say the higher classes in the Public School, and also teaching what is common to the lower classes in the High School, it is a Public School subject or a High School subject, one or the other. At one time it was, as I think appears, a Public School subject; it has now become something that may be a Continutaion School subject or the lower classes in the High School.

Your Lordship will see in a very short time that a Continuation School may suddenly turn itself into a High School. The object is to show that what was done in the establishment of Continuation and High Schools was to divide the original Common or Public School into different branches, the primary and secondary schools, whereas at the time of Confederation, our submission is, the Common School of that day combined in itself both the primary and the secondary schools of to-day. I am not saying by that that the teaching went as high as it does to-day, but it was then the elementary and the secondary school.

Then, my Lord, the next Act to which I direct the Court's attention is the Continuation School Act of 1909, 9 Edward VII, chapter 90. I think that may be termed the first Continuation School Act proper. That Act divides

the establishment of Continuation Schools into two distinct parts. By section 3 of the Act, it says:

"(1) Part I shall apply to all Continuation Schools heretofore established under the Public Schools Act, and in operation at the time of the passing of this Act and to Continuation Schools hereafter established under this Act, except those established by county councils as provided in Part II.

"(2) Part II shall apply to Continuation Schools hereafter established by county councils as provided in this Act.

10 "(3) Part III shall apply to all Continuation Schools to which "Parts I and II apply."

So there was now, for the first time, authorization to county councils to establish these Continuation Schools. Your Lordship will see prior to that they were established in the ordinary way by the boards of trustees of the Common Schools or Public Schools.

Then Part I, which applies to Continuation Schools established under the Public Schools Act, declares:

"Subject to the regulations, the Public School board of any municipality or school section may establish and maintain a Continuation School in connection with any Public School under its control.

20 "(2) The board shall have in respect of such Continuation School all "the powers conferred on Public School boards, as to acquiring a school "site, renting buildings and additions to existing buildings and providing "equipment for such Continuation Schools."

Then comes this provision:

"(3) Agreements may be entered into by two or more Public School boards or by one or more of such boards and one or more Separate School boards for the establishment and maintenance of a Continuation School to be conducted in one of the Public or Separate Schools under their control or in some other place agreed upon by the boards for the benefit of the pupils of all of such schools, and any such agreement shall specify the proportion of the cost,"

30 and so on.

"(6) For the purposes of subsections 1 and 2 of section 91 of The Public Schools Act a Continuation School shall be deemed a Public School."

I do not think I need trouble your lordship with what can be done by a municipal council in the way of establishing, but section 9, part III, is:

"A Continuation School shall not be established or maintained in a High School District."

40 Then, my Lord, in the Report of the Minister for the year 1909, at page 237, dealing with regulations again, the second paragraph commences:

"Courses of Study.

"7. (1) The course of study for Continuation Schools shall be that prescribed for the High Schools, of which the following subjects are obligatory on all pupils:

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

“Geography, arithmetic and mensuration, English grammar, writing, reading, English composition, English literature, history, art and elementary science.”

“8. (1) The class-rooms of the Continuation School shall be separate from those of the Public School, but the building need not be separate.

“(2) The pupils of the Continuation School shall be taught separately from the pupils of the Public School.”

“10. (1) Continuation Schools in rural Public and Separate Schools shall not share in the general or the special legislative grants to such Public and Separate Schools. 10

“(2) Continuation Schools in urban municipalities shall not share in the general or the special legislative grants to urban Public and Separate Schools.”

I might direct your Lordship's attention to page 236 in the Report of 1909, which gives special regulations for Continuation Schools, with minimum requirements, and qualifications of staffs:

“6. (1) In a grade C Continuation School; that is, one in which at least the equivalent of the time of one teacher but less than the time of two, is given the work of the Continuation School, the teacher shall hold a permanent Provincial first-class certificate.” 20

Then there is in grade B Continuation School; and:

“(3) In a grade A Continuation School, that is, one in which at least the time of three teachers is given the work of the Continuation School, the principal shall hold the qualifications of a principal of a High School, and each of his staff the qualifications of an assistant teacher in a High School.”

HIS LORDSHIP: Are you reading that because it is one of the things you complain about?

MR. HELLMUTH: I am reading that to show, my Lord, that shortly after they allowed this Continuation School to declare itself a High School, and then it passed out, it became something that was above or beyond, but was really doing the same work. 30

HIS LORDSHIP: Don't they exist now?

MR. HELLMUTH: Oh, yes, my Lord, some do.

HIS LORDSHIP: You mean some are allowed to?

MR. HELLMUTH: Some have become High Schools.

HIS LORDSHIP: I see.

EXHIBIT 18:—Report of the Minister of Education, Province of Ontario, for the year 1909.

MR. HELLMUTH: In the same exhibit, my lord, Exhibit 18, I overlooked page 264, in which the Report of the Inspector of 1909 on the Continuation School Act is; it sets out, which I won't read, about the Act, and then he says: 40

“The new Act offers a choice of three ways in which a Continuation School may be established:

“(a) The Public School Board of any municipality or school section, not already forming part of a High School district, may establish and

"maintain a Continuation School in connection with any Public School under its control. This is the simplest and least involved course of action since it gives the individual school board full power to act on its own motion and determination without reference to any other municipal body or even the voice of the ratepayers themselves."

*In the
Supreme
Court of
Ontario.*
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

Then he goes on and shows how this can be done, and what they can do in rural sections. But he is pointing out there practically what the Act, I would submit, did point out, that purely of its own motion the Public School board can create as something within its jurisdiction as Public School trustees, a
10 Continuation School.

Then at page 266, it is stated that county councils may also establish Continuation Schools by creating and constituting Continuation School districts, in which case the county council appoints part of the trustees and the local municipality the rest. It then goes on and says:

"The Continuation Schools are therefore encouraged as being a fair medium through which to offer all children some of the advantages that the High Schools extend to the few."

In the Report of the Minister of Education for the year 1910, at page 322, the present and future aims of the Continuation Schools are set out there—
20 HIS LORDSHIP: How does that affect this case? They are observations of somebody, I suppose, aren't they?

MR. HELLMUTH: It is a report to the Minister of Education, the Honourable Dr. Pyne—

HIS LORDSHIP: I dare say, but it is just somebody's observations on the Act. Observations do not help you, do they?

MR. HELLMUTH: It gives the number of pupils there, and that sort of thing, which I suppose is fact, but the comments perhaps are worth very little. The facts that they set out—

HIS LORDSHIP: Any fact that shows they are taking a right away from
30 you, yes.

MR. HELLMUTH: There is a table there, my Lord, on page 323, that shows the number of pupils through 1906, 1907, 1908, 1909 and 1910, in those Continuation Schools.

HIS LORDSHIP: I do not get the bearing of it at all.

MR. HELLMUTH: The Continuation School was, according to my submission, nothing more than a branch of the—

HIS LORDSHIP: I mean, I do not get the bearing of the evidence at all.

MR. HELLMUTH: Well, here in this it shows the pupils in the lower school, that is the lower Continuation School, in the second division, in the
40 middle school, and in the upper school, and the candidates for the Normal entrance, showing that in this Continuation School, which was a Public School, we say, these pupils were being prepared for the Normal entrance examination and doing all the work in a Public School, if a Continuation School is a Public School, that had been done in the past, and that was just at that particular time done in the High Schools; that there was no distinction between the class of work that was being done in those three schools, if I may so put it. However, I do not accept that. Your lordship will see that we are

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

being taxed for the High Schools in which the work which could be done in the Continuation and Public Schools could be done, and under our Act of 1863 we are exempt from any taxes for Common Schools.

HIS LORDSHIP: Yes, I dare say, but these documents that are going in now that we have been spending some time on now, are not helping to establish that fact, are they?

MR. HELLMUTH: Well, except, my Lord, that we are trying to show, rightly or wrongly, we are trying to show that the Continuation School, which really in a sense was apparently intended at one time to supply in the rural sections the work that was done in the High Schools in the urban sections, that Continuation School was nothing more nor less than a branch of the Public School recognized at that time by the authorities, and that there was no reason at all why we should not in our Separate School do that work, and that that work was nothing different in its higher branches from the work of the High School, so-called. 10

HIS LORDSHIP: Have you ample evidence before the Court now upon which to argue in support of that contention?

MR. HELLMUTH: Yes, my Lord; I want to finish the Acts, though.

HIS LORDSHIP: Oh, yes.

MR. HELLMUTH: I do not think it becomes very material, my Lord. 20

HIS LORDSHIP: These comments and statistics seem to me to be very irrelevant.

MR. HELLMUTH: Then, coming to the Acts, my Lord, the Continuation School Act of 1913, 3-4 George V, chapter 72—I am quite agreeable that we should take the Revised Statutes of that date, because the next year was the revision. Your Lordship will find that in the Revised Statutes of 1914, chapter 267, an Act respecting Continuation Schools. By section 3 of that Act:

“Subject to the regulations, and to the approval of the Minister the
“Public School board of any municipality or school section or a Separate
“School board may establish and maintain one Continuation School.” 30

Then that required, as your Lordship will see, the approval of the Minister in order to start a Continuation School.

HIS LORDSHIP: Yes.

MR. HELLMUTH: I do not know that there is a great deal in that Act that differs from the prior Act, because by section 6 your Lordship will see again:

“A Continuation School shall not be established or maintained in a
“municipality in which a High School is maintained or in any other part
“of a High School district.”

So that while at that date a Separate School board could establish a Continuation School in connection with its Separate School, if it was not in a High School district, yet if it was in a district in which there was a High School, which had nothing to do with the Separate School at all, it was forbidden to do it; that is to say, the very existence of a High School, which had no bearing whatever upon the Separate School, prevented the Separate School from establishing its Continuation School. 40

I might point out, my Lord, at one time it only applied to a section or municipality in which there was a High School; I mean, it becomes much more sweeping in its effect in this statute—and the one prior to it, I think, too—in which it applies now if it is in a High School district. It before only prevented the creation by a Separate School board of a Continuation School, if there was a High School in the municipality or section, but now it is in that district.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. TILLEY: Mr. Hellmuth, you do not contend that there is anything prejudicial about that unless you are entitled to do High School work in the Common Schools, do you?

10 MR. HELLMUTH: Unless we are entitled to do what is either High School or Continuation—

MR. TILLEY: Well, put it both.

MR. HELLMUTH: Yes.

MR. TILLEY: I mean, there is nothing prejudicial to the schools, if your rights with regard to High School work are as the legislation says it is to be?

MR. HELLMUTH: If you are right, that we had to obey regulations which limit us in the work that we shall do, why, we are wrong on that branch, of course.

20 I do not contend, my Lord, for one moment that if the Ontario Legislature saw fit to give us special privileges beyond such as we had by law a right to in 1867, they could not take away those special privileges. That is not what was guaranteed to us.

HIS LORDSHIP: No, I suppose not.

MR. HELLMUTH: I do not think there is any quarrel between my friend and myself with regard to that; but what I do contend is, they have very seriously taken away privileges that were.

Now, section 12 of this Act, my Lord, is:

30 “Every Continuation School which has been established under the provisions of Part II of the Continuation Schools Act, passed in the ninth year of the reign of His late Majesty, King Edward the Seventh, chaptered 90, shall be deemed to have been on and after the first day of July, 1913, and shall be a High School, and, except as hereinafter expressly provided, shall be subject to the provisions of The High Schools Act.”

I was then coming, my Lord, to the regulations which were made under that Act. I don't know whether your Lordship intended to sit much longer.

HIS LORDSHIP: Do you want me to stop?

MR. HELLMUTH: I think, if your Lordship has no objections, I would be very glad if your Lordship would stop now.

40 HIS LORDSHIP: You have had a fairly hard day, I dare say; you have been on your feet all day.

MR. HELLMUTH: Unless my friend has any objection.

MR. TILLEY: Not the slightest.

HIS LORDSHIP: Very well; until half-past ten.

—(Adjourned at 4.35 p.m., Tuesday, January 12th, 1926, until 10.30 a.m., Wednesday, January 13th, 1926.)

In the
Supreme
Court of
Ontario.

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

—On resuming at 10.30 a.m., Wednesday, January 13th, 1926:

MR. HELLMUTH: When the Court adjourned, my Lord, I was going to take up some of the regulations in regard to these Continuation Schools.

HIS LORDSHIP: The regulations of 1915?

MR. HELLMUTH: The 1914 regulations first, my Lord, and then I will come to 1915.

This is from the Regulations and Courses of Study of the Continuation Schools, Amended and Consolidated, 1914, from the Ontario Department of Education. My lord, you will see on the first page, paragraph 1, sub-paragraph 4:

“(4) Where practicable, Public and Separate School boards which “desire to establish a Continuation School should unite as provided in “section 3 (3) of *The Continuation Schools Act*. Where, however, such “union is impracticable by reason of either a Public or a Separate School “board being unable or unwilling to bear its share of the cost of establish- “ing and maintaining a Continuation School, the Minister may approve “of the establishment of a Continuation School under one of the boards; “but, in that case, the school shall be open to the children of the sup- “porters of both Public and Separate Schools on the terms provided in “section 5 (2) and (3) of *The Continuation Schools Act*, and, subject to the “Minister's decision in the case of disagreement, shall be conducted under “conditions as to staffs and accommodations that are acceptable both to “Public and to Separate School supporters.”

I might just mention, my Lord, there, that would not be a Separate School itself at all; it would not be a denominational school, as your Lordship will see later on.

Then on page 13, my Lord, which is subsection (5) of section 3, just the first paragraph there:

“(5) Except in the case of a grade C School with an assistant teacher, “the class-rooms of the Continuation Schools shall be wholly separate “from those of the Public or Separate School.”

Then on page 18, at the top of the page, section 5, subsection (1):

“5.—(1) In a grade A school the qualifications of the teachers shall “be the same as those for a High School.”

Then on page 19, section 7, subsection (4) is:

“(4) It shall be the duty of the principal:”

and the first one is:

“(a) To admit no pupil who has not been duly admitted under the “High School entrance regulations.”

Then on page 25, Regulation 15, subsection 4:

“(4) Emblems of a denominational character shall not be exhibited “in a Continuation School during regular school hours.”

Then on page 43, under the heading of “Distribution—”

HIS LORDSHIP: Does this mean even in a denominational Continuation School?

MR. HELLMUTH: In a Separate Continuation School.

HIS LORDSHIP: That is what I mean, even in a denominational Continuation School or a Separate Continuation School.

MR. HELLMUTH: Yes, it covers all Continuation Schools, either Separate or Public, as I understand it, my Lord.

Then if your Lordship will turn to page 43, your Lordship will see the first one is the general legislative grants to grade A schools.

I should, my Lord, call the Court's attention to the fact that in 1918 in the Regulations, Amendments to the Regulations of the Collegiate Institutes, High and Continuation Schools, and the Public and Separate Schools of 1918, there is substituted for that the following—I might as well get the substitution in there—as it reads there it is:

"1.—(1) (a) The general legislative grants to grade A Schools, which had three teachers before December 31st, 1909, shall, after September 1st, 1915, be distributed on the same bases as are the general grants to High Schools with the same number of teachers, in *High School Regulations* 1, 3 and 4, pp. 45-47."

Now, in the regulations of 1918, on page 11, by clause 23, this is put in:

"For regulation 1 of the Continuation School regulations, p. 43, the following is substituted:

"The general legislative grants to grade A Schools shall be distributed on the same bases as are the general legislative grants to High Schools with three teachers."

So that that has been amended in that respect. I am just giving that so that your Lordship won't have that as the one that is now or that was in force subsequently.

Then section 3, on the same page, 43, is:

"3.—(1) All sums received by a board of trustees for the maintenance of the Continuation School shall be expended on said School alone.

"(2) Continuation Schools shall not share in the general or the special legislative grants to Public and Separate Schools."

There is a note at the foot of subsection 3, applying to that section, apparently:

"NOTE.—It is not the policy of the Department to approve of the maintenance or establishment of Continuation Schools with more than two teachers. Localities able to maintain such schools should establish them under *The High Schools Act*."

Your Lordship will see, that would prevent, naturally, the Separate Schools from establishing, as they have no powers under the High Schools Act as framed at present.

On page 114 it is headed, "Senior High School Entrance Examination," and under "Admission" is:

"29.—(1) Only candidates who are in attendance at Form V of a Public or Separate School, or a Continuation School where only lower school work is taken up, shall be admitted to the senior High School entrance examination."

HIS LORDSHIP: I do not know that I understand that, quite. What is a Continuation School where only lower school work is taken up?

MR. HELLMUTH: There is lower school work and middle school work provided for in a Continuation School. I do not know that there is not upper, but at all events there are lower and middle work in a Continuation School, and the lower and middle work in a Continuation School corresponds with the lower and middle work in the High School—practically identical with it.

HIS LORDSHIP: That is to say, if a pupil is at a Continuation School where the middle work is taken up, he is ineligible for the High School? Is that what that clause means? 10

MR. HELLMUTH. As I understand it, my Lord, if in a Separate School—you see, it applies to both a Public or a Separate School or a Continuation School—if in a Separate School a pupil takes work beyond Form V he cannot under that regulation be admitted to write the senior High School entrance examination. That would prevent the Public School from going beyond Form V.

HIS LORDSHIP: The Separate School.

MR. HELLMUTH: The Separate School, yes, my Lord.

MR. TILLEY: Or Public.

MR. HELLMUTH: Oh, yes, my Lord, or Public. 20

EXHIBIT 19:—Regulations and Courses of Study of the Continuation Schools, Amended and Consolidated, Extracts from the Continuation Schools Act and other Schools Acts, 1914.

MR. HELLMUTH: Then, my Lord, in the Report of the Minister of Education for the year 1915, in Appendix B, beginning at page 21, on the first page—it is the Reports of the Inspectors of Continuation Schools, and this is a report of Inspector Mills to the Honourable Dr. Pyne. On that page, 21, he says:

“New Schools

“During 1915, one new Continuation School was opened at Delhi 30

“and one three-teacher school, Shelburne, became a High School.”

That is one Continuation School.

“Other three-teacher schools are seriously considering the advisability “of becoming High Schools.”

Then on the following page—

MR. TILLEY: My Lord, are we concerned with the specific application of something? After all, it depends upon the statute law, whether it is valid or invalid.

HIS LORDSHIP: Yes, the statute law, or the—

MR. TILLEY: Well, I am not drawing any distinction between some- 40 thing done under a statute by a regulation, or the statute; but I mean, we seem to be starting on a new line now, to take the specific application, and I had hoped we might avoid that, because it might be far-reaching to go into the specific application.

HIS LORDSHIP: What is the point there, Mr. Hellmuth?

MR. HELLMUTH: What I want to show, my Lord, is that first of all the Public School is a school which we have a right, as a Separate School, to have; that the Continuation School is a part of the Public School—I mean so far as teaching and subjects are concerned; that the Continuation School can of itself be declared a High School.

MR. TILLEY: No.

MR. HELLMUTH: Yes. Well, that is what I was going to show, that the Continuation School can be declared exactly—

10 MR. TILLEY: If my friend will pardon me—I do not want to be interrupting, because I know it is not very pleasant to have interruptions all the time—but if it can, that is under some statute or regulation under a statute; it is not because some inspector says that a school is thinking of it; that does not establish it.

HIS LORDSHIP: I do not get the bearing of the inspector's report so far.

MR. HELLMUTH: Well, my Lord, let me put it this way: I want to show as a matter of actual fact that a very large number of these Continuation Schools, without anything changed in teaching or subjects, have become High Schools.

20 HIS LORDSHIP: Well, what difference does it make whether they have or have not? The question is whether they can or cannot, isn't it?

MR. HELLMUTH: Well, I think it is this, that there is a practical illustration of the fact of these schools really in large numbers doing exactly the work, not merely doing the work of High Schools but being declared to be High Schools; what were Public Schools are declared to be High Schools to-day. I submit that the fact of that being—

MR. TILLEY: But it is controlled by statute.

HIS LORDSHIP: You gave me the statute yesterday that provides—

30 MR. TILLEY: My friend said it could be done over night; well, we will have to look at the statute to see whether it can or not. But he gave your Lordship reference to the statute; these things cannot be done except by law.

HIS LORDSHIP: No, I do not see any possible value of that report, unless it was to illustrate what the statute effected. It might be impossible or difficult for me, for instance, knowing very little about the workings of schools, to understand what the statute was saying. If I saw what was happening I might know better what the statute meant, or what it effected.

MR. TILLEY: I quite agree that in some cases where regulations are involved it is well to have a concrete instance of the application of it; but there is nothing of that kind here. Certain proceedings must be taken to have a Continuation School turned into a High School.

40 HIS LORDSHIP: Then this inspector was saying, in the part that Mr. Hellmuth read, that certain Continuation Schools have come to the conclusion that it would be a good thing to become High Schools. I do not see that that advances us very far.

MR. HELLMUTH: No, my Lord; but what I was coming to now was a distinct statement as to the actual number that year of Continuation Schools that have become High Schools.

There is another branch to that which I may mention to your lordship.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

While they were Continuation Schools the Separate School supporters were not taxed for them at all as Continuation Schools. The instant one of these schools became a High School we became liable to taxation.

HIS LORDSHIP: Quite so.

MR. HELLMUTH: Now, it is rather an important matter, it seems to me, to show that in a large number of instances we have become liable for rates imposed upon us for these Continuation Schools which have under the statute declared themselves to be High Schools.

HIS LORDSHIP: No, I do not think so. I think, as it strikes me just now, the question is not whether in some cases the supporters of Separate Schools have become liable for High School rates, but whether a statute is objectionable in that it provides machinery which may make them liable for High School rates. I think the enquiry would be unending if we took up all the school sections in the Province and enquired how the Act would work. That might be a matter for the Legislature in considering whether there was a hardship or not; I do not think it is a matter for me in considering whether the statute infringes your right. 10

MR. HELLMUTH: Your Lordship will permit me to say, we plead the very fact that we are being rendered liable as a matter of fact for taxes for these particular Continuation Schools that have been turned into High Schools, and that in that respect we are being prejudiced. 20

HIS LORDSHIP: May I interrupt? Then I suppose you go on to ask for a declaration that the attempt to make you liable for the support of the High Schools is beyond the powers of the Legislature.

MR. HELLMUTH: Yes.

HIS LORDSHIP: Well, one can decide that without knowing how many dollars you have lost in taxes.

MR. HELLMUTH: Yes, my Lord; but if the statute is being worked to our detriment, it surely is not improper that we should show—I do not mean each case, of course—but that we should show that this is not an infinitesimal matter that may possibly do us harm, but that it has been of very serious effect in a great number of cases. I submit, to your Lordship—of course, whatever your Lordship's ruling may be— 30

HIS LORDSHIP: Is that the only one of the reports that you have on that?

MR. HELLMUTH: That is the only reference that I have on that subject.

HIS LORDSHIP: If it is the only one, perhaps it won't do much harm to mark that, subject to the objection.

MR. HELLMUTH: On page 22 it says:

“The Multiplication of High Schools

“There are in the Province one hundred and thirty-three Continuation Schools classified as follows: 40

“Grade A, four; Grade B, eighty-nine; Grade C, having the full time of one teacher and at least half the time of a second teacher, twelve; and “Grade C, having the full time of one teacher, twenty-eight. Since the “midsummer of 1913, thirteen Continuation Schools have become High Schools and it is expected that several others will become High Schools

“during the coming year. Besides these there are more than twenty
 “Continuation Schools having an attendance of from about fifty-five to
 “seventy-five pupils. The attendance in most cases has increased rapidly
 “during the past two years as is shown by the large attendance in Forms
 “I and II as compared with the attendance in Form III. Next year when
 “the present large Form II reaches Form III and another large class
 “enters Form I it will be imperative in several cases to increase the
 “accommodation and engage an additional teacher. As under present
 “conditions High Schools having three teachers have certain advantages
 10 “over Continuation Schools with three teachers, these schools will un-
 “doubtedly in the near future seek to become High Schools. Such a
 “process simply tends to increase the number of High Schools.”

*In the
 Supreme
 Court of
 Ontario.*
 No. 8.
 Suppliant's
 Case,
 Introducing
 Exhibits
 —continued

EXHIBIT 20:—Report of the Minister of Education, Province of Ontario,
 for the year 1915.

MR. HELLMUTH: Then, my Lord, I have here correspondence with the
 Deputy Minister of Education refusing to permit the establishment of a
 Continuation School by a Separate School, 1915. It deals with the Roman
 Catholic Separate School Board of Dublin, Ontario.

MR. TILLEY: I must object to that.

20 HIS LORDSHIP: Oh, I think that is getting—

MR. HELLMUTH: And the application of the regulation by the Deputy
 Minister to this particular school.

HIS LORDSHIP: Well, one can assume that if there is the regulation it
 will be applied when a case arises, I suppose.

MR. HELLMUTH: I submit that particular instance as one which makes
 quite clear how and in what way the Separate School Board was refused to
 permit the courses of study that would be followed beyond the fifth form in
 what the Legislature now term a Continuation School, but which, of course,
 we submit, could have been followed by us irrespective of any Continuation
 30 School. It shows, at all events, that that class of study was forbidden by the
 Department, the Deputy Minister; and I submit on that branch alone to show
 that there has been an attempt to deprive us of the right to carry on classes is
 material in this case.

HIS LORDSHIP: I do not think you need exhibits for that purpose.

MR. HELLMUTH: Then, my Lord, I just tender that.

HIS LORDSHIP: Yes. Well, I think I won't admit that, if the objection
 is pressed.

MR. TILLEY: Yes.

MR. HELLMUTH: The first letter, just so that it may be identified—

40 MR. TILLEY: Well, there is no identification unless it is marked for
 identification. I understand the correspondence is rejected.

HIS LORDSHIP: Correspondence tendered for that purpose, yes.

MR. HELLMUTH: Any and all correspondence?

HIS LORDSHIP: For that purpose; I will deal with any other purpose
 when it arises—for that purpose.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. HELLMUTH: Your Lordship has the two purposes for which I have offered this? First of all, to show that there was a refusal to allow a Continuation School; and, secondly, that it was a refusal to allow us in our schools to teach those subjects so far as any grant was concerned from the Government.

HIS LORDSHIP: Yes.

MR. TILLEY: That is, no grant would be paid if you taught.

MR. HELLMUTH: No grant.

MR. TILLEY: No additional grant.

MR. HELLMUTH: And perhaps a further ground, that our Continuation School would not be one that would be acceptable to the—

MR. TILLEY: My friend will pardon me—the grounds upon which he is tendering, not the discussion of what he thinks of the merits of the particular case. I do not know upon what ground he is tendering it.

MR. HELLMUTH: No, I am talking of the grounds taken by the Minister in refusing.

MR. TILLEY: Well, I object to that. It is the very point that is ruled out, as I understand it.

HIS LORDSHIP: I do not think there is any ambiguity in the ruling. My idea is that if the statute prevents, or authorizes the Minister to prevent, the establishment of a Continuation School by a Separate School board under any particular circumstances, and the statute is objectionable as infringing on section 93 of the British North America Act, you can get that declaration, but that we are not going to be helped here by proof of ministerial acts in enforcing the statute.

MR. HELLMUTH: Then, my Lord, I wanted to show further that it was conceded by the Department in this correspondence that we had been teaching in our schools work beyond that of the Lower School in the Continuation Classes, and beyond the Lower School in the Continuation Classes and High Schools, beyond the fifth form work.

HIS LORDSHIP: I do not see the relevancy of it.

MR. HELLMUTH: We have stated that we were teaching that, beyond that, in our pleadings, and that we have been teaching it for a period of I don't know how many years, but a great many years; that is denied.

HIS LORDSHIP: I do not think it matters what you were teaching after 1867.

MR. HELLMUTH: Then, my Lord, I would tender the correspondence in relation to another Separate School, that of Genevis—it will follow from your Lordship's ruling that it is on the same basis, but I just want to submit it—that of Genevis with the Deputy Minister. It is a correspondence between the Deputy Minister of Education and the Separate School Section Number Ten, Lancaster, in the County of Glengarry—that is known, I think, as the Genevis section. I desire to put before your Lordship the fact that in that matter there is a reference to our not being able to get any grant or any part of any grant if we teach these Separate Schools.

HIS LORDSHIP: Well, it is the statute, not the opinion of the Minister, that affects your right to the grant, or what is in question in this proceeding.

MR. HELLMUTH: Then there is only one other, and that is in reference

to the Eganville Continuation School. I also tender that, the reports and correspondence.

HIS LORDSHIP: It is the same thing, is it?

MR. HELLMUTH: Yes, my Lord. Just in reference to the correspondence in regard to the Glenevis case, I am desirous of showing, my Lord—I do not know, perhaps, that I can show in any other way that there was a denial of allowing such pupils as had gone in the Separate School to beyond the fifth form to present themselves for the Normal Entrance, Normal School Entrance examination, the Normal Entrance examination. I do not know that I can
10 show it anywhere else, but that is what has been the ruling of the Department.

HIS LORDSHIP: I do not think it matters what the Department rules.

MR. HELLMUTH: My Lord, I want to put before the Court the courses of study and examination of the High Schools, Collegiate Institutes and Continuation Schools in the pamphlet from the Ontario Department of Education of 1922, at page 7.

MR. TILLEY: My friend is asking me for an extra copy. I have them for 1924, but not for 1922, but I am told they are the same. If we find there is anything material—

MR. HELLMUTH: Oh, yes. What I want to put in is 1922; I do not know
20 whether the paging is the same.

HIS LORDSHIP: I will find it if you give it to me.

MR. HELLMUTH: My Lord, I am going to refer to 1922; that was the year that we made our claim.

HIS LORDSHIP: Well, what is the number?

MR. HELLMUTH: It is the year 1922, and it is on page 7, and the heading is:

“High School Course of Study”

“Scope of the Course.”

Your Lordship spoke about the different grades.

30 HIS LORDSHIP: Yes.

MR. HELLMUTH: “The High School course of study, detailed below, is “designed to be a continuous and progressive course of five years. It “comprehends a Lower School course of two years, followed by a Middle “School course of two years, and an Upper School course of one year. “From the syllabus prescribed may be planned suitable courses for the “needs of those pupils who desire to be admitted to the Normal Schools “or to the Universities, or of those who wish to prepare for a business “career, or of those who, not having such courses in view, desire merely to “secure a general education.”

40 It is the same, my Lord—you have 1924 before you.

HIS LORDSHIP: Yes, the words are the same.

MR. HELLMUTH: I thought it was. Then your Lordship will see, “Subjects of Study,” and then comes “Lower School Subjects (a two years’ course)” Section 1, subsections 1 and 2 are the subjects or options. That, I think is the same.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

On the next page in this, which is page 8, come the Middle School subjects. I am not reading them to your lordship, but I am putting them in so that they can be referred to. Then there is "A Two Years' Course," and they are set out under section 2, subsections 1 and 2, with its subsection. The Upper School subjects are on the same page here, "A One Year's Course," and they are set out there under section 3.

Your lordship will see that on page 10 of the 1924, section 8—I am trying to follow in the 1924—

HIS LORDSHIP: The paging is the same; everything seems to be the same.

MR. HELLMUTH: Then your lordship will see on page 10:

"8. (1) (a) Every High School shall be opened with the reading of "the Scriptures and the repeating of the Lord's Prayer and shall be "closed with the Lord's Prayer or the prayers authorized by the Depart- "ment of Education; but no pupil shall be required to take part in any "religious exercises objected to by his parent or guardian."

Then on page 11:

"(4) Emblems of a denominational character shall not be exhibited "in a High School during regular school hours."

"Perhaps I should read (2), and possibly refer to (3):

"(2) (a) The Scriptures shall be read daily and systematically; the "parts to be read may be taken from the book of selections adopted by "the Department for that purpose, or from the Bible, or from the list of "the Selected Scripture Readings of the International Bible Reading "Association, as the Board by resolution may direct.

"(b) A Board may also order the reading of such parts by both "pupils and teachers at the closing of the school, the repeating of the Ten "Commandments at least once a week, and the memorization of passages "selected by the principal from the Bible.

"(c) If the Board does not pass the resolution provided for in (a) "above, the principal shall make the selection himself, and shall promptly "notify the Board of his action. Such action may be revised by the "Board at any time thereafter."

Then, my Lord, without attempting to read it, if your Lordship will look at page 14 and the following pages, you will see the details of the subjects of study, starting with Lower School subjects, and running through practically, as far as I can see, to page 72. It gives the details in both the Lower, Middle and the Upper School work. It is to page 72; I am not dealing with the examinations there, but just the subjects. It gives to and including part of page 72.

I can substitute, my Lord, for the 1922, the 1924.

Then on page 77 of this, 1924—the paging is different from 1922 there; it is page 93 in 1922—the requirements for admission to the Normal School.

HIS LORDSHIP: This one does not go up as far as 90.

MR. HELLMUTH: I say in the 1922 it is page 93, but in the 1924 it is page 77. I cannot see any difference in it, so it does not make any difference which one goes in. There is the Requirements for Admission. I am putting that in,

10

20

30

40

my Lord, because I think it will be apparent that it is impossible in the Separate Schools to obtain those requirements.

HIS LORDSHIP: You say it would be impossible?

MR. HELLMUTH: It would be impossible through the Separate Schools. As the courses are limited now, we could not obtain admission to the Normal School from our school.

Then the Requirements for Matriculation, on page 78. The same would apply to our not being able from the Separate Schools to obtain matriculation. Your lordship has a copy of 1924?

10 HIS LORDSHIP: I have 1924 here, yes.

MR. HELLMUTH: Well, that might be perhaps marked.

EXHIBIT 21:—Courses of Study and Examinations of the High Schools, Collegiate Institutes and Continuation Schools, Revised, 1924.

MR. HELLMUTH: Then, my Lord, I want to refer to and put in the Regulations of the High Schools and Collegiate Institutes, with Appendices, Legislative Grants, Requirements and Grading of Accommodations, Extracts from the High Schools Act, 1922. On page 8 of that—the paging is at the bottom, as your Lordship will see—towards the foot of page 8 you will see:

“High School Teachers’ Certificates

“Grades of Certificates

20

“6. The following grades of certificates qualify the holders for teaching in the Provincial High Schools and Collegiate Institutes.”

Then I turn to page 9:

“Requirements for High School Teachers’ Certificates.

“7. The requirements for the above grades of certificates are as follows:

“(1) For an interim ordinary High School assistants’ certificate:

“(i) A certificate of graduation as Bachelor or Master of Arts, Bachelor or Master of Science, Bachelor of Commerce, Bachelor of Agriculture, or Bachelor of Applied Science, from a British University, after a regular university course approved by the Minister of Education as to entrance requirements and as to content of undergraduate courses.

30

“(ii) The completion of the professional course of training for High School assistants’ certificates at the Ontario College of Education.”

That is what is required for the High School assistant’s certificate. What we say is, we cannot get these at all under our Separate School training; we have got to go beyond our schools and outside of them to prepare for this.

HIS LORDSHIP: Well, do you?

40 MR. HELLMUTH: Well, what your Lordship will see was that at the time of Confederation we could prepare in our schools for the examinations for the county boards who examined then and qualified teachers.

HIS LORDSHIP: Well, you can do it now in one of your Continuation Schools, can’t you?

MR. HELLMUTH: No, my Lord.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant’s
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*
—
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

HIS LORDSHIP: This is for a permanent—

MR. HELLMUTH: For a permanent High School assistant's certificate—
an interim ordinary High School assistant's certificate, two years' successful
teaching in an Ontario High or Continuation School. We cannot have a
Continuation School in any place in which there is a High School district, and
if it is a combination one it has got to be acceptable to both. It says:

“(ii) Two years' successful teaching in an Ontario High or Continua-
“tion School or Collegiate Institute, duly certified on an official form by
“the inspector or inspectors concerned.

“(3) For an interim High School specialist's certificate: 10

“(i) Academic standing approved by the Minister of Education
“in the course in which he is an applicant for a specialist's certificate.

“(ii) The completion of the professional course of training at the
“Ontario College of Education”—

which we cannot enter in that way—

“in the specialists' course in which he is an applicant for a certificate.

“(iii) An interim ordinary High School assistant's certificate.

“(4) For a permanent High School specialist's certificate.

“(i) An interim High School specialist's certificate.

“(ii) Two years' successful teaching experience as a High School 20
“specialist, duly certified on an official form by the inspector or inspectors
“concerned.”

On page 25, my Lord, in appendix B, section 1, (b) and (c), and I am
specially referring to (c) (i):

“(c) (i) Subject to the regulations below, and on the report of the
“inspectors concerned, the rest of the accommodations, in the case of a
“High School with not more than three teachers, may be used jointly with
“the Public School, and in the case of a High School with four teachers,
“may also be used jointly with the Public School, but only for exceptional
“reasons satisfactory to the Minister. 30

HIS LORDSHIP: What is the point of that?

MR. HELLMUTH: Well, my Lord, our contention will be that after Con-
federation the Common School of that day was divided into two or perhaps
more divisions—two at least; that is, the elementary part of the Common
School was styled a Public School; the secondary part of the Common School
was termed a High School; and so the High School and the Public School are
simply two divisions of the old Common School. They run together in this
regulation.

HIS LORDSHIP: Is the regulation put in as something that is objected
to, or for the purpose— 40

MR. HELLMUTH: No, just merely to show—of course, if the Public
School of to-day is within, as we admit it is, within the purpose and purview
of the Legislature, they can divide it into as many kinds as they like; they can
make High Schools and Public Schools and Collegiate Institutes; but they
cannot interfere with us at all; we may go on in the Separate School, our con-
tention is, to the same subjects and the same courses as are taken up in the
High Schools. But this is an indication, I submit, that the two are really in a

sense not divorced from one another, but are part of the same system of the Common Schools—High School and Public School part of one system of education for the masses, for the general public, and not, as we contend, a separate entity altogether, divorced from and having no connection with what was the Common School system.

EXHIBIT 22:—Regulations of the High Schools and Collegiate Institutes, with Appendices—Legislative Grants, Requirements and Grading of Accommodations, Extracts from the High Schools Act.

MR. HELLMUTH: I want to put in now, my Lord, the curriculum for the
10 High School of 1873, after the Act of 1871; it is based on the Act of 1871, and it appears in the Journal of Education for Ontario for the year 1873, at pages 108 and 109. Those pages show the curriculum, giving the first form curriculum, the second form, the third form, and the fourth form in the High School as established under the Act of 1871.

HIS LORDSHIP: What is that for?

MR. HELLMUTH: Well, my Lord, I am going to compare it with the curriculum in that Appendix H for the Separate School in 1863. This is the only copy I have got; I would like to be able to take it out during the course of the trial.

20 EXHIBIT 23:—Journal of Education for Ontario, Volume XXVI, for the year 1873.

HIS LORDSHIP: You said this was for comparison with the Separate School—

MR. HELLMUTH: I wanted to use it in comparison with what your lordship had before you yesterday, appendix H to the Separate School subjects, or the subjects applicable to Separate Schools set out in that appendix H.

HIS LORDSHIP: Appendix H is what year?

MR. HELLMUTH: 1863.

MR. TILLEY: From 1858 on.

30 MR. HELLMUTH: Yes; in effect I think it is 1867; I do not think there is any change at all there—the same thing in 1867.

HIS LORDSHIP: But where do I get it? What exhibit?

MR. HELLMUTH: It went in in an exhibit that my friend, Mr. Tilley, added to an exhibit that I put in, I think.

MR. TILLEY: Your Lordship will find it set out in a report for 1858.

MR. HELLMUTH: Part of Exhibit 5, my Lord.

40 MR. TILLEY: Your Lordship made a note—it is a report of 1858, at page 135, and then in a Separate School pamphlet of laws and regulations that was produced, your Lordship took a copy of the title page of it. It was not marked as an exhibit. I think probably I had better have a copy made of that page and marked as an exhibit; but what follows the heading is the same as what was in the report of 1858 which was marked just before. If my friend agrees, I will have a copy of the page made just as it is, with the title page, and then it can be filed as an exhibit.

*In the
Supreme
Court of
Ontario.*

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. HELLMUTH: That would be very satisfactory. It might be Exhibit 5-A, and then it will be close to it.

MR. TILLEY: Yes.

MR. HELLMUTH: Yes, because it came in in that order.

EXHIBIT 5-A:—The Law of 1863 relating to Roman Catholic Separate Schools in Upper Canada, together with extracts from the Common School Acts, Departmental Regulations, etc., affecting the Roman Catholic Separate Schools, arranged with notes and references.—Appendix H.

MR. HELLMUTH: My Lord, in the Journal of Education for 1861 there is an official statement by the Chief Superintendent—that was Dr. Ryerson— 10
to the local school authorities in Upper Canada, in which he speaks of the duties of the trustees of the Public Schools—they were Common Schools at that day; I have very often used the word "Public" when I should have said "Common," and perhaps I have used the word "Common" when I should have said "Public," but your lordship appreciates—

MR. TILLEY: It means the same.

MR. HELLMUTH: It has now come to mean the same, except, as I say, that they now call the High School—we say the High School is only a branch of the Common School, but "Public School" usually meant—

MR. TILLEY: That is a 1926 change. 20

MR. HELLMUTH: Oh, no, my friend cannot move it as far forward as that. I am offering this, my Lord, as showing the scope at the time, the duty of trustees.

MR. TILLEY: I must object once more to that. This is in the year 1861, with relation to Public School trustees, and it is the Superintendent's view; it may be the right view or it may be the wrong view, but we have the statute and the Separate School Act of 1863 operated on the statute, not on some article in the Journal, and when the Act of 1863 describes the powers and duties of Separate School trustees by reference to the duties of Public School trustees, 30
surely we must go to the statute for them.

HIS LORDSHIP: I should think so. I did not quite grasp what it was that Mr. Hellmuth was tendering.

MR. HELLMUTH: Well, my Lord, surely—

HIS LORDSHIP: I have not got it before me. I did not quite grasp what it was that you were tendering.

MR. HELLMUTH: What I wanted to show was—

HIS LORDSHIP: No, not what you wanted to show; tell me what the document is, please.

MR. HELLMUTH: The document is from the Journal of Education, the official statement by the Chief Superintendent in regard to what are the duties 40
of trustees in regard to the schools. I want to show that at that date—and it followed right on from then, because there had been no change after 1867 in regard to the position of Common School trustees, in regard to their duties—what was the view of the Chief Superintendent at that time as to the functions of the trustees, and what was his view as to the scope of the Common School, is surely good evidence as to what that Common School was, not only in his

opinion, but what it was directed to do. I submit we could if we wanted to find what the Common School—if Mr Ryerson were alive, we could put him in the box and ask him what was the Common School of that day doing, I submit; what its scope would be at that time would be proper evidence. Now we get his official direction to the trustees of Common Schools of that day, in regard to their duties, and I submit that that is good evidence as to the position that the Chief Superintendent of Education in Upper Canada, and authorized by statute to give his instructions, at all events, and to decide on these matters, what he had established or what he thought he had established as the Common

10 Schools of that day and their duties. I submit, my Lord, that we cannot get these men here to-day. It is on page 26 that I want to make just one reference.

HIS LORDSHIP: I should be inclined to take that, subject to the objection.

MR. HELLMUTH: It is just at the top of the left hand column of page 26; he says:

“Right of pupils to attend schools:

“It is the duty of the trustees to admit and the duty of the teacher “to teach all residents, whether servants or children, of the section between “five and twenty-one years of age.”

MR. TILLEY: That is in the Act.

20 HIS LORDSHIP: Yes: that is not what I thought you were going to put in.

MR. TILLEY: He is right that time; I don't know how many times he was wrong.

HIS LORDSHIP: I thought you were going to give me something bearing on this question of what they were to teach.

MR. HELLMUTH: Well, can't that be put in without my parting with my volume? I have read it.

MR. TILLEY: It is on the notes.

30 HIS LORDSHIP: The reporter has taken down what you have said. What is it, again? That it is the duty of the teacher to teach everybody under twenty-one?

MR. HELLMUTH: “It is the duty of the trustees to admit and the duty “of the teacher to teach all residents, whether servants or children, of “the section between five and twenty-one years of age.”

MR. TILLEY: In the next paragraph he goes on to say they need not teach non-residents.

MR. HELLMUTH: No.

40 MR. TILLEY: That is the point, drawing a distinction between residents and non-residents. He says if you teach non-residents you ought to be paid extra, because the trustees only pay you to teach residents—try to get some more money out of them. It is very good advice.

MR. HELLMUTH: Then, my Lord, in the Journal of Education for the year 1868, there are references by Dr. Ryerson to the proposed High School in Kingston and to the—

MR. TILLEY: What page is that?

MR. HELLMUTH: Page 55, and on the next page, 56, to the proposed Central High School for Guelph, and references—

*In the
Supreme
Court of
Ontario.*
—
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. TILLEY: My Lord, I must object to this sort of material going in. These are extracts printed in this, no doubt, very valuable paper of the day, and the first my friend refers to is an article quoted from the *Chronicle and News of Kingston*, and the second is an article from the *Guelph Herald*. Now, there is comment on them; they are just produced here, nothing to do with—

HIS LORDSHIP: What is the point of such things, Mr. Hellmuth? How do they help on this case?

MR. HELLMUTH: I will try to make my reason for this, whether rightly or wrongly, clear to your Lordship. The Common School boards of Kingston were establishing a High School or Central School such as had been established, as pointed out, in other places—Hamilton, London—and the Common School board at Guelph were doing the same thing at that time. The nomenclature does not make any difference at all, but they were establishing as Common School trustees a secondary school, if one may call it so. They were having the primary or ward schools, and they were establishing as part of the Common School system a High or Central School, so that the pupils who would go to the Ward Schools for the more elementary education would have to, when they got to a certain stage, walk past those Ward Schools to the Central or High School for the further education under the Common School Board Act. 10

Now, my submission is that immediately, just at the time, practically, of Confederation—prior to that it had been done in other places—immediately as Confederation came into effect it was being done in Kingston, and was proposed and carried out eventually in Guelph. I submit that that is valuable evidence to show that the power, the right, of the Common School trustees was not limited to a primary School, but that they had the right to make any kind of graded schools, that is, primary schools and secondary schools, using that expression; so that they could make either a High School or a Central School in which the more advanced subjects would be taught. My contention would be this, my Lord, that while that was true in the urban municipalities, while they could have different actual schools in the urban municipalities, that is, Ward Schools, as I put it, and a Central School, in the rural municipality they could not have separate schools, but they could have those gradations of study in the one building. 30

HIS LORDSHIP: Yes.

MR. HELLMUTH: Now, it seems to me, with great respect, it is somewhat material to show that that is not a mere theoretical idea that they could do it, but that they were in effect, without any let or hindrance, encouraged to go on. I say they had the right to do it, of course, under the statute with regard to the kind and description of schools, the urban trustees of Common Schools had the right and the trustees of rural schools had no limitation in regard to subjects; that is my contention, although they could not, from practical reasons, in a rural section, have more than one school, could not afford it. 40

HIS LORDSHIP: That is almost re-stating the statute, isn't it?

MR. HELLMUTH: But it may be said, was this ever done?

HIS LORDSHIP: Are you not prepared to admit that what the statute authorized was done?

MR. TILLEY: I assume that the statutes were all taken advantage of at the time.

HIS LORDSHIP: Isn't that all you want, Mr. Hellmuth?

MR. HELLMUTH: No, because my friend will say the statute never authorized that.

MR. TILLEY: Well, if it did not, I would still have the argument, I hope

HIS LORDSHIP: Well, even if the statute did not authorize it, how could you be advanced by proving that it was done?

MR. HELLMUTH: Because I would be able to show what was in fact the
10 Common School of the day of Confederation, I would be able to give an interpretation to the language used in the statute of what a Common School was; that is my submission. It may be difficult to give a definition, unless we have a practical illustration of what the Common School of that day was.

MR. TILLEY: My learned friend, I submit, is not adding anything at all to what we have already. There was quite an agitation prior to this date about combining schools in a city, and then there was a question raised later whether Separate Schools could do the same thing. There is no doubt in those days they were having a Central School for Common School purposes where those that could walk further to the local school did walk further, and were in
20 a little higher grade, but they were all Common Schools, doing Common School work. This article does not suggest anything to the contrary. They are called the High School or the Central School merely because they are a Central School for the higher pupils; that is, practically, those that could walk further, the little tots that had to go to the local school—it is a system of getting a better graded school for Common School purposes in the centre of the town or the city, and that was being encouraged, and it was within the Act—no one is suggesting it was not—and I assume it was done, and I do not care what you call it—you could go to the Ward School or you could go to the Central School—I do not care whether you call it Central or
30 High; it was part of the Common School system.

HIS LORDSHIP: Isn't the document that Mr. Hellmuth is tendering something of the class that I said yesterday I would take within limits?

MR. TILLEY: Well, we are getting now to—I do not know whether this article did appear in the *Chronicle and News*, as the second paper, the copy of it, says it did.

HIS LORDSHIP: The paper in which the copy is is a departmental publication, isn't it?

MR. TILLEY: Well, the expense of printing it was borne by the Government; it was a matter that was set on foot first, I think, by Dr. Ryerson or Mr.
40 Hodgins, without any aid, but later on was no doubt made official; but these like all papers of that kind—educational journals—it contains some things that are official, some things that are merely clippings from newspapers, and what would be a good thing for people to have—

HIS LORDSHIP: Of course, I have not—

MR. TILLEY: I am willing that your Lordship should look at it.

HIS LORDSHIP: Isn't it a mere statement of what is being done in these two municipalities?

In the
Supreme
Court of
Ontario.
No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. TILLEY: If your Lordship will look at it, you can see.

MR. HELLMUTH: The first part has nothing to do with the paper. Then they quote the paper—papers on education in Ontario.

HIS LORDSHIP: I think that can go in subject to the objection. It is just an editorial on what is reported in the newspapers to be the fact. I do not see any harm in that.

MR. HELLMUTH: May I read that, my Lord?

HIS LORDSHIP: Yes.

MR. HELLMUTH: On page 55.

"1. Proposed High School in Kingston.

10

"We are happy to notice a movement in the right direction which "has just taken place at Kingston. The Board of Trustees, acting upon "their own experience and judgment aided by the suggestions contained "in the Chief Superintendent's report, propose to establish a High School "in that city. Three out of the four cities in this province have thus "adopted the principle of a gradation of Schools. Hamilton was the "first to act upon it; then London, and now Kingston. The proceedings "of the Kingston Board in this respect (as quoted in the *Chronicle and "News*) are as follows:

" "The Committee on teachers, officers and salaries received applica- 20
"tions from parties for the situation of head female teacher of Queen
"Street school. Before taking any action or making any selection from
"the candidates, the committee had before them, to assist them, in their
"deliberations, the last report of the Chief Superintendent of Education,
"and after a careful and anxious consideration of the strong recommen-
"dations therein contained, to secure advanced pupils of the Common
"Schools, especially girls, a higher class of education, resolved to invite the
"School Committee to meet with them to consider the subject. In
"accordance with this resolution, both committees accordingly met.
"Seriously viewing the importance of the proposed measure, your com- 30
"mittee gave careful consideration to the arguments adduced by the
"Superintendent, as emanating from such a source they were justly
"entitled to. They also availed themselves of the oral communications
"made to the chairman by the Rev. Mr. Young, Inspector of Grammar
"Schools during a recent visit to Kingston, in which he earnestly recom-
"mended that some arrangement should be made to secure a higher class
"of education to advanced pupils in the Common Schools, both male and
"female, but especially the latter. On a careful perusal of the Chief
"Superintendent's report, it appears clear to your committee that the
"union school system, by means of which it was intended to secure a 40
"higher class of education' "—

the union school system was the union of a Grammar and a Common School—"for advanced female pupils, has proved a failure. After giving an "account of the unsatisfactory manner in which the union school system "worked, the Chief Superintendent says: "Will any man say that this "state of things is satisfactory, a state in which the Common Schools are "degraded by being suspended from the exercise of their higher functions.

10 "Unless I misunderstand the object of the Common School law, the
 "Common Schools are designed to furnish a good English and general
 "education to those deserving it." Then again he adds: "I have such a
 "sense of the importance of maintaining a high standard of education in
 "the Common Schools," he would submit to great sacrifices to secure it.
 "The views thus expressed in this able report, in favour of securing a
 "higher class of education for male and female pupils in our Common
 "Schools, of course, had their due weight with your committees, enhanced
 "as they were, by the belief, that such an arrangement will meet with the
 20 "approval of our citizens. With a view, therefore, to carry it out, your
 "committee recommend that in the meantime, no change should be made
 "in the staff of the Queen Street School.' They also recommend that
 "Johnston Street School be constituted by the Board the *Head or High*
 "*School* of this city; that all pupils, both male and female, receiving their
 "education in other schools under the Board, after having passed an
 "examination (the subjects to be prescribed by the local superintendent)
 "shall be transferred by the local superintendent to the head department
 "of Johnston Street School, and that this resolution of the Board shall
 40 "take effect after the summer vacation; in the meantime that steps be
 "taken to secure the services of an experienced first-class female teacher
 "of higher standing for the High School."

Then the next is:

"2. Proposed Central High School for Guelph.

"We are happy to see that the Board of School Trustees for Guelph
 "are also fully alive to the necessity of a Central High School, for the more
 "thorough and efficient instruction of the youth of that important town.
 "We have often noticed in the local papers the zeal and efficiency of the
 30 "members of this Board in the discharge of their onerous duties, and we
 "hope they will not delay the establishment of a good Central High
 "School as now contemplated. The following are the proceedings of the
 "Board on this subject:
 " 'Your Committee recommend that next year an extension should
 "be made to this building of such a nature as will admit of a better classi-
 "fication of pupils and the initiation of the system of the Central School
 "character, which your committee feel satisfied is necessary for the
 "efficient working of a Common School system in towns like Guelph.
 "An additional teacher in the higher English branches will then be in-
 40 "dispensable, and should be provided. Your committee think that during
 "this year plans and specifications should be prepared for this extension,
 "believing that teachers could be procured on more advantageous terms
 "than by delaying until the busy building season has begun. Some of the
 "Ward Schools may continue as feeders, so to speak, for the Central
 "School connected with which a Grammar School department might be
 "conjoined for the sake of greater convenience to the pupils of the town,
 "the present site being too remote from the centre of the same.' The
 "report was adopted."

*In the
Supreme
Court of
Ontario.*

EXHIBIT 24:—Journal of Education for Ontario, Vol. XXI, for the year 1868.

No. 8.
Suppliant's
Case,
Introducing
Exhibits
—continued.

MR. HELLMUTH: Then, my Lord, at page 18 of the Schedule to the Petition, your Lordship will find the High School Act. Now, so far as that Act is concerned, we claim it has no application to Separate Schools or Separate School supporters, except where it authorizes a levy upon the property of Separate School supporters to sustain the High School. That is objected to.

HIS LORDSHIP: I beg your pardon; you say what?

MR. HELLMUTH: We say that the High School Act can have no application to Separate School supporters, and that where it attempts to impose taxation for its support upon the Separate School supporters, it is going beyond the power of the Legislature. 10

I think, my Lord, that is all the evidence.

MR. TILLEY: I understand my friend goes a little beyond that. I understand my friend also claims—I would like to know whether he does—that scholars doing in his schools what would be High School work would be counted on the average attendance argument that he makes.

MR. HELLMUTH: Oh, yes.

MR. TILLEY: Not only that they refuse to pay, but he suggests that the pupils, if there were any, in his school doing High School work, that they would come under the rule that they should be counted in average attendance under the main argument he makes. 20

MR. HELLMUTH: I am not attempting to argue the case at all at the moment. I am only suggesting that we do object to any attempt to tax us for High School purposes.

HIS LORDSHIP: Then is there any evidence that you want to get in, Mr. Tilley?

MR. TILLEY: Well, my Lord, there are some documents that I desire to put in—

MR. HELLMUTH: May I interrupt one moment? My Lord, there are several statutes, particularly those showing the grants from time to time, that of course I do not have to put in. The grants are there. I shall have to refer to them at another stage, but as far as documentary evidence or evidence at all is concerned, I have submitted my case. 30

No. 9.
Respondent's
Case,
Reference to
Statutes.

MR. TILLEY: My Lord, there are some documents that I should put in, and in order that your Lordship will see the place they take, possibly I should refer to one or two statutes that my friend has not referred to yet, so that your Lordship will be able to follow it better as we go along.

The first statute is a statute passed in 1849, but assented in 1850, in the month of May. I point that out, because it was an Act that was brought into effect just before the Common School Act of 1850. I think your Lordship will find that the assent was given to this Act of 12 Victoria, chapter 200, on the 27th of May, and the Common School Act was passed in June following. The Act, 12 Victoria, chapter 200, became in the Consolidated Statutes— 40

MR. HELLMUTH: Of Upper Canada?

MR. TILLEY: Of Canada, chapter 26. May I just refer to one or two provisions of 12 Victoria, chapter 200? It says:

"Whereas it is desirable that an annual sum of one hundred thousand pounds"—

HIS LORDSHIP: What chapter of the Consolidated Statutes of Canada?

MR. TILLEY: 26. This Act was assented to on the 27th of May, 1850; the 12 Victoria, chapter 200, and it was passed by the Legislature of Canada on the 30th of May, 1849, so that there was a year between the time it was passed and the time it was assented to. It says:

"Whereas it is desirable that an annual sum of one hundred thousand pounds should be raised from the public lands of this Province, for the maintenance and support of Common Schools therein, and that so much of the first moneys to be raised by the sale of such lands as shall be sufficient to create a capital which shall produce the annual sum of one hundred thousand pounds at the rate of six per cent. per annum, should be set apart for that purpose: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice,"

and so on,

20 "And it is hereby enacted by the authority of the same, that all moneys that shall arise from the sale of any of the public lands of the Province, shall be set apart for the purpose of creating a capital which shall be sufficient to produce a clear sum of one hundred thousand pounds per annum, which said capital and the income to be derived therefrom shall form a public fund to be called the Common School Fund.

30 "II. And be it enacted, that the capital of the said Fund shall from time to time be invested . . . for the purpose of creating such annual income; which said Fund and the income thereof shall not be alienated for any other purpose whatever, but shall be and remain a perpetual Fund for the support of Common Schools, and the establishment of township and parish libraries.

40 "III. And be it enacted, that the Commissioner of Crown lands under the direction of the Governor in Council, shall set apart and appropriate one million acres of such public lands, in such part or parts of the Province as he may deem expedient, and dispose thereof on such terms and conditions as may by the Governor in Council be approved, and the money arising from the sale thereof shall be invested and applied towards creating the said Common School Fund: Provided always, that before any appropriation of the moneys from the sale of such lands shall be made, all charges thereon for the management or sale thereof, together with all Indian annuities charged upon and payable thereout, shall be first paid and satisfied.

"IV. And be it enacted, that so soon as a net annual income of fifty thousand pounds shall be realized from the said School Fund, the public grant of money paid out of the Provincial Revenue for Common Schools, shall forever cease to be made a charge on such revenue. Provided always nevertheless, that in the meantime the interest arising from the said

*In the
Supreme
Court of
Ontario.*

No. 9
Respondent's
Case,
Reference to
Statutes
—continued

“School Fund so to be created as aforesaid, shall be annually paid over to
“the Receiver-General, and applied towards the payment of the yearly
“grant of fifty thousand pounds now appropriated for the support of the
“Common Schools. Provided further, that after the said annual sum of
“fifty thousand pounds shall have been taken off the Consolidated
“Revenue, if the income arising from the said school fund shall from any
“cause whatever fall short of the annual sum of fifty thousand pounds,
“then it shall and may be lawful for the Receiver-General of the Province
“to pay out of the said Consolidated Revenue, such sum or sums of money
“as may from time to time be required to make up such deficiency, the
“same to be repaid so soon as the said income of the said School Fund shall
“exceed the said sum of fifty thousand pounds.” 10

I have read to your Lordship the whole of the statute, as it is in our view an important statute.

The Consolidated Statutes of Canada, chapter 26, being a statute that referred to both Upper and Lower Canada, and not merely to one of the portions of the Province. That is, it was a fund created for all the Common Schools of the whole Province of Canada, if your Lordship follows.

HIS LORDSHIP: Yes, I understand.

MR. TILLEY: Now, chapter 26, I may say, was in force at Confederation. 20

HIS LORDSHIP: Is there something in it that was not—

MR. TILLEY: Yes, my Lord, there was some change made in that, and I would like to give your Lordship the reference to it.

HIS LORDSHIP: I wonder if it is covered by what I noted the other day.

MR. TILLEY: No, my Lord; this statute has not been referred to.

HIS LORDSHIP: No, but you referred me to some statutes, and whether you referred me specifically to this one or not, I looked at it. I have a note that the fund was to be four hundred thousand dollars.

MR. TILLEY: Yes, that is right.

HIS LORDSHIP: That was to be divided between Upper Canada and 30
Lower Canada, and that until the revenue amounted to two hundred thousand dollars it was to be made up to that sum. Is there anything more than that?

MR. TILLEY: And it was to be divided between the two provinces according to population at the census.

HIS LORDSHIP: My recollection was that that was not mechanical, that was not quite as mechanical as that, that there was a little discretion, but I forget.

MR. TILLEY: It is section 5; the said two hundred thousand dollars annually shall be apportioned between Upper and Lower Canada in proportion to population ascertained by the census; that is just my note of it.

HIS LORDSHIP: Well, that no doubt is correct. 40

MR. TILLEY: Then section 6 is a section that is somewhat like the former section. It says—this is not verbatim at all:

“When the annual income of two hundred thousand dollars is realized,
“the grant from the provincial revenue shall cease, and in the meantime
“the interest from the Permanent Fund shall be paid to the Receiver-
“General and applied towards the payment of the yearly grant of two

"hundred thousand dollars; but if in any year the revenue falls below two hundred thousand dollars, it is to be supplemented and repaid when the income exceeds that sum."

*In the
Supreme
Court of
Ontario.*

It is very much the same as it was before.

No. 9.
Respondent's
Case,
Reference to
Statutes
—continued.

Then there is a provision—it is not important, probably—under section 7, that one-fourth of the proceeds might be taken for local improvement purposes—that is, improvements where the land is taken away. I think I need not refer to the orders-in-council passed, but the lands set apart were all in Ontario or Upper Canada, as it was then.

10 That Act was in force at Confederation, and after Confederation under the provision for arbitration contained in the British North America Act there was an arbitration as to that fund, amongst other things, and I had hoped to have an extract from that award here, but I should like to put it in later if your Lordship would permit me, dealing with that fund, an extract from it, with an extract that is referred to frequently, where it was stated by the Provincial Treasurer, Mr. Wood, at the time of the arbitration, what appears to be the fact from the record, that the interest from the fund prior to Confederation was not actually transferred and then paid out for the grant, but the school grant was paid out of the Consolidated Revenue Fund, and the
20 interest was merely a receipt of the Province, and that is the way any school grant has been paid since.

I want to put in, my Lord—but I have not it here at the moment—to show the revenue from that fund. The award of 1870 directed that the fund should remain with the Dominion, and the interest on the fund should be divided between Upper and Lower Canada in accordance with the population each census; so that Ontario has since been receiving its interest, and it amounts to about seventy-five thousand dollars a year, on a share of that fund appropriated to Upper Canada. I want to put in the account to show that.

30 I am to have those papers, and I may ask to put them in after the adjournment.

Then, my Lord, dealing with the question of clergy reserves, your Lordship will find the Act of Canada, the Province of Canada, dealing with the Clergy Reserves—there are two that I shall refer to, and I think only two—the Statutes of Canada, 1854, 18 Victoria, chapter 2. That statute recites the history of the Clergy Reserves—I need not bother with that—and then by section 1, after reciting that the fund should be used for other purposes, it says:

40 "1. The moneys arising from the Clergy Reserves in Upper Canada shall continue to form a separate Fund which shall be called the Upper Canada Municipalities Fund, and the moneys arising from the Clergy Reserves in Lower Canada shall continue to form a separate Fund, which shall be called the Lower Canada Municipalities Fund.

"2. The Municipalities Fund for each section of the Province respectively, shall consist of all moneys arising from the sale of Clergy Reserves in that section of the Province, whether now funded or invested either in the United Kingdom or in this Province,"

and so on. The Act goes on to provide that the moneys shall be divided between the various municipalities in accordance with their population, and

*In the
Supreme
Court of
Ontario.*

No. 9.
Respondent's
Case,
Reference to
Statutes
—continued

there is a further Act of 1856, 19 Victoria, chapter 16, which by section 1 provides that:

“The amount of ‘The Upper Canada Municipalities Fund,’ remaining
“unexpended and unappropriated under the provisions of the first,
“second, third and fourth sections of the said Act, on the thirty-first day
“of December in the year one thousand eight hundred and fifty-five, and
“on the same day in each year after the passing of this Act shall, by the
“Receiver-General, be apportioned equally among the several city, town
“incorporated village and township municipalities in Upper Canada, in
“proportion to the number of ratepayers that shall appear on the assess- 10
“ment rolls of such municipalities for the year next before the time of
“such apportionment.”

Then, clerks of municipalities were to make a return.

No. 10.
Respondent's
Case,
Introducing
Exhibits

Now, receipts from that Fund are shown in the reports of the Superintendent. I have the report for 1857, at page 53, table B, Report of the Superintendent of Education, Dr. Ryerson, for the year 1857; of course, it was issued in 1858, but it is marked 1857. I have not the reference to that report here—it was not available at the time I was looking at it—but at page 6 of the report for 1861 there is this item, under the heading of “Common Schools, Table A, Receipts and Expenditures of Common School Moneys.” Then, amongst the 20 receipts, item No. 6:

“6. The amount received by trustees from the Clergy Reserve Fund
“and other sources, was \$130,375; being an increase of \$23,636. The
“large amount which the municipalities have appropriated from the
“Clergy Reserve Fund for school purposes, may account for the small
decrease of \$608 in the municipal assessment of \$278,085.”

I point that out to show that prior to Confederation the municipalities were appropriating that money, the Clergy Reserve Fund, for school purposes.

MR. HELLMUTH: Is that an exhibit?

MR. TILLEY: Well, do you want it marked? 30

MR. HELLMUTH: I think so.

MR. TILLEY: On page 16 of the same report there is a full statement of receipts, showing the counties in detail, and under a column that is headed, “Clergy Reserve Fund and other sources,” there are sums which are totalled for the counties and totalled for the cities. I do not know what the other sources are, but it expressly mentions Clergy Reserve Fund. The grand total of that column was \$130,375.18. Would you like to have it marked?

HIS LORDSHIP: I suppose it had better be marked.

EXHIBIT 25:—Annual Report of the Normal, Model, Grammar and Common Schools, in Upper Canada, for the year 1861. 40

MR. TILLEY: Then 1860, if I may just refer to it, 1860 at page 5.

HIS LORDSHIP: That is the same volume?

MR. TILLEY: 1861 was the last. 1861, page 5, the same numbered item, 6, amongst the Receipts and Expenditures of Common School Moneys, there is this remark:

"6. The amount received by Trustees from the Clergy Reserve Fund and various other sources, was \$106,738; increase \$30,431. This large increase in connection with the decrease in the municipal assessment, appears to show that the municipalities have aided the school sections from the Clergy Reserve moneys in their hands, in preference to levying special rates."

Then Table A, the same column, shows the details of that amount.

*In the
Supreme
Court of
Ontario.*
—
No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

EXHIBIT 26: Annual Report of the Normal, Model, Grammar and
10 Common Schools, in Upper Canada, for the year 1860.

HIS LORDSHIP: Perhaps that is a good place to break off.

Adjourned at 1.03 p.m. until 2.15 p.m.

On resuming at 2.15 p.m.

MR. TILLEY:—My Lord, the reports that I have already put in are for 1860 and 1861. Possibly I should put in the reports for 1862 and 1863 to show that the moneys were still being received from Clergy Reserves.

In the Report for the year 1862 it appears at page 6, Item No. 6, where it states:

20 "6. The amount received from the Clergy Reserve Fund and other
"sources was \$112,524; decrease, \$17,851."
That will be Exhibit 27.

EXHIBIT 27:—Annual Report of the Normal, Model, Grammar and
Common Schools, of Upper Canada, for the year 1862.

MR. TILLEY: Then for the year 1863 it appears at page 6, the same page, and the same item number; the amount there was \$108,467. That will be Exhibit 28

EXHIBIT 28:—Annual Report of the Normal, Model, Grammar and
Common Schools, of Upper Canada, for the year 1863.

30 MR. TILLEY: The reports for 1864 and 1865 are in the same volume,
and the item appears there just in the same way.

In each of those reports, I should point out, the table that shows the amount of the legislative grant to each school merely as indicating the size of the grant at that time. Of course, the funds that were available, as shown by the statutes, were not very large, and, therefore, the amount was relatively small.

HIS LORDSHIP: Was that legislative grant something different from the revenue from the fund created?

MR. TILLEY: Your Lordship will remember that the statute said that where the amount did not reach two hundred thousand dollars—

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

HIS LORDSHIP: Yes, I know.

MR. TILLEY: The grant was to be two hundred thousand dollars.

HIS LORDSHIP: Yes.

MR. TILLEY: And then there were certain payments made out of the grant, and it was the balance. It ran about a hundred and seventy thousand dollars.

HIS LORDSHIP: It is always that two hundred thousand dollars.

MR. TILLEY: Yes, that is being divided between Upper and Lower Canada at that time.

Then, my Lord, the Public Accounts show the fund as it exists now. 10
The first year that I refer to is 1921. I put in that year merely as showing what it was the year prior to 1922, being the year that my friend complains of. It appears in the Public Accounts for 1920 and 1921, at page 11, as to the Capital Fund, under the heading, "Trust Fund of the Province held by the Dominion," as follows:

"Common School Fund (See Consolidated Statutes, c. 26), 1,000,000
"acres set apart (proceeds realized to 31st December, 1920), after deduct-
"ing Land Improvement Fund, \$2,654,250.63, portion belonging to
"Ontario as per population of 1911..... \$1,479,766.31."

Then there is a note:

"NOTE.—See Awards, Sessional Papers, 1900 and 1901." 20

HIS LORDSHIP: I did not quite follow that. Let me look at the book.

MR. TILLEY: That is the Capital Account.

HIS LORDSHIP: I do not understand "after deducting Land Improvement Fund," but that is perhaps not necessary.

MR. TILLEY: Your Lordship will remember, I pointed to the section that said a certain percentage, one-fourth, might be deducted for an improvement fund for the locality.

HIS LORDSHIP: Oh, yes.

MR. TILLEY: And that deducts, I think, twenty-five per cent. for that 30
item; and then it is to be used for other purposes, and in addition to that there is a six per cent. deduction for cost of realizing, and then the balance goes to the Dominion and is held for Ontario and Quebec, and that is Ontario's share of the Capital Trust Fund based on population.

Then, if your Lordship will just look at the item that I have also marked just beyond that, in the same volume—I have put a marker there; I have not from memory what the page is.

HIS LORDSHIP: It is page 55.

MR. TILLEY: That shows the revenue received by Ontario in the year from that source.

HIS LORDSHIP: "Interest, 5 per cent. for one year to July 1st, 1921, on
"Ontario's proportion of Common School collections paid over to the Dominion
"Government." 40

MR. TILLEY: That is, the moneys are in the hands of the Dominion, and the Dominion pays five per cent. to the two provinces and divides it according to population. I think the amount there is seventy-odd thousand.

HIS LORDSHIP: It is \$73,895. That is to say, the interest arising from the investments is got in by the Dominion, and the Dominion charges its five per cent. until payment over to the Province; is that it?

MR. TILLEY: No. The Dominion invests it, but it pays the definite rate of five per cent. to the Provinces and divides the five per cent. between them according to population.

HIS LORDSHIP: I understand now. The fund itself is one million four hundred and seventy-nine thousand.

MR. TILLEY: Yes, that is the capital sum. Let us say that that is 10 half, for lack of better figures, because Quebec would have a similar amount, or somewhat similar, according to population.

HIS LORDSHIP: Yes, I understand.

MR. TILLEY: And then the two sums make the fund, and the Dominion retains it and pays five per cent., and that interest then goes to the Provinces in proportion to population.

HIS LORDSHIP: I understand.

MR. TILLEY: Just to give your Lordship a figure for 1922, in case that is of any importance—I suppose I should put that in.

EXHIBIT 29:—Public Accounts of the Province of Ontario for the twelve 20 months ended 31st October, 1921.

MR. TILLEY: 1921 and 1922 Public Accounts show the capital sum at page 13. The total is \$1,474,952.43. The income is shown at page 54, \$73,737.49.

EXHIBIT 30:—Public Accounts of the Province of Ontario for the twelve months ended 31st October, 1922.

MR. TILLEY: I have the account for other years, but it runs along about the same. I think there is no object in putting it in. For the last fiscal year that I have the report of, 1924, the income was \$73,585.99.

HIS LORDSHIP: It becomes smaller each year; it seems to become 30 smaller year by year; the capital seems to diminish.

MR. TILLEY: Your Lordship will see that this, I think, is based on the census—it is possibly the different census.

HIS LORDSHIP: There is a difference of a few dollars between 1921 and 1922.

MR. TILLEY: Well, there may be some expense charged to the fund, or something of that kind. Those are the figures as we have them.

Then I have the award of 1870, but I would like to retain the book and make an extract, which I will show to my learned friend and put in rather than have these particular books marked.

40 HIS LORDSHIP: You won't forget to have that done before I have to deal with it?

MR. TILLEY: No, my Lord; I have got to return the book, and I shall see that it is done. There are two portions that I want to extract. One is

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

from the statement made by the Hon. Mr. Wood before the Commission. As I said this morning, it is a statement that is repeated in some of the law reports that deal with cases that have arisen. What he says is:

"This fund was not treated or dealt with exactly as the statute directed, although in accordance with its spirit and intent. Instead of the annual income from the capital being applied to the expenses of education, and supplemented by an annual grant, the whole sum given annually to Common Schools consisted of the Legislative grant, and the annual income of the school fund was added to the capital, and allowed to accumulate. It should be observed that these annual grants were apportioned to Upper Canada and Lower Canada, according to population as ascertained by the last preceding census." 10

That was in 1869.

The award that is also with this book of papers contains this, at page 3—there are two or three paragraphs that I shall read and have copies made of. The first paragraph deals with the Montreal Turnpike Trust; that particular fund was one of the funds in which the moneys were then invested for Quebec, I think. Then, paragraph V:

"V. That the following Special, or Trust Funds, and the moneys thereby payable, including the several investments in respect of the same or any of them are, shall be, and the same are hereby declared to be the property of and to belong to the Province of Ontario, for the purpose for which they were established, namely: " 20

and then it gives several funds—the Upper Canada Grammar School Fund; Upper Canada Building Fund; Upper Canada Municipalities Fund; widows' pensions and uncommuted stipends, Upper Canada, subject to the payment of all legal charges thereon; Upper Canada Grammar School Income Fund; Upper Canada Improvement Fund; balance of special appropriations in Upper Canada; and other items of the same kind. Then VI:

"VI. That the following Special, or Trust Funds, and the moneys thereby payable, including the several investments in respect of the same or any of them are, shall be, and the same are hereby declared to be the property of and to belong to the Province of Quebec for the purposes for which they were established, namely:" 30

Then it gives the Lower Canada Superior Education Fund, the Lower Canada Superannuated Teachers' Fund, and other funds that we are not concerned with. Then VII:

"VII. That from the Common School Fund, as held on the thirtieth day of June, one thousand eight hundred and sixty-seven, by the Dominion of Canada, amounting to one million seven hundred and thirty-three thousand two hundred and twenty-four dollars and forty-seven cents (of which fifty-eight thousand dollars is invested in the bonds or debentures of the Quebec Turnpike Trust, the said sum of fifty-eight thousand dollars being an asset mentioned in the fourth schedule to the British North America Act, 1867, as the Quebec Turnpike Trust), the sum of one hundred and twenty-four thousand six hundred and eighty-five dollars and eighteen cents shall be, and the same is 40

10 "hereby taken and deducted and placed to the credit of the Upper Canada
"Improvement Fund, the said sum of one hundred and twenty-four
"thousand six hundred and eighty-five dollars and eighteen cents being
"one-fourth part of moneys received by the late Province of Canada
"between the sixth day of March, one thousand eight hundred and
"sixty-one and the first day of July, one thousand eight hundred and
"sixty-seven, on account of Common School lands sold between the
"fourteenth day of June, one thousand eight hundred and fifty-three,
"and the said sixth day of March, one thousand eight hundred and
"sixty-one."

That date is fixed because it was for that date that they were permitted to make the deduction of one-fourth for the Improvement Fund. Payments made prior to that date had no such deduction taken from them.

20 "VIII. That the residue of the said Common School Fund, with
"the investments belonging thereto as aforesaid, shall continue to be
"held by the Dominion of Canada, and the income realized therefrom,
"from the thirtieth day of June, one thousand eight hundred and sixty-
"seven, and which shall be hereafter realized therefrom shall be appor-
"tioned between and paid over to the respective Provinces of Ontario and
"Quebec as directed by the fifth section, chapter twenty-six of the
"Consolidated Statutes of Canada, with regard to the sum of two hundred
"thousand dollars in the said section mentioned.

30 "IX. That the moneys received by the said Province of Ontario
"since the thirtieth day of June, one thousand eight hundred and sixty-
"seven, or which shall hereafter be received by the said Province from, or
"on account of the Common School lands set apart in aid of the Common
"Schools of the late Province of Canada shall be paid to the Dominion
"of Canada to be invested as provided by section three of said chapter
"twenty-six of the Consolidated Statutes of Canada, and the income
"derived therefrom shall be divided, apportioned and paid between
"and to the said Provinces of Ontario and Quebec respectively as provided
"in the said fifth section, chapter twenty-six, of the Consolidated Statutes
"of Canada with regard to the sum of two hundred thousand dollars in
"the said section mentioned.

40 "X. That the Province of Ontario shall be entitled to retain out of
"such moneys six per cent. for the sale and management of the said
"lands, and that one-fourth of the proceeds of the said lands, sold between
"the fourteenth day of June, one thousand eight hundred and fifty-three,
"and the said sixth day of March, one thousand eight hundred and sixty-
"one, received since the thirtieth day of June, one thousand eight hundred
"and sixty-seven, or which may hereafter be received after deducting the
"expenses of such management as aforesaid shall be taken and retained
"by the said Province of Ontario for the Upper Canada Improvement
"Fund."

HIS LORDSHIP: That is such a long sentence, I cannot quite get what it was that was to be taken.

MR. TILLEY: All that means is this: that out of certain of the moneys pursuant to the Statute, Ontario is permitted to deduct the one-fourth for the Improvement Fund and six per cent. for management. I think the details of that will not turn out to be important. Certain of the moneys were subject to that deduction; others were not, and this is a clause giving Ontario the future receipts, the right to make the deduction. Under that award the money was to continue with the Dominion, and the income was to be divided as under chapter 26 of the Consolidated Statutes of Canada, subject to the deductions authorized by that Statute.

EXHIBIT 31:—Extract from Arguments of Hon. E. B. Wood, before the 10 arbitrators, under the British North America Act of 1867.

Copy of the Award of the Arbitrators between the Provinces of Upper Canada and Lower Canada, referred to in the second paragraph of the Speech from the Throne. Transmitted to the Legislative Assembly by the Lieutenant-Governor.

MR. TILLEY: I think, my Lord, that that is all I desire to put in with regard to that Common School Grant, and I think there is nothing more to add with regard to the funds that the municipalities received from the Clergy Reserves, and the fact that they devoted some of the moneys to education at and prior to Confederation. 20

With regard to Grammar Schools, I should put in the courses of study, and it might be well to put in the Journal of 1855, commencing with page 17. The heading there is, "Programme of Public Instruction in Upper Canada," and then there is a short narrative that I need not read.

HIS LORDSHIP: Programme of what?

MR. TILLEY: Programme of Public Instruction in Upper Canada.

MR. HELLMUTH: Whose programme?

MR. TILLEY: The official programme. It is described as "Programme of Studies Prescribed by the Senate of the University of Toronto, for Colleges in Affiliation with the University." They are given at page 18. Following 30 that, the programme of studies at page 23 for the Grammar Schools of Upper Canada, and at page 25 the list of text-books for Grammar Schools. Then follows, at page 27, the programme of studies in the Provincial Model School. Your Lordship will remember that that is what the Common School programme was taken from, so that it completes the programme of studies at that time for all the schools, Common, Grammar Schools and the University. I do not think there is anything I need to refer to specially. That will be Exhibit 32.

EXHIBIT 32:—Journal of Education for Upper Canada, Vol. VIII, for 40 the year 1855.

MR. TILLEY: Then I put in the pamphlet that I referred to yesterday. It is headed:

"Grammar School Manual, containing the Consolidated Act relating to Grammar Schools in Upper Canada, together with the Revised Programme of Studies and the General Regulations and Instructions for Grammar Schools, with a Copious Analytical Index, by J. George Hodgins, Deputy Superintendent."

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

It is printed for the Department of Public Instruction for Upper Canada in the year 1866. There are some parts of that, of course, that are not necessary to be treated as part of the record, because they are merely statutes, but following the statutes, commencing at page 32, we have the Revised Programme of Studies and General Rules and Regulation for the Government of Grammar Schools in Upper Canada; I need not read those. At page 35 the Programme of Studies for 1866 is set out. Then follows the statement of the duties of the masters and teachers, duties of the pupils, and the Departmental Regulations for the Meteorological Stations of Upper Canada, which at that time were looked after by the Grammar Schools.

Now, I ask your Lordship's attention particularly to two or three letters of instructions or circulars of instructions from the Chief Superintendent. They are given here in full, and they are also to be found in some of the official reports that were made by the Chief Superintendent, his annual reports, but I take them from this pamphlet as being more convenient. The first of them is—

MR. HELLMUTH: Well, my Lord, if those are in the same position as the circulars that your Lordship thought I should not put in—

MR. TILLEY: You were not asked not to put them in.

MR. HELLMUTH: I thought so.

MR. TILLEY: Not official circulars taken from the Annual Report; they are all in the Annual Reports.

HIS LORDSHIP: Some of the documents tendered by Mr. Hellmuth, I think, were official circulars, some of the documents objected to as irrelevant.

MR. TILLEY: I did not think so. Instructions contained in his report containing the instructions he had given—I think that is what your Lordship admitted as showing what might have been known at the time legislation was passed.

HIS LORDSHIP: I cannot remember whether any were excluded.

MR. TILLEY: I do not know what my friend has in mind that was excluded at that time. Everything that he read from those reports was admitted. He read reports, according to my recollection, from local superintendents.

HIS LORDSHIP: As a matter of fact, in the next result not much that was tendered was excluded.

MR. TILLEY: No, I think nothing—

HIS LORDSHIP: Yes, there was one file of correspondence.

MR. HELLMUTH: In 1896 and 1886, I think, your Lordship refused me to put in the annual reports.

MR. TILLEY: 1886 is Exhibit 16.

HIS LORDSHIP: 1896, that is.

MR. TILLEY: I do not remember anything in 1886.

MR. HELLMUTH: I think so; I am speaking from recollection. I had taken down what I tendered, and I find that something from the Annual Report of 1886 and 1896 was objected to and rejected.

MR. TILLEY: Well, what was it?

MR. HELLMUTH: I do not remember what it was.

HIS LORDSHIP: In what connection did you tender the 1886 report, Mr. Hellmuth?

MR. HELLMUTH: I am just looking at it, my Lord. It was pages 8 and 9 in 1886, Table B, showing the numbers of pupils in the different branches of instruction, and the different branches.

MR. TILLEY: 1886?

MR. HELLMUTH: Yes.

MR. TILLEY: That is long after Confederation.

MR. HELLMUTH: I thought you were after Confederation.

MR. TILLEY: No, mine is 1866; I am ten years before

MR. HELLMUTH: Twenty, to be exact, from 1886—twenty years ahead. At all events, my Lord, I see no distinction between putting in the Report of 1886 showing the number of pupils and the subjects taught, and what my friend suggests putting in of 1866. I do not really want to object to anything going in, but it seems to me—

HIS LORDSHIP: I thought that you got in practically everything that you wanted to which showed what the schools were authorized to do, or, where you could not prove that, what they were doing at the time when the British North America Act came into force. I cannot remember excluding any document that—

MR. HELLMUTH: Your Lordship is referring now up to the time of the British North America Act?

HIS LORDSHIP: Came into force. I cannot remember excluding any document that showed either what they were authorized to do or what they were doing at that time.

MR. HELLMUTH: I do not think your Lordship did.

HIS LORDSHIP: Well, that is what Mr. Tilley is tendering now, another document that shows the same thing—isn't it, Mr. Tilley?

MR. TILLEY: Yes, my Lord.

MR. HELLMUTH: I think there was something in the Journal of Education prior to that, in 1862 I think, that your Lordship rejected.

HIS LORDSHIP: In what connection was it tendered?

MR. HELLMUTH: I was just trying to refer to it, my Lord—yes, my Lord, it was in 1862, in the Journal of Education, at page 81 and following pages, in regard to what had been apportioned to the various—

MR. TILLEY: The actual amounts apportioned.

MR. HELLMUTH: The amounts apportioned to the various counties and to the municipalities within those counties, both to Separate Schools and to Public Schools. I think, my Lord, I tendered some others, but 1862 was prior to Confederation. 1867, I think, I tendered, too, my Lord.

HIS LORDSHIP: Yes, it was prior to Confederation, but what you are speaking of now was—I have got what you are speaking of now: "Mr.

10

20

30

40

Hellmuth tenders a document showing the apportionment made before the Act of 1863. He seeks, he says, to show that for forty-three years no question of propriety of apportioning in accordance with the statutes. Mr. Tilley objects to proof of the practice unless for helping construe the statute." The Journal tendered was withdrawn meantime, after that discussion, not excluded; and then—

MR. HELLMUTH: Subsequently, my Lord, it was excluded. I was not allowed to put that in.

MR. TILLEY: Your Lordship may remember that I said that I would
10 assume, I was prepared to assume, that the moneys were divided in accordance with the statute; my friend said on that he was satisfied.

MR. HELLMUTH: Oh, no.

HIS LORDSHIP: Here I have it. This was at a later stage; this was on Monday, in the afternoon. There was a discussion about chapter 291 of the Revised Statutes of 1897, and then the Journal of Education of 1862 was tendered and rejected, and similarly the Journal of 1867, showing apportionment of the fund granted in that year, and the Journal of Education for 1876, showing an apportionment by the Minister, and the Annual Report for 1886,
20 and the Report for 1896, certain pages of them. As nearly as I can remember it now, those were excluded because it was thought that the precise amounts given to the various schools were immaterial, that what we were concerned with was principle. I do not think that anything that tended to show what the schools were allowed to teach or instructed to teach or taught before 1867 was excluded, and that is what you are dealing with now, isn't it?

MR. TILLEY: Just the instructions as to these Grammar Schools, my Lord, in 1866, the year before.

HIS LORDSHIP: I think that is admissible.

MR. HELLMUTH: Well, my Lord, I submit that what the instructions to the Grammar Schools were has no bearing upon what the instructions to
30 the Public School or Common School are.

HIS LORDSHIP: As I understand it, your point, or one of your points, is that the Common School and the Separate School at Confederation were authorized in effect to teach everything that was required to be known before the pupil went to the university.

MR. HELLMUTH: That, rather, the trustees of each particular Separate School were entitled to direct that those subjects should be taught if there were pupils desiring them.

HIS LORDSHIP: Quite so. Then Mr. Tilley now is going to show where
40 the Grammar School came in the scheme of education of the period. If it turned out, for instance, that certain things could be done by a Grammar School and could not be done by a Common School, I should think that was of importance.

MR. HELLMUTH: Oh, if it turned out that there were certain things that prior to Confederation could not be done by the Common Schools in the course of their studies, I would think it would be important, but I would think it was of no importance whatever what the Grammar Schools might be entitled to teach; they were on an entirely different system.

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

HIS LORDSHIP: I do not think I can exclude that.

MR. HELLMUTH: Well, my Lord, I just want that to be subject to my objection.

MR. TILLEY: The first of the circulars is addressed to the Boards of Trustees of Grammar Schools in Upper Canada:

"Gentlemen: I herewith transmit you a copy of the new 'Grammar School Improvement Act,' and of the revised Programmes of Studies, which have received the approval of the Governor-General in Council, and which are designed to give effect to the wishes of the Legislature, and the comprehensive objects of the Grammar School Law, namely: 10
"to make the Grammar Schools the High Schools of their respective localities—intermediate schools between the Common Schools and the University, in arts, in law, and in the department of civil engineering, to give to intended surveyors their preliminary education; and to impart the higher branches of an English and commercial education to those youth whose parents do not wish them to study Greek or Latin.

"2. My printed circulars to the municipal councils of counties, cities, towns and incorporated villages explain the equitable and public grounds on which a liberal municipal support may be reasonably and confidently expected to be given to the Grammar Schools. By 20
"the provisions of the new Act, a sum equal to one-third will be added to the Grammar School Fund, for the payment of teachers' salaries. One condition required by the regulation is, that 'after the 1st day of January, 1866, no Grammar School shall be entitled to receive anything from the Grammar School Fund unless suitable accommodations are provided for it, and unless it shall have a daily average attendance (times of epidemic excepted) of at least ten pupils learning Greek or Latin.' It is not worth while to have a Grammar School in a place where there is not sufficient interest in it to provide suitable accom- 30
"modations, or the material for the attendance at the Grammar School of at least ten regular pupils in those subjects, the teaching of which was its primary object. It is much better to concentrate the school fund, and to give adequate support to a smaller number of good Grammar Schools, than to dissipate it on a large number of inefficient and nominal schools.

"3. Hitherto, many of the Grammar Schools have done little as classical schools, and taught few, if any, of the English branches of a good education, which have been as well, if not better taught, in many of our Common Schools. The object of the law, and of the revised 40
"Programmes of Studies, is to prevent any further dissipation of the Grammar School Fund in this way; to prevent the Grammar Schools from poaching upon Common School ground, or being rivals of Common Schools; to make them English high Schools; and to render them efficient in their appropriate work of elementary classical and superior English education. But while it is intended that they shall accomplish, to as great an extent as possible, the ends of good classical schools, special regard is had in the second, or English course of studies, to the

"increasingly wide and pressing demands of a high English and commercial education, supplementary to the elementary education which is provided in the Common Schools.

"4. It will be observed, that the pupils are not to take certain subjects of the Grammar School course as a matter of form, in order to be retained as Grammar School pupils, while they are, in reality, but Common School pupils, almost wholly employed in learning the elementary subjects of Common School instruction. None can be recognized as Grammar School pupils but those who really are so, and who are bona fide pursuing the whole of the subjects in one of the two courses of studies prescribed in the Programmes. The pupils of all the schools are to be finally admitted, on examination, by the Inspector. This places all the schools on the same footing, and brings the pupils of each, on their admission, up to the same standard; and every school shares in the fund according to its work, irrespective of county or locality. Under the provisions of the new Act, there is no apportionment to counties according to population, nor any distinction between senior and junior Grammar Schools; but, as the seventh section of the Act expresses it: 'The apportionment, payable half-yearly to the Grammar Schools, shall be made to each school conducted according to law, upon the basis of the daily average attendance at such Grammar School of pupils in the Programme of Studies prescribed according to law for Grammar Schools; such attendance shall be certified by the head master and trustees, and verified by the Inspector of Grammar Schools.'

"5. During more than ten years I have employed my best exertions to get the great principle of our Common School system applied to that of the Grammar Schools, namely, the principle of each municipality providing a certain proportionate sum, as a condition of sharing in the school fund provided by the Legislature. This is the vital principle of our Common School system, and is the main element of its wonderful success. The intelligent liberality of the municipalities has far exceeded the requirements of the law in relation to our upwards of four thousand Common Schools; I doubt not a like liberality and intelligence will soon be shown in regard to our one hundred Grammar Schools.

"6. Relying upon the liberal co-operation of the county, city, town and village municipalities, and to facilitate, as far as possible, the labours of the trustees, I will make and pay the next year's apportionment of the Grammar School Fund, in aid of the Grammar Schools which are conducted according to law, without waiting for the proportionate sums required by law to be provided from local sources; but if these sums, in any instances, are not provided in the course of the year, it will then be my duty to withhold, in all such cases, the payment of any further sums from the school fund, until the deficiency is made up.

"7. With the additional co-operation and means which the new Act provides in behalf of Grammar Schools, and the practical Programme of Studies prescribed, it remains for the trustees to employ their earnest

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

“and patriotic exertions to make the Grammar Schools, under the Divine
“blessing, fulfil their noble mission, and prove an honour, as well as a
“general blessing, to the country.

“I have the honour to be,

“Sir,

“Your very obedient servant,

E. RYERSON.

“Education Office,

“Toronto, 1st December, 1865.”

That is at page 47, ending at page 49.

10

Then there is a circular commencing at 49, which reads as follows:

“2. Circular to Wardens of Counties in Upper Canada, on the
“New Grammar School Improvement Act.

“Sir,—I have the honour to enclose you herewith, for the information
“of the County Council over which you preside, a copy of the new
“Grammar School Improvement Act, by the provisions of which it
“will be seen that cities, with one exception, are made counties for
“Grammar School purposes; and the County Council will hereafter
“appoint one-half of the members of the Board of Trustees of any
“Grammar School situated in any town or incorporated village, and the
“municipal council of such town or village will appoint the other half of
“the members of such Board. In regard to Grammar Schools not situated
“in any town or incorporated village, the new Act makes no change
“in the mode of appointing trustees; the appointment of these trustees
“still rests with the county council.

20

“2. The great object of this Act is to make Grammar Schools what
“they were intended to be, and what they ought to be—namely: Inter-
“mediate Schools, between the Common Schools and the University
“Colleges—to prepare these pupils for matriculation into the University,
“who intend to acquire an University education—to impart to other
“pupils the higher branches of an English education, including the
“elements of French, for those who intend to engage in the various pur-
“suits of life without entering the University”—

30

MR. HELLMUTH: My Lord, Dr. Ryerson is now giving his views of the
Act, and I thought it was immaterial what views he had of the meaning of an
Act.

HIS LORDSHIP: Well, there were some rulings more or less to that effect.

MR. HELLMUTH: My friend is putting in Dr. Ryerson's views as to the
objects of the Act. I think very strenuous objection was made to my giving
evidence—I had a good deal of it—of what Dr. Ryerson's views were with
regard to the meaning of an Act and the objects of an Act.

40

MR. TILLEY: My friend put in evidence to show that at certain schools
there were Common Schools that he regarded as fairly advanced in education,
and he said at that time with the consent of the authorities, it was part of their
plan that they should go on as far as they liked. I have put in the course of
study since, so that possibly does not carry so far. My submission is that I

am entitled to show that at this time there was a determined effort being made officially, and approved by the Legislature, to bring the Grammar School into its proper place of intermediate school between the Common Schools and the University. My friend read extracts to show that that was not being done, or he thought they tended in that direction.

10 HIS LORDSHIP: Yes, I think that Mr. Tilley ought to be allowed to show that there was an effort being made to make the Grammar Schools perform a certain function. If the document from which that appears, if it does appear, contains also some expressions of opinion as to the meaning of an Act, I suppose one has got to try to separate the relevant from the irrelevant; but I do not think you could exclude the whole document.

MR. HELLMUTH: But, my Lord, in one of the matters that I put in a circular, your Lordship, if I have not mistaken what you said, said, oh, that part of it is merely a suggestion, and it was ruled out, I was not to give it. It was merely an opinion of Dr. Ryerson's as to what the purport of the Act was and as to what he would advise them to do.

20 HIS LORDSHIP: No, it seems to be a little more than that. It seems to be that he was—I have not heard the whole article yet, but it seems rather that he was stating there that his effort was to make the Grammar School do a certain thing.

MR. HELLMUTH: He says, my Lord, if I caught what my friend read aright, that that was the object and purpose of the Act.

HIS LORDSHIP: Well, I know he says that, and I say as far as opinions on the objects and purposes of Acts go, or effect of Acts, perhaps it will have to be excluded, but as evidence of what he, representing the Department, was trying to do at the time, I do not think I can exclude it. It may have some things in it that are not strictly admissible, but I think the document as a whole would have to go in subject to the objection.

30 MR. TILLEY: Here is what my friend read from Exhibit No. 16:
"Provision is made for Continuation Classes in Public Schools. The
"object of the classes is to enable pupils who have passed the entrance
"examination."

and so on. He put that exhibit in all for the one sentence or two.

HIS LORDSHIP: Of course, "tu quoque" is not always a good argument.

MR. TILLEY: I thought my friend would perhaps withdraw his objection if I reminded him of it.

40 MR. HELLMUTH: It is quite true, my Lord, that your Lordship did admit some of the evidence that I offered in regard to Dr. Ryerson's views. There were other parts of the evidence in regard to what Dr. Ryerson, we say, thought or believed to be the effect of an Act or of Regulations, which your Lordship thought was quite immaterial. Now, I find it very difficult to appreciate—it may be my misfortune—the difference between one opinion such as my friend proposes to put in as to the object and purpose of the Act, and another opinion as to what was the view or scope that Dr. Ryerson took of this or that matter in relation to the Common Schools of that day; and I think, my Lord, that some of that evidence that I tendered was ruled out. It might be explanatory of something that is now tendered. I would not have objected

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

at all to my friend putting in what he is putting in if the ruling had been that I might put in on my side what Dr. Ryerson's views were of the utter failure of the Grammar School to accomplish anything like what he had hoped it would be able to accomplish.

HIS LORDSHIP: I do not suppose there would be any objection to that.

MR. TILLEY: Not the slightest.

HIS LORDSHIP: I cannot see what objection could be taken.

MR. TILLEY: In fact, my friend read one extract to show just what his opinion was at that time.

HIS LORDSHIP: It is impossible for me to remember exactly what the document or part of the document was that I may have admitted or excluded in the three days that we have been here; but I think generally where I excluded anything—and I did not exclude very much—as being expression of opinion, it was something that was merely an expression of opinion as to the meaning or effect of an Act. I do not think that I have excluded anything at all that was tendered for the purpose of showing either what a school was doing or was permitted to do, or was desired by the authorities to do, and if this document that Mr. Tilley is trying to read from now is a document in which the Superintendent of Education, speaking for his Department, says, "We desire that the Grammar Schools shall do a certain thing, and we are trying to make them do that certain thing," I think that it is within the rulings that I have made throughout as to what is admissible.

MR. HELLMUTH: Your Lordship will admit that, then, subject to objection?

HIS LORDSHIP: Oh, yes, it is all subject to objection.

MR. TILLEY: It continues:

"—and also to impart a special preparatory education to those who intend to become surveyors and civil engineers.

"3. It is upon this broad basis, and with these comprehensive and important objects in view that the programme of studies and regulations have been revised; and on these grounds they present strong claims to the liberal support of the counties and municipalities where they are established—not, in any way, being the rivals of the Common Schools, nor permitted to do Common School work, but to perform a higher educational work of the greatest importance to the advancement of the country, which can neither be done by the Common School on the one hand, nor by the College on the other.

"4. The progress, institutions, professions and employments of our country, together with the influx of many well educated persons from other countries, render these intermediate Schools an indispensable necessity, if our native youth are to maintain their proper position in society, and if our country is to maintain its rank in comparison with other educating and progressive countries. But the Grammar Schools cannot accomplish the objects of their establishment without further aid in addition to that of the small fund provided by the Legislature. No such schools ever did fulfil their mission by mere fees of pupils and a small Legislative grant, without liberal local support, unless they had

"a large independent endowment—which is not the case with the Grammar Schools of Upper Canada. The county councils have, of late years, created a large number of Grammar Schools; and the authors of any offspring ought not to leave it to languish and starve for want of support.

*In the
Supreme
Court of
Ontario.*
No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

10 "5. It appears from the returns of 1864, that to 49 of the 101 Grammar Schools some municipal aid had been granted last year; but the other 52 Grammar Schools have had no other resources than fees of pupils and the apportionment from the Grammar School Fund. It is not, therefore, surprising that so many of the Grammar Schools are little better than Common Schools, and some of them, both in accommodations and efficiency, inferior to the Common Schools in the same town or village. This ought not so to be. All reasonable men must admit that it is better to discontinue the Grammar Schools where there are no materials for their operations and support, and concentrate joint legislative and municipal appropriations upon a smaller number of good Grammar Schools, than to dissipate these funds upon a large number of poor and needless schools. In order to remedy this evil to some extent, it has been provided that no Grammar School shall be

20 "entitled to share in the Grammar School Fund which has not proper accommodations provided for it, and an average attendance of at least ten pupils in one of the languages, for teaching which that fund was originally created; and the sixth section of the new Grammar School Improvement Act provides that 'No Grammar School shall be entitled to share in the Grammar School Fund, unless a sum shall be provided'—

and so on; I read that before.

30 "6. The Act does not say in what way the proportionate sum from 'local sources' shall be provided; but I would suggest that, as the county council appoints one-half of the Board of Trustees for the management of each Grammar School, the county council should provide one-half of the sum required by law to be provided from 'local sources' as a condition of sharing in the fund. But a higher and broader ground for this suggestion is, not only that the Grammar School is a national school and the country has a special interest in it, as has the country at large, as evinced by the Legislative provision for Grammar Schools, but a large number of ratepayers in the country do not send their children to the Common Schools, but to the Grammar and other schools; yet their properties are largely assessed for providing Common School premises and for supporting Common Schools. It is but equitable, therefore, to

40 "these ratepayers—apart from other considerations—that a small portion, at least, of the school assessments in counties should go to support the one or more county Grammar Schools. It is to be recollected that the county school assessment forms but a small part of the assessments levied (by municipal councils and trustees) in the county for school purposes; and it is only by the county council granting some part of its school assessments in aid of Grammar Schools, that it can do justice to those ratepayers who have sent or are sending their children to the

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

“Grammar and to other than Common Schools, yet have paid assessments in all past years for the support of Common Schools. Therefore, upon these personal grounds of equity between different classes of ratepayers, as well as upon these broad, public and national grounds, I trust your County Council will aid in doing for the few Grammar Schools what has been so long and liberally done by all classes for the Common Schools.

“7. Relying upon your intelligent and liberal co-operation (which you have so nobly evinced in regard to the Common Schools), and anxious to the utmost of my power to facilitate the exertions of your Grammar School Trustees, I will make and pay the apportionment for 1866 in aid of each Grammar School conducted according to law, without waiting for the payment of the proportionate sum required by law to be provided from local sources,”

and so on.

HIS LORDSHIP: Is that 1866, that report?

MR. TILLEY: 1866, yes, my Lord. Then he says:

“Many municipalities have far exceeded the required conditions of the law in making provision for Common Schools; I trust, by a similar intelligence and liberality in regard to the Grammar Schools, it will soon be your happiness to see them, equally with the Common Schools, fulfilling their appropriate mission, and conferring inestimable blessings upon the country.”

“I have the honour to be, Sir,

“Your very obedient servant,

“E. RYERSON.

“Education Office,

“Toronto, 9th Nov., 1865.”

Following that is this circular:

“3. Circular to Mayors of Cities in Upper Canada, on the New Grammar School Improvement Act. 30

“Sir,—I have the honour to transmit herewith, for the information of the Council over which you preside, a copy of the new Grammar School Improvement Act, the first section of which provides, that “Each city shall, for all Grammar School purposes, be a county;”

and he quotes the section.

“The City of Kingston is the only city to which the latter clause of this section of the Act applies.”

The latter clause is this:

“But when, and so long as, the only Grammar School in the county is situated within a city, the council of such county shall appoint one-half the trustees of such Grammar School.” 40

Then he says:

“The City of Kingston is the only city to which the latter clause of this section of the Act applies. The sixth section of the Act provides, that “No Grammar School shall be entitled to share in the Grammar School

"Fund, unless a sum shall be provided, from local sources, exclusive of fees, equal at least to half."

and so on.

"I have suggested to the County Council, that as it, jointly with your City Council, appoints the trustees, each council should provide one-half of the amount required to be raised from local sources. This may be done by making an appropriation from the clergy reserve moneys, or from the general funds of the municipality.

*In the
Supreme
Court of
Ontario.*
No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

10 "The new Act places your Grammar School wholly under the manage-
ment of a Board of Trustees, appointed by your Council; and the object
of the Act and of the recently revised Programme of Studies is, to make
your Grammar School what it ought to be, a High School for your city
—an intermediate school between the Common Schools and the Uni-
20 versity—preparing pupils to matriculate into the University, either in
arts, or law, or in the department of civil engineering, providing for
intended surveyors their preliminary education, and imparting the
higher branches of an English and commercial education to those youths
whose parents do not wish them to study Greek or Latin. The progress
and institutions of our country render such schools an indispensable
necessity.

30 "3. Considering, therefore, the objects and importance of your
Grammar School, and that it is to be henceforth under the management
of a Board of Trustees appointed by your Council, I confidently trust
that nothing will be wanting on the part of your council to provide as
liberally for the accommodations and support of your Grammar School
as you have for the accommodation and support of your Common
Schools. Many of your citizens have never sent their children to the
Common Schools, though their property has been largely taxed to pro-
vide for the accommodation and support of those schools. It is but
just, therefore, to such citizens, apart from other higher and more
public considerations, that a portion of your future school assessments
should go to provide for the accommodation and support of your public
Grammar School.

"4 Relying upon your intelligent and liberal co-operation in regard
to your Grammar School, and desirous of facilitating, as far as possible,
the exertions of the trustees which you may appoint, I will pay the
apportionment to it in 1866, without waiting for the proportionate sum,"
and so on.

40 Then he writes to the Mayors of Towns, and Reeves of Incorporated
Villages; that follows at page 54, and is in much the same strain.

Then at page 55 appears Part VI:

"Progress of Grammar School Education in Upper Canada.

"With a view to furnish the reader with a brief view of the history
and progress of Grammar School Education in Upper Canada, the
following summary sketch on the subject is inserted:

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

"In 1789, in compliance with a memorial presented to Governor-General Lord Dorchester, praying for the establishment of a Public School near Cataraqui (Kingston)—the most central part of Upper Canada—he directed the setting apart of land for the endowment of schools in the new townships in that part of the Province; but no school was actually established at that time.

"In 1792 a private Classical School was established at Newark (Niagara), and in 1796 one was established at York (Toronto).

"In 1797, the subject having been brought before the Upper Canada Legislature by Governor Simcoe, on a despatch received from the Duke of Portland, a memorial was sent to the King, praying for the grant of a sufficient quantity of land to endow a Grammar School in each of the four districts into which the new Province was divided, and a University for Upper Canada. The prayer of the memorial was granted, and 500,000 acres of land were set apart for the purposes specified. In 1798 President Russell requested his executive council, the judges and the law officers of the Crown, to submit to him a scheme of education for the Province. They did so, and recommended a sum of money to be granted for the erection of a school house at Kingston, and in the Newcastle District, for the accommodation of 100 pupils, with a residence for the master. They also recommended that a University be erected at York. The claims of Cornwall and Sandwich for a school were, in the meantime, to remain in abeyance. Nothing was done, however, except to bring out from Scotland, Mr. (now the Right Rev. Bishop) Strachan, as President of the proposed College. Before Mr. Strachan arrived, however, the project of the College was abandoned, Governor Simcoe went to England, and Dr. Strachan opened a school at Kingston and subsequently one at Cornwall.

"In 1806 a temporary Act was passed, establishing a Public School in each of the eight districts into which Upper Canada was divided, and granting 100 pounds per annum for each teacher. In 1807-8 this Act was made permanent.

"In 1817 Common Schools were first established by law in Upper Canada.

"In 1819 another District School was opened, and provision was first made for holding public examinations—for reporting on the condition of the schools to the Government and for educating ten Common School pupils as free scholars at each District School. The allowance of 100 pounds was reduced to 50 pounds wherever the number of pupils did not exceed ten.

"In 1823 a Provincial Board of Education was established. In 1824 the germs of a library system were developed. Subsequently, and down to 1839, other steps of progress were made.

"In 1839 the terms 'District School' were changed to those of 'Grammar School'; and 200 pounds were offered to each District which would raise an equal amount for the erection of a Grammar

"School building. One hundred pounds were also offered for the establishment of a school in each of four towns (not nearer than six miles to the County town) at which not less than sixty pupils were to be educated.

"In 1853 the Grammar School Act was passed."

MR. HELLMUTH: The present Grammar School Act.

MR. TILLEY: Well, it is the same thing. It would hardly be the present, because it had been amended afterwards.

10 "In 1853 the Grammar School Act was passed. To render the transition from an old to a new system more easy, many of the provisions of the former Grammar School Acts were retained. For instance (1) the distinction between senior and junior County Grammar Schools, (2) the granting of 100 pounds to each senior County Grammar School over and above that given to a junior school, on condition (3) that the daily average number of pupils reached ten, and 50 pounds in case the average was below ten. These senior schools were, however, required to make meteorological returns to the Educational Department.

"In order to see what has been the gradual progress in the number of Grammar Schools in Upper Canada and the number of pupils attending them, we append the following table:

20	"In the Year	No. of Schools	No. of Pupils
	"1844.....	25	1,000 approx.
	"1854.....	64	4,287
	"1863.....	95	5,352
	"1864.....	95	5,590
	"1865.....	104	5,700 estim."

Then there is a footnote saying:

"This number was, however, reduced in the course of the year by the exclusions required under the new regulations."

Then, continuing:

30 "Of the 5,590 pupils in the various branches of instruction in 1864, there were as follows:—

	"In the English branches.....	5,425
	"In Latin.....	2,825
	"In Greek.....	726
	"In French.....	1,729
	"In Mathematics.....	5,387
	"In Geography.....	4,963
	"In History.....	3,833
	"In Physical Science.....	2,911

40 "In 1865 the number of pupils attending Grammar Schools from the cities, towns and villages (incorporated) are about.... 4,400
" Ditto ditto from counties..... 1,300

" Estimated total as above..... 5,700

"—showing that while the new Act will give County Councils equal power with Town and Village Councils to appoint trustees, only one-

*In the
Supreme
Court of
Ontario.*
No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

"fourth of the pupils attend from the rural portions of the country over
"which the County Councils exercise jurisdiction.

"In order to see what was the financial condition of these schools
"in 1864, we append the following summary:—

"Legislative School Grant paid in 1864

"for Masters' salaries..... \$45,000."

Then it says in a footnote to that:

"Not including about \$6,000 not paid within the year."

Going on with the summary:

"Municipal Grants..... \$15,913." 10

HIS LORDSHIP: Mr. Tilley, any part of this that you want taken as read—those statistics, for instance, I shall have to get from the documents.

MR. TILLEY: Yes. I was just pointing out that the amount of the grant at that time was upwards of \$45,000, and the fees about \$19,000 or \$20,000, and the municipal grants \$15,000. That is to say, the fees, of course, did not begin to compensate the expense incurred.

HIS LORDSHIP: Fees were how much?

MR. TILLEY: The fees were, say, \$20,000.

HIS LORDSHIP: And the municipal collections?

MR. TILLEY: The Legislative Grant was \$45,000, plus this, say, 20
\$51,000, and the Municipal Grants \$16,000. Then there was a grant for maps and prizes.

At the top of page 58 it appears that the students paid \$1 to \$8 a pupil, according as the school was supported by Municipal Grant or otherwise.

Then it gives the teachers' salaries, running from \$300 up to \$1,200.

Then it goes on to give grants, but the rest is mainly statistics.

Then on page 59 there is a List of Subjects for the Matriculation Examination at the Universities of Upper Canada, and the other pages are taken up with authorized textbooks and extracts from Common School law, and so on; I need not bother with those. 30

EXHIBIT 33:—Grammar School Manual. The Consolidated Acts relating to Grammar Schools in Upper Canada; together with the Revised Programme of Studies, and the General Regulations and Instructions for Grammar Schools, with a Copious Analytical Index.

HIS LORDSHIP: Mr. Hellmuth, I do not think there is any misapprehension, but in case there is, it is perfectly open to you in reply to displace any of these statements made in that—

MR. HELLMUTH: Yes, my Lord; I have one already, and I may have some more.

MR. TILLEY: If there are any I am sure my friend will have them. 40

HIS LORDSHIP: Or to show that there was a change of heart—there is hardly time for that between 1866 and the passing of the Act.

MR. HELLMUTH: Thank you, my Lord; I thought perhaps I would have to struggle, but now I won't.

MR. TILLEY: The pamphlet with regard to Separate Schools I have already referred to. It is the bound book that we are not putting in, but we are giving your Lordship a copy of Appendix H from it. That pamphlet, your Lordship will remember, was 1863.

HIS LORDSHIP: Yes.

MR. TILLEY: Now, I have between that Separate School pamphlet and the Grammar School pamphlet, the Common School pamphlet. The Trustees' School Manual for Common Schools was published in 1864. It is described as:

10 "The Consolidated Acts relating to Common Schools in Upper
"Canada; together with a Full Digest of the Decisions of the Superior
"Courts, relating to School Cases, down to 1864; and forms, General
"Regulations, and Instructions for executing their Provisions."

Then on the margin it is shown that these were for distribution amongst the school corporations, because there is printed:

"The Property of the School Corporation, and not of any individual trustee."

That book contains the Common School Acts, as did the other, and gives a lot of references to decisions of the Courts, that we need not bother with,
20 and then it gives the General Regulations for the Organization, Government and Discipline of Common Schools, under Division III, at page 126. It deals with various matters regarding terms and vacations, and opening and closing exercises, religious instruction, and duties of teachers, trustees and pupils, and then there are suggestions as to the performance of the duties of each. Then it gives the Normal School Entrance Examination at page 155. I presume that is the examination that my friend referred to when he was putting in his documents. I do not think any of them require any comment.

EXHIBIT 34:—Trustees' School Manual. The Consolidated Acts relating to Common Schools in Upper Canada; together with a Full Digest of the
30 Decisions of the Superior Courts, relating to School Cases, down to 1864; and Forms, General Regulations, and Instructions for executing their provisions, with a Copious Analytical Index.

MR. TILLEY: Then I put in the Courses of Study for the Public and Separate Schools, 1924. My friend put in the Courses of Study, 1915. This will be Exhibit 35.

EXHIBIT 35:—Courses of Study, Public and Separate Schools, 1924—Ontario Department of Education.

MR. TILLEY: Then I put in the Instructions to School Inspectors of 1922, issued by the Ontario Department of Education, for the apportionment
40 of the Legislative Grants among the Public and Separate Schools of the Counties. I think that should be in to show exactly how these grants were computed under which my friend got three hundred and eighty dollars. Of course, the statute says in a way how it should be done, but this shows the departmental regulations with regard to it.

*In the
Supreme
Court of
Ontario.*

No. 10.
Respondent's
Case,
Introducing
Exhibits
—continued.

MR. HELLMUTH: You are putting in the whole of that Instruction to Inspectors, 1924?

MR. TILLEY: Yes.

MR. HELLMUTH: Perhaps we ought to have 1922 in, because it may touch this—

MR. TILLEY: I will put this in. It will show the modern one, at any rate. It is 1924.

MR. HELLMUTH: I just want to make this clear. It does not show the grant to each particular township.

MR. TILLEY: Just how it is made up, that is all. 10

MR. HELLMUTH: I think 1924, my Lord, would be just as useful for the purpose as 1922, and we have copies of that.

MR. TILLEY: I put in 1924, then, as Exhibit 36, and we can agree that it is the same as 1922, or at any rate the difference is not material.

MR. HELLMUTH: Not material.

MR. TILLEY: The principle is the same.

EXHIBIT 36:—Instructions to School Inspectors, Apportionment of the Legislative Grants among the Public and Separate Schools of the Counties—Ontario Department of Education.

MR. TILLEY: That is all that I desire to put in, my Lord. 20

HIS LORDSHIP: Is there any reply, Mr. Hellmuth?

MR. HELLMUTH: Yes, my Lord.

No. 11.
Reply,
Introducing
Exhibits.

MR. HELLMUTH: In the same year, 1865, I have it in the Journal of Education, and I followed my friend's reading from his document, and there are perhaps some very minor alterations in the two, but in substance they are practically the same.

MR. TILLEY: You mean the circulars?

MR. HELLMUTH: The circulars. There are just a few things. There is nothing, I should say, which my friend read which is not contained here, 30 although the language might vary a little bit.

Now I want to call your Lordship's attention to page 139 in the right hand column on that page—

HIS LORDSHIP: You have the Journal now?

MR. HELLMUTH: I have the Journal of Education for 1865, and it follows immediately after what my friend has been reading. Dr. Ryerson is also unfolding the principles of this Act. The first I want to read is what is numbered clause or section 6. He says:

“The principle embodied in the sixth section”—
that is, the sixth section of the Grammar School Act— 40

“is in harmony, though in a modified degree, with that of the Common School law, which declares that each municipality receiving a share of the Legislative School Grant shall contribute an amount equal to the aid received. In this Act only one-half of the amount granted is

"required as a condition of receiving aid. The Act does not declare that
 "a municipal rate for this sum shall be levied. The amount may be
 "contributed from the Clergy Reserve Fund or from any other source, or
 "from the general funds of the municipality. If a rate be imposed,
 "however, it is not required that it should be levied on the entire county,
 "but it may be levied on the town, village or township in which the
 "Grammar School is situated."

*In the
 Supreme
 Court of
 Ontario.*
 No. 11
 Reply,
 Introducing
 Exhibits.
 —continued.

Then, my Lord, in the seventh section—I do not intend to read the whole
 section, but your Lordship will have it before you—he speaks of the Grammar
 10 Schools, and he says:

"The Common School law amply provides for giving the best kind
 "of superior English education in High Schools in the cities, towns and
 "villages, with primary Ward Schools as feeders, as in Hamilton, while
 "to allow Grammar Schools to do Common School work is a mis-
 "application,"

and so on,

"of Common School funds."

Then, my Lord, in the very last, I think I may say, pronouncement of Dr.
 Ryerson prior to the coming in force of the Act of Confederation, which was
 20 in on the 1st of July, 1867, in May, 1867, in the Journal of Education for 1867—

HIS LORDSHIP: Is this 1865 Journal in as an exhibit?

MR. HELLMUTH: No, it is not in. I will put it in, my Lord. A good
 deal of it is a repetition of what my friend has read.

HIS LORDSHIP: Yes, I understand that.

EXHIBIT 37:—Journal of Education for Upper Canada, Volume XVIII,
 for the year 1865.

MR. HELLMUTH: In the Journal of Education for 1867, at page 81, we
 have Dr. Ryerson again speaking, and the name of the article is, "Grammar
 School Attendance and Apportionment." It is quite a long article, and I
 30 shall ask your Lordship to look at more than I read, but this is what I want to
 bring before your Lordship: in the right hand column there he says:

"And according to the best opinions any course of studies which would
 "attempt to be equally excellent for the higher education of both boys
 "and girls, would be simply worthless for either. This opinion is firmly
 "held, and was recently strongly expressed by the distinguished American
 "educationists at a late re-opening of the excellent Rutgers' Female
 "College in New York. It therefore becomes advisable to discourage
 "the present unusual attendance of girls at the Grammar Schools.

40 "But it is often urged that 'if our girls do not go to the Grammar
 "School there is no other provision made for their receiving an advanced
 "education in our Public Schools. This is a mistake. The Consolidated
 "Common School Act, section 79"—

MR. TILLEY: Now he is construing the statute.

MR. HELLMUTH: But he is giving his opinion in regard to what should
 be done.

In the
Supreme
Court of
Ontario.

No. 11
Reply,
Introducing
Exhibits.
—continued.

HIS LORDSHIP: Well, I don't care what he is doing, I am going to take that part of it; it naturally fits in.

MR. TILLEY: All this point is a construction of a section of the Act, that is all; he is giving a section of the Act, and he says, "This means so-and-so"; that is all it is.

MR. HELLMUTH: He is dealing with the question of education—

HIS LORDSHIP: This particular one I will take subject to the objection, whether it is an expression of opinion or not.

MR. HELLMUTH: We won't cross any more bridges at once, my Lord; we will cross this one. 10

"But it is often urged that 'if our girls do not go to the Grammar School there is no other provision made for their receiving an advanced education in our Public Schools.' This is a mistake. The Consolidated Common School Act, section 79, subsection 8, authorizes the Common School Trustees of every city, town and incorporated village to determine "(a) the number, sites, *kind and description* of schools to be established"— "kind and description" being in italics—

"and maintained in the city, town or village (whether they be high schools for boys and girls, or infant schools, etc.); also (b) the teacher or teachers to be employed; the terms of employing them; the amount of their remuneration, and *the duties which they are to perform.*' There is thus every legal facility for the establishment of high schools for girls throughout the country, and it is in such institutions that those pupils ought to find the means of prosecuting the advanced studies which they now seek in the grammar schools, and which if they find there, it is at the expense of not employing their time to the best advantage, and of studying some subjects which are of very little use to them." 20

MR. TILLEY: I suppose, Mr. Hellmuth, it is understood that that article from which you have read down to the point where you have read, is all— 30

MR. HELLMUTH: Oh, yes.

MR. TILLEY: It is not just that sentence.

MR. HELLMUTH: Oh, no

Then, my Lord, on page 82, which is the very next page, in the left-hand column, under the heading, "Chief Superintendent's Remarks on the Grammar Schools," it says:

"1. That the union of Common and Grammar Schools is, as a general rule, an evil to both. The provisions of the law permitting the union of Grammar Schools, arose from the absence of any other means to provide for the support of Grammar Schools." 40

EXHIBIT 38:—Journal of Education for Ontario, Vol. XX, for the year 1867.

MR. HELLMUTH: In the Journal of Education for 1864, at page 125, under the heading of "Educational Intelligence," on the right hand column:

"—Proposed Female High School, Toronto.—Extract from a Report

10 "of the City Board on the Subject.—Your committee having had under
"consideration the desirability of establishing one or more superior
"schools for boys and girls, report accordingly. First, that although the
"necessity of establishing a High School for boys is fully recognized by
"your committee, yet as some public provision for boys in this respect
"already exists in the Upper Canada College and Grammar Schools, your
"committee deem it inexpedient at present to recommend the Board to
"take action in the matter in this direction. Second, that in the opinion
"of your committee there is, however, a very urgent necessity for the
"establishment of a High School for girls, inasmuch as no public provision
"of this kind has hitherto been made, and they accordingly recommend
"that immediate action be taken by this Board to supply a want so
"extensively felt."

Then they go on and talk about the furnishing of a thorough English education, and so on, accomplishments of French, English and drawing, and the probable estimated cost, income and expenditure of the proposed Girls' High School. The revenue will be 100 pupils at \$8 per quarter, or 125 at \$6 per quarter, say \$3,000, and the total expenditure will be \$2,200, showing an apparent margin for miscalculation and unforeseen contingent expenses of \$800.

20 MR. TILLEY: That would be self-sustaining.

MR. HELLMUTH: Yes, but I am putting it in, my Lord, in view of what the board, in 1864, three years before Confederation, proposed doing—that is, the Common School Board of the City of Toronto.

MR. TILLEY: There is nothing to show that that is the Common School Board, is there?

MR. HELLMUTH: Yes. This is an extract from the Report of the City Board, that is the City Board of Trustees—it is not the Municipal Council at all—the City Board on the subject. The committee appointed by the City Board make their report.

30 EXHIBIT 39:—Journal of Education for Upper Canada, Vol. XVII, for the year 1864.

MR. HELLMUTH: I am going back now, my Lord, to Exhibit 24, the Journal of Education for 1868. At pages 84 and 85 is a circular to the chairman of each Board of Grammar School Trustees.

MR. TILLEY: That is after Confederation, of course.

MR. HELLMUTH: Yes, but it is just at that next year. He says—

MR. TILLEY: I submit that what happens after 1867 is not material.

40 HIS LORDSHIP: Well, if that is what happened, I suppose not.

MR. HELLMUTH: It is a circular to them in regard to the Grammar School Law, and also with regard to the position of girls going into the Grammar School, in 1868. He has got a definite statement from the Attorney-General of the day; it is not a great deal.

MR. TILLEY: I submit that this is not evidence at all. I understand that some opinion was taken as to the right of girls to be admitted to Grammar School. The article that my friend read from before showed that they were

*In the
Supreme
Court of
Ontario.*

No. 11
Reply,
Introducing
Exhibits.
—continued.

attending in fact, and apparently after Confederation some question was raised as to whether they were entitled to it then, and a statute was passed in 1870, I think it was, by Ontario to put that question at rest, and say that they could attend. I do not see, in the light of that, what use it is to get the opinion of any person as to whether they could or not. It has nothing to do with what we are concerned with here.

HIS LORDSHIP: No. You see, this is after the British North America Act was passed.

MR. HELLMUTH: Yes, my Lord, but before that, I gave to your Lordship, in May, 1867, before the British North America Act was passed, the statement emanating from the Superintendent of Education that the Grammar Schools were not the schools to which the girls could attend, and that there was an easy way of overcoming the difficulty of their obtaining higher education, by making these High Schools. I would submit that the view that was taken immediately after Confederation would show what had been done up to Confederation, at all events, and the view that had been accepted up to that time in regard to girls' attendance. 10

HIS LORDSHIP: Of course, I do not know what is in it. If it bears upon what was done up to the coming into force of the Act, I think it is admissible. 20

MR. HELLMUTH: Well, my Lord, it is dealing with what was to be done under the Grammar School Act of 1865.

HIS LORDSHIP: What was to be, or what was?

MR. HELLMUTH: What was done.

HIS LORDSHIP: Well, if it is bearing on what was done under that Act, before the British North America Act came into force, then I think it is admissible.

MR. HELLMUTH: As I understand it, my Lord, some of the Grammar Schools prior to 1867 were admitting girls; others absolutely refused to admit them. Then the Attorney-General was applied to in 1868 as to what the law was in relation to that Grammar School Act of 1865. That is what I wanted to show, the view that was then taken. 30

HIS LORDSHIP: Well, I do not know that views as to what the law was are of very great importance, but if your article indicates what had been happening I will take it, even if it has some irrelevant matter in it.

MR. HELLMUTH: My Lord, of course I do not want to put anything in under any misapprehension. I am afraid, as far as that is concerned, it is merely Dr. Ryerson's view of the opinion that he obtained from the Attorney-General with regard to the right of girls to attend—if your Lordship thinks it should not go in. I cannot put it any stronger than that. 40

HIS LORDSHIP: Well, how can that be relevant?

MR. HELLMUTH: Because, as I understand it, it was on that view, as the prior documents show, that the Act was actually administered, it was on that view that the Act had been and was being administered in a number of the Grammar Schools which refused to admit girls to them, as I have shown your Lordship—

HIS LORDSHIP: Unless there is in it some evidence of fact or policy that existed before 1867, I do not think I will take it if the objection is pressed. You are pressing that objection, are you, Mr. Tilley?

MR. TILLEY: Well, I only press it because I think it is entirely irrelevant. I do not think it does any harm. If this is the last, I am content; if it is not going to open up—

MR. HELLMUTH: No.

MR. TILLEY: Is this the last?

MR. HELLMUTH: Oh, no, but it is not going to open up anything—

10 MR. TILLEY: Well, I object.

HIS LORDSHIP: That objection was taken in such a mild tone that I think I will admit it subject to the objection. I think that, logically, it ought to stay out, but I will let it in.

MR. TILLEY: Then, my Lord, I do object to it going in, because it is just a statement of an opinion made on the statutes that we have to interpret, and we can interpret them just as well as any person—well, I won't say just as well, but at any rate we ought to try to interpret them just as well as any person could at that time. It was on the statute, it is an opinion on the statute by hearsay, and I object to it. It has nothing to do with our case,
20 and I do not think it should be in.

MR. HELLMUTH: His Lordship asked if it was any fact. There is a fact which I had not noticed there, and I will show it to my friend here.

MR. TILLEY: There is no statement of fact in it at all. He is saying why he did a particular thing, because he said he got a legal opinion, and the legal opinion was thus and so, that is all.

MR. HELLMUTH: My Lord, it goes further—

MR. TILLEY: And the thing that was done was with regard to 1868, after Confederation—nothing that was done before Confederation that is affected by the ruling—

30 MR. HELLMUTH: My submission is, he shows how he apportioned the grant, in view of the fact that he understood then by the, I suppose, leading opinion he got of the Attorney-General as to what were the rights of girls to attend these schools, and they apportioned the grant that year, 1868, on the strength of what he got.

HIS LORDSHIP: I do not think it matters much what he did in 1868; what he did in 1867 might matter—I mean before the 1st of July.

MR. HELLMUTH: Well, I just submit that, my Lord, and tender it.

HIS LORDSHIP: I do not think it is admissible if the objection is pressed. I do not want the case coming back after it is half argued in the Judicial
40 Committee, Mr. Tilley, for more documents.

MR. TILLEY: I understand that all my friend wants to read this for is that some person gave an opinion that girls were not entitled to attend the Grammar School, and therefore if they did attend their attendance should not be counted in dividing the Grammar School Grant.

HIS LORDSHIP: That is what I understand. That being so, I exclude it if you—

In the
Supreme
Court of
Ontario.

No. 11.
Reply,
Introducing
Exhibits.
—continued.

MR. TILLEY: Well, that is the fact as disclosed. If that is satisfactory to my friend, I am content that that should be stated.

MR. HELLMUTH: Well, I want it to go to this extent, that the view, the opinion at that time, was—

MR. TILLEY: Of one man.

MR. HELLMUTH: Of the Attorney-General, and the opinion acted upon, as shown there, by a number of schools. Some schools did admit girls, that is quite clear, some Grammar Schools; other Grammar Schools would not. And both the grant and the fact that these High Schools were established for girls, or at least some of them were, is, I think, a matter of importance. 10

HIS LORDSHIP: Well, that much is admitted, isn't it?

MR. TILLEY: Yes. That is what happened in 1868.

MR. HELLMUTH: Then, my Lord, in the Journal of Education, 1873, which is Exhibit 23, the Superintendent of Education is dealing with the High School Act of 1871 and Separate Schools, and he states the instructions that he has given to the inspectors in regard to the High School Act of 1871 so far as the Separate Schools are concerned, and these instructions are here in the shape of a paragraph or two directed to the inspectors.

MR. TILLEY: That is some six years after Confederation.

MR. HELLMUTH: It is quite true. 20

MR. TILLEY: Are we concerned with that?

MR. HELLMUTH: My submission in regard to that is this, my Lord: the High School Act had no application to the Separate Schools; none of the regulations that were put out by the Department of Education or by the Minister of Education dealing with High Schools had the slightest bearing upon the Separate Schools in any shape or form. The High School Act was merely an Act which dealt with the—shall I say either Protestant or non-sectarian schools, and did not touch the Separate Schools at all. My submission is that when the Chief Superintendent gives his instructions to his inspectors to have nothing to do in the operation of the High School Act with the Separate School Act, I am entitled to give it. That is his instructions as shown in the Journal of Education, which was the official dealing between the Chief Superintendent of Education and the various inspectors. 30

HIS LORDSHIP: I cannot follow that. What was the year?

MR. HELLMUTH: It is in 1872. I happened to just have that. The Act was passed, as my friend Mr. Battle just points out to me, in 1871, and in 1872 he repeats it again, the instructions in 1873, immediately after the High School Act came into force.

HIS LORDSHIP: That cannot bear upon the right that you had at the time we are inquiring into. 40

MR. HELLMUTH: Well, my Lord, supposing it is said now, "The regulations which were passed after the High School Act came in were regulations which affected you, although your Separate Schools were not specifically named," yet when you find regulations which deal with Public Schools and High Schools, those regulations must be assumed to also deal *mutantis mutantis* with Separate Schools. My submission is that when the Chief Superintendent, who issues those regulations, or at least through whom they passed, and

whose duties are very plain under the Act, officially declares to his inspectors in regard to the matter, we have a right to show it; that is my submission.

HIS LORDSHIP: If he declares officially in 1871 that in 1867 those regulations were not applied to the Separate Schools, then I would take that.

MR. HELLMUTH: But, my Lord, the High School Act was not passed—

HIS LORDSHIP: Well, then I cannot see the bearing of it.

MR. HELLMUTH: Well, I tender it, my Lord, in the Journal of Education for 1872, and again repeated in the Journal of Education for 1873. The page in the Journal of 1872 is page 64, and in the Journal of Education of 1873 it is page 80.

Just at the moment—I do not mean that I have not finished, but as far as I can think, that is all I have in reply, my Lord.

HIS LORDSHIP: Will you commence your argument now, Mr. Hellmuth, or would you prefer to do it in the morning?

MR. HELLMUTH: I think, if your Lordship has no objection—I could not get very far to-night—I will go on if your Lordship wishes. I think perhaps I would not save very much time by starting now.

HIS LORDSHIP: That is what I always hear about this time of day.

MR. HELLMUTH: Well, I have no objection to starting the argument.

HIS LORDSHIP: If you are not tired, or if it is not inconvenient, I should like to go on for another half hour.

MR. HELLMUTH: All right, my Lord.

HIS LORDSHIP: At some stage, Mr. Hellmuth, either in opening or before you close, I should be glad if you would formulate as closely as you can what it is that you think ought to be declared as to each of these points. The discussion has been somewhat at large, and the Petition covers a good deal of ground. I want to know as nearly as possible what it is I am being asked to declare or adjudge.

One other matter: I dare say a good deal of the argument is already on the notes in the shape of a discussion about the admissibility of documents and other matters; do counsel want the rest of the argument taken by the reporter?

MR. TILLEY: If your Lordship would like to have it, it would be all right as far as I am concerned.

HIS LORDSHIP: I might or might not. I take pretty full notes as a rule. I do not much think that I shall want it.

MR. TILLEY: Then I do not want it.

MR. HELLMUTH: Well, I am certainly, in that view, not going to press it, if my friend does not want it, and your Lordship does not want it. I would be quite agreeable, of course.

HIS LORDSHIP: All the discussion that has taken place is on the notes, of course. If you wanted it made complete by having the rest of the discussion on, the reporter could take it down—just as you like.

MR. TILLEY: I do not see any object in it.

HIS LORDSHIP: Very well.

*In the
Supreme
Court of
Ontario.*

No. 12.
Exhibits
Filed During
Argument.

(Argument commenced, and the following Exhibit put in by Mr. Hellmuth):

EXHIBIT 40:—Special Departmental Grants, Public and Separate Schools, 1924—Ontario Department of Education.

(Adjourned at 5.30 p.m., Wednesday, January 13th, 1926, until 10.30 a.m., Thursday, January 14th, 1926.)

(On resuming at 10.30 a.m., Thursday, January 14th, 1926):

(Argument resumed.)

(Adjourned at 1.00 p.m. until 2.15 p.m.)

(On resuming at 2.15 p.m.):

10

(Argument resumed.)

(Adjourned at 4.45 p.m., Thursday, January 14th, 1926, until 10.30 a.m., Friday, January 15th, 1926.)

(On resuming at 10.30 a.m., Friday, January 15th, 1926):

(Argument resumed, and the following Exhibits put in by Mr. Tilley):

EXHIBIT 41:—Estimates of the Province of Ontario for the Fiscal Year ending October 31st, 1922.

EXHIBIT 36A: Instructions to School Inspectors. Apportionment of the Legislative Grants among the Public and Separate Schools of the Districts—Ontario Department of Education.

20

EXHIBIT 42:—Circular of Instructions re Continuation Schools, Ontario Department of Education, May, 1924.

(Adjourned at 1.00 p.m. until 2.15 p.m.)

(On resuming at 2.15 p.m.):

(Argument resumed.)

(Adjourned at 4.55 p.m., Friday, January 15th, 1926, until 10.30 a.m., Monday, January 18th, 1926.)

(On resuming at 10.30 a.m., Monday, January 18th, 1926):

(Argument resumed, during which the following discussion took place):

MR. TILLEY: I propose now to consider, my Lord, the statutes, and 30
having regard to some of the provisions in the statutes, I think it is important

that we should have, in addition to the legislation, the documents that were issued by the Council of Public Instruction or the Chief Superintendent of Education, prior to Confederation, bearing on these statutes, and the rules and regulations—provided for in the statutes, I should say.

MR. HELLMUTH: My Lord, I was prevented from putting in during the course of the trial pronouncements and pamphlets from the Attorney-General, his view of the legislation. I asked to put in, to show that the High School Act had no application to the Separate Schools, and matters of that kind, and I object most strenuously now to pamphlets that were issued by Dr. Ryerson or anybody else as explanatory of the Acts that were actually passed. It is exactly the same position. If my friend is to put that in, or if it is allowed, I submit that the rule that is already made—it is contrary to the ruling that is already made, and that in case your Lordship does—you have excluded the evidence, and I am not at all quarrelling with the ruling; it is made—the opinions of persons. Now, the opinions of Dr. Ryerson in pamphlets are not evidence here, I submit, as to what was the purpose of these early Acts. I have never seen them; I do not know anything about them.

HIS LORDSHIP: I have not so far understood Mr. Tilley to say that he was offering some expression of opinion as to the purpose of the Act. What I understood him to say was that he was offering some pamphlets of instructions, practically, which the Act itself provided for.

MR. HELLMUTH: Not the Act of 1863.

MR. TILLEY: May I come to the Acts, and I will show your Lordship the point a little better. I do not want to provoke a discussion till your Lordship sees exactly how they come in together, and then if your Lordship thinks they should be put in—I ask this: the case is important; it is being brought under arrangements that are not altogether arrangements between hostile persons, to have the rights determined; and if my friend wants to put in anything that helps or is evidence, I have no objection to his doing it at any time. I want all that is official, that can be got, in. I do object to mere opinion of the Attorney-General as to what the Act means, but these are pamphlets, as I have mentioned to your Lordship; every time an Act was passed, apparently the Act required that the Superintendent should prepare these things and send them out for the instruction of the people who had to observe the law, and he did it in 1841 and continuously on through. These are all bound together.

HIS LORDSHIP: That does not sound to me like any of the documents that were excluded.

MR. HELLMUTH: Well, my Lord, if Dr. Ryerson sent out a pamphlet stating what the Act meant, and the interpretation to be placed upon it, and the instructions that were to be followed in regard to that Act, which would be his interpretation placed upon it, it might be right or it might be wrong.

HIS LORDSHIP: Oh, true.

MR. HELLMUTH: And that is the class of evidence which I offered to your Lordship, with great respect, in regard to Mr. Ryerson writing in the Journal of Education, which was the official communication or official medium of communication between the various schools and the Department; and he

*In the
Supreme
Court of
Ontario.*

No. 12.
Exhibits
Filed During
Argument.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 12.
Exhibits
Filed During
Argument.
—continued.

there told them what the Act meant, he commented on the Act of 1863, on the Act of 1859, which were the two Acts then, and he told them what those Acts meant, and your Lordship ruled that his view, which was what he told them—and he was just in the same position then—that is, under that Act—I think I pointed it out to your Lordship—under a section of that Act, he was the one to send out these documents and instructions.

HIS LORDSHIP: He was the one to send out instructions, yes, and I thought I said that any instructions he sent out you might have in. I thought I said that anything that showed what the schools were doing in fact—it is a long time ago now—or what the competent authorities told them to do, you could have in. 10

MR. HELLMUTH: Well, one thing that your Lordship, with great respect, ruled out, which I think is exactly in line, was, when he sent out and told the inspectors—my recollection is—that the High School Act had no application to Separate Schools. Your Lordship ruled that out, that I offered.

MR. TILLEY: The High School Act?

MR. HELLMUTH: The Act of 1871 had no reference whatever to Separate Schools, that it had no application to them; I mean, that they were—

MR. TILLEY: That was after 1867.

MR. HELLMUTH: I know it was after 1867; but if he had under the statute the right of sending out those instructions, is it that we could have what he said before 1867 and we cannot have what he said after 1867? 20

HIS LORDSHIP: Well, I was for certain purposes drawing a sharp line between what happened before and what happened after 1867.

MR. HELLMUTH: Well, his duties were exactly the same under both Acts.

HIS LORDSHIP: True, but the relevancy of his instructions might be quite different. Of course, that ruling—

MR. HELLMUTH: To all school inspectors.

HIS LORDSHIP: That ruling of mine was made with reference to evidence tendered for one specific purpose. I do not remember exactly what the purpose was, at the moment, but it was a limited ruling, and I should be much astonished to find that it covered the case of a document provided for by a statute when that document is tendered for such a purpose as Mr. Tilley is tendering these documents for. 30

MR. HELLMUTH: The particular matter that I desired to put in was in the Journal of Education for the year 1873, and it was a ruling under the authority of an Act which he had—

HIS LORDSHIP: But for what purpose did you want to put it in?

MR. HELLMUTH: I wanted to put it in to show that the High School Act—the Act of 1871, not the High School Act; I do not remember the title of the Act, but I think it is to improve the Common and Grammar Schools—was not an Act which, under the instructions that the Chief Superintendent of Education issued, had the slightest application to or bearing upon the position of Separate Schools; it was only designed to deal with the Common or Public Schools, and he gave instructions about it. Supposing, my Lord, if I might put my friend's position forward, he practically is going to suggest that what Mr. Ryerson sent out as instructions, not in reference to the Act of 40

1863 at all, when everything might have been changed, but in reference to earlier Acts which may or may not have been thought out or brought into mind or specifically referred to—they might have been entirely altered by another Act, and I submit that what Mr. Ryerson thought to be an Act of 1840 or 1841 would have no bearing upon the meaning and interpretation of the Act of 1863, and could not be evidence.

*In the
Supreme
Court of
Ontario.*
—
No. 12.
Exhibits
Filed During
Argument.
—continued.

MR. TILLEY: My Lord, these are not of Mr. Ryerson; they are pamphlets published by the Council of Public Instruction, and are authentic, and are in quite a different position from anything else we have been dealing with.

10 HIS LORDSHIP: Pamphlets of the council?

MR. TILLEY: Of the Council of Public Instruction.

HIS LORDSHIP: And your purpose in using them is?

MR. TILLEY: The purpose in using them is to show the regulations and the gradual development of the schools and what they were instructed to do in the schools from time to time.

HIS LORDSHIP: Up to?

MR. TILLEY: Up to 1863—up to 1867, one pamphlet.

HIS LORDSHIP: I mean, they do not go past Confederation at all?

MR. TILLEY: Oh, no; I was not thinking of putting in anything beyond
20 Confederation. I assumed that that would stand or fall by itself. They are Government publications, either by the Government or by the Council of Public Instruction, of the same type that my friend had for 1863, and I think that pamphlet ought to be put in in full, in view of the way the matter had developed.

HIS LORDSHIP: Treating them apart from all other rulings, I do not see anything objectionable in them in themselves.

MR. TILLEY: They are the forms of regulations and instructions.

HIS LORDSHIP: And, as I remember the other ruling, the admission of
30 them is not in conflict with it. That was at a comparatively early stage of the case. I do not know whether, in view of the wider development of the case since, you have had any reason to re-consider your objection to the document—

MR. TILLEY: My Lord, rather than have any question arise with regard to a case of such importance, and having regard to the fact that it is very desirable to have all the matters determined once and for all, and not for some other person claiming the right to say that something was left out in this case, I think I will waive any objection to my friend putting in anything that can in any way help.

HIS LORDSHIP: Well, of course, that was your point before.

MR. TILLEY: I know, but I mean to say, my friend can put it in if he
40 thinks it is of use to him, if he thinks he can build an argument on it. It is better to put it in—they are only official documents, anyway, and if they are not useful they may be disregarded, I suppose.

HIS LORDSHIP: That was somewhat my own hazy view at the time the thing was tendered, but I did not know then quite what was coming, or how widely the door was going to be opened, by them, and I thought I had to rule on the objection taken. There was a specific tender of a number of

*In the
Supreme
Court of
Ontario.*

No. 12.
Exhibits
Filed During
Argument.
—continued.

documents, which were excluded. Is your objection to all of those withdrawn?

MR. TILLEY: I am willing that they should be put in. I do not want the matter to get into a position, on thinking it over—I intended to say before I finished that if my friend wanted to put in any of these things I preferred that it should be done, rather than that any person should have the view that a different result might be expected if other documents not before the Court had been before the Court.

HIS LORDSHIP: Then when we get those in I do not know whether they may lead to more. 10

MR. TILLEY: Well, if my friend wants to put it in, he can. I am willing that he should put it in.

HIS LORDSHIP: Then the objection upon which that ruling was based is withdrawn.

MR. TILLEY: Yes, my Lord.

HIS LORDSHIP: And the ruling goes with it, I suppose.

MR. TILLEY: Yes, my Lord.

HIS LORDSHIP: And Mr. Hellmuth is at liberty to reopen his case in so far as it need be reopened on that ground.

MR. TILLEY: Yes, my Lord. I do not suppose that my friend will 20 burden the record with documents that he does not think are desirable.

HIS LORDSHIP: I assume he would not.

MR. TILLEY: I shall put these in, my Lord, then.

EXHIBIT 43:—Educational Pamphlets, 1841-1855.

EXHIBIT 44:—The Laws relating to Grammar and Common Schools, in Cities, Towns and Villages in Upper Canada; together with the Forms, General Regulations and Instructions, for executing their Provisions, prepared according to Law—1855.

EXHIBIT 45:—School Manual. The Consolidated Acts relating to Common Schools in Upper Canada; together with Decisions of the Superior 30 Courts, and the Forms, General Regulations and Instructions, for executing their Provisions, with a Copious Analytical Index—1861.

EXHIBIT 46:—Pamphlet—The Law of 1863 relating to Roman Catholic Separate Schools in Upper Canada (containing Appendix H, Exhibit 5-A).

(Argument resumed.)

(Adjourned at 1.00 p.m. until 2.15 p.m.)

(On resuming at 2.15 p.m.):

(Argument resumed, during which the following Exhibits were put in):

EXHIBIT 47:—Journal of Education for Upper Canada, Vol. XIII, for the year 1860.

EXHIBIT 48:—Journal of Education for Upper Canada, Vol. XV, for the year 1862.

EXHIBIT 49:—Journal of Education for Ontario, Vol. XXIX, for the year 1876.

EXHIBIT 50:—Report of the Minister of Education for the year 1886.

EXHIBIT 51:—Report of the Minister of Education for the year 1903.

EXHIBIT 52:—Journal of Education for Ontario, Vol. XXV, for the year 10 1872.

EXHIBIT 53:—Letter, Deputy Minister of Education to Secretary, R.C. Separate School Board, Dublin, Ont., June 7th, 1915; Letter, Deputy Minister of Education to Secretary, R.C. Separate School Board, Dublin, Ont., Feb. 22nd, 1915; Letter, Deputy Minister of Education to Secretary, R.C. Separate School Board, Dublin, Ont., Feb. 22nd, 1915.

EXHIBIT 54:—Correspondence re Middle School Normal Entrance Examinations in Lancaster, etc.

EXHIBIT 55:—Inspector's Report of Continuation School at Eganville Separate School, 1908.

20 EXHIBIT 56:—Documentary History of Education in Upper Canada, 1865-67.

(Adjourned at 4.55 p.m., Monday, January 18th, 1926, until 10.30 a.m., Tuesday, January 19th, 1926.)

(On resuming at 10.30 a.m., Tuesday, January 19th, 1926):

(Argument resumed, during which the following Exhibits were put in):

EXHIBIT 57:—Report on a System of Public Elementary Instruction for Upper Canada, by Egerton Ryerson, 1846.

(Adjourned at 1.00 p.m. until 2.15 p.m.)

(On resuming at 2.15 p.m.):

30 (Argument resumed, during which the following Exhibits were put in):

EXHIBIT 58:—Journal of Education for Upper Canada, Vol. IX, for the year 1856.

EXHIBIT 59:—Journal of Education for Upper Canada, Vol. X, for the year 1857.

*In the
Supreme
Court of
Ontario.*
—
No. 12.
Exhibits
Filed During
Argument.
—continued.

EXHIBIT 60:—Journal of Education for Upper Canada, Vol. XI, for the year 1858.

(Adjourned at 5.00 p.m., Tuesday, January 19th, 1926, until 10.30 a.m., Wednesday, January 20th, 1926.)

(On resuming at 10.30 a.m., Wednesday, January 20th, 1926):

(Argument resumed and concluded, during which the following Exhibit was put in):

EXHIBIT 61:—Historical Educational Papers and Documents of Ontario, 1842-1861.

(At the conclusion of the argument the following discussion took place): 10

HIS LORDSHIP: I am afraid that it is going to be a considerable time before I can deal with this case. It is one that will take some time.

MR. HELLMUTH: I thought perhaps, as it had taken so long in presentation and argument, your Lordship would dispose of it very rapidly.

HIS LORDSHIP: Would you like me to give judgment now? No, I don't think so. I think it will take, notwithstanding the help that these arguments have afforded, some time, and I do not know when I will get the time.

MR. HELLMUTH: Well, it has to rest with your Lordship, of course.

HIS LORDSHIP: Well, I will do the best I can to dispose of it soon. There is no disposition of costs, I suppose? 20

MR. TILLEY: If your Lordship comes to the conclusion that the plaintiffs are not entitled to succeed, I am not asking for costs. If your Lordship comes to the conclusion that they are entitled to succeed, I do not know why the punishment should not fit the crime. If the plaintiffs are entitled to judgment, I am not asking to be relieved of costs. Your Lordship can take it that way, or your Lordship can say that you need not deal with costs at all.

MR. HELLMUTH: It is not a question even on our side of costs.

HIS LORDSHIP: I did not suppose that—

MR. TILLEY: I am only indicating to your Lordship that you need not deal with the question of costs. 30

Certified to be a correct copy,

R. N. DICKSON, C.S.R.,
Official Reporter, Supreme Court of Ontario.

REASONS FOR JUDGMENT OF THE TRIAL JUDGE

MR. JUSTICE ROSE,

Delivered 13th May, 1926.

In the
Supreme
Court of
Ontario.No. 13
Reasons for
Judgment
Rose, J.
May 13,
1926.

This is a petition of right presented by the board of trustees of the Roman Catholic Separate School for School Section No. 2 of the township of Tiny, in the county of Simcoe, on behalf of themselves and all other boards of trustees of Roman Catholic separate schools in Ontario, seeking (1) a declaration that certain sections of certain Acts passed by the legislature of Ontario, in so far as they prejudicially affect rights in respect to denominational schools secured to Roman Catholics by sec. 93 (1) of the British North America Act, are beyond the powers of the legislature and are invalid, (2) a declaration that the suppliants and all other boards of trustees of Roman Catholic separate schools in Ontario have the right "to establish and conduct courses of study and grades of education such as are now conducted in" continuation schools, collegiate institutes and high schools, and that all regulations purporting to prohibit, limit or in any way prejudicially affect such right are invalid and *ultra vires*, (3) a declaration that the supporters of Roman Catholic separate schools are exempt from the payment of rates imposed for the support of continuation schools, collegiate institutes and high schools not established or conducted by a board of trustees of a Roman Catholic separate school, (4) judgment against the Province for a sum of money equivalent to what the suppliants say is the difference between the amount awarded to them out of the legislative grant for the year 1922, and the amount that would have come to them if effect had been given to the statute that was in force at Confederation, which statute, they contend, created a right that the legislature has no power to affect prejudicially, and (5) other relief.

The provincial legislature has exclusive power to make laws in relation to education, but only subject to and according to certain provisions, one of which is 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 British North America Act, section 93 (1)*. Any provincial legislation repugnant to this provision is "to the extent of such repugnancy . . . absolutely void and inoperative": *Colonial Laws Validity Act, 28-29 Vict., ch. 63, sec. 2; Hirsch v. The Protestant Board of School Commissioners of Montreal (1926), S.C.R. 246*. At the Union there was in force a statute passed by the legislature of the Province of Canada in 1863 (26 Vict., ch. 5) which gave certain rights to separate schools to Roman Catholics in Upper Canada; and the first subject of inquiry in this case must be whether under that statute Roman Catholics had the rights or any of the rights which the suppliants say the Ontario legislation, and the regulations passed under its authority, affect, or purport to affect, prejudicially.

*In the
Supreme
Court of
Ontario.*
—
No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

To discover the real nature and extent of the rights with respect to denominational schools which the class of persons represented by the suppliants had by law at the Union, is not only the first, it is also the most difficult of the tasks to be performed in deciding this case; for, as will appear, when once it is known whether the rights were what the suppliants contend, or only what counsel for the Attorney-General submits, there will be no great trouble in ascertaining whether any of them are affected prejudicially by one or another of the post-Confederation statutes or regulations complained of.

In order to appreciate the full effect of the Separate Schools Act of 1863, and to know what rights with respect to denominational schools the Roman Catholics of Upper Canada had by law at Confederation, it is necessary to consider to some extent the beginning and the growth until 1867 of the system of providing education in state-aided schools in Upper Canada. Schools like Upper Canada College with their own endowments and their special spheres need not be referred to; but the constitution of the grammar schools, the normal school, the model schools, the common schools and the several classes of separate schools, and the place of each in the general scheme of public education are important. 10

The history of the schools was discussed elaborately at the trial; and I have gone over the ground again and have set down a detailed statement of the course of the legislation. The result is that my judgment, in one aspect, is much too long; but, while I think that the important characteristics of the schools of 1867 could be described quite shortly, I have decided to let the judgment stand as drafted, in the hope that, in any appellate courts before which the case may come, a perusal of my statement may, as to certain of the statutes and documents, serve instead of a laborious examination of the originals. A similar hope has deterred me from condensing that part of the judgment which deals with the development of high Schools, collegiate institutes, continuation schools and fifth classes in Ontario. The origin and the present status of each of these could be set forth in a few paragraphs; but as the case proceeds a chronological statement such as has been prepared may be of use. 30

In 1789 and 1797 there were grants of land for the support of schools such as afterwards were known as grammar schools; but apparently no such schools were set up until after the passing in 1807 of an Act of the Legislature of Upper Canada, 47 Geo. III, ch. 6 (see the Journal of Education for Upper Canada, 1865, page 130). By this Act provision was made for granting £800 annually for "public" schools, one in each of the eight districts of the province. Trustees were to be appointed in each district; the trustees were to nominate the teachers; each teacher was to receive £100 a year. In 1808 this Act was made permanent by 48 Geo. III, ch. 16. 40

In 1816 the first Common School Act, 56 Geo. III, chapter 36, was passed. For the establishment of common schools, in each district there was to be paid annually a total sum of £6,000, which was to be divided amongst the districts in a manner prescribed. The inhabitants of any "town, township, village or place" were authorized to meet and make arrangements for a common school. As soon as a competent number of persons had united and

had built or provided a school house and had engaged to furnish twenty scholars or more, and had made partial provision for the payment of a teacher, they might meet and appoint three trustees, who should have power to engage a teacher and to make rules and regulations for the government of the school. The trustees were required periodically to report to the district board of education as to the books used and the rules made; and the board might order any of such books not to be used, and might rescind any of the rules and regulations, and might make alterations in the rules in order that there might be "a more uniform system of education throughout the Province." A board
 10 of education consisting of five persons was to be appointed by the Governor for each district. Each such board was given full power to superintend the schools of its district, and was required to make an annual report to the Governor for the information of the legislature. The board also was to apportion the district's share of the legislative grant amongst the common schools in the district; and the treasurer of the Province was to pay each school's share to the teacher upon the certificate of the trustees of the school. Thus from the beginning the inhabitants of each locality were to take the initiative in the formation of a common school, and the school was to be managed by trustees elected locally, whereas at first the grammar schools
 20 were managed by district boards appointed by the Governor; but although the common schools were organized locally they were subject to regulation by district boards, and uniformity in the educational system throughout the Province was aimed at.

The Common School Act of 1816 was continued in 1820 by 60 Geo. III, ch. 7; but the amount of the annual grant was reduced to £2,500 divisible equally amongst the districts, of which at that time there were ten. There was another Act in 1820, 1 Geo. IV, ch. 7, the terms of which have no bearing upon the present case; and in 1824, by 4 Geo. IV, ch. 8, the Act of 1816 was made to extend to schools for Indian children; and it was enacted
 30 that no teacher in a common school should share in the public grant until he had been examined by the board of education for his district or had obtained a certificate of fitness from a member of such board, "due regard at all times being had to the degree of education wanting, or to the branches necessary to be taught" in the particular school.

In 1839, by 2 Vict., ch. 10, after recitals that lands had been set aside by King George III for the endowment of grammar schools and a university, that Upper Canada College had been incorporated and was an appendage to the university, and that for some years to come the course of education would be promoted better by devoting a portion of the University's income
 40 to the support of Upper Canada College and of grammar schools than by the erection of a university, it was declared that the existing district schools were grammar schools; and it was enacted that the Governor should appoint a board of grammar-school trustees in each district; that the money arising from the sale of school lands should be invested and the investments should be placed under the control of the council of the University (King's College) to distribute the income among the districts requiring assistance; that the Governor might set aside 250,000 acres of waste lands to be sold, the proceeds

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

to form a fund for grammar schools; that moneys might be advanced to the boards of grammar-school trustees for certain purposes, including the support of additional schools in towns or villages (other than the towns in which the court houses were situate) in which the inhabitants should provide suitable school houses—no such additional school, however, to be within six miles of the district town; and that the university council might make rules and regulations for the conduct and good government of the several grammar schools.

By the Union Act of 1840, 3-4 Vict., ch. 35 (Imp.), sec. 46, it was enacted in effect that all laws in force in Upper Canada at the union should 10
continue in force in that part of the united province until repealed or varied by the Legislature of the Province of Canada. That Legislature at its first session, in 1841, passed an Act, 4-5 Vict., ch. 18, to repeal the Upper Canada Common School Acts of 1816, 1820 and 1824 and a Lower Canada Act of 2 Wm. IV, and "to make further provision for the establishment and maintenance of common schools throughout the Province" of Canada. By that statute it was enacted (sec. 2) that for the establishment, support and maintenance of common schools in each and every township and parish in Canada there should be established a permanent fund which should consist of the moneys derived from the selling or leasing of lands set apart for common 20
schools; (sec. 3) that for the purposes already mentioned there should be granted annually the sum of £50,000, which sum should be made up of the revenue derived from the permanent fund and of such moneys as might be required to complete the same, which annual grant should be called the Common School Fund; (sec. 4) that the Governor might appoint a superintendent of education, who was required (clause 1) to distribute the annual grant among the municipal districts in the ratio of the number of children over 5 and under 16 years of age resident therein; (clause 3), to certify to the several district treasurers the amounts awarded to their districts respectively, so that each district council might raise (and it was required to 30
raise) an amount equal to the amount apportioned to it from the Provincial treasury; and (clause 5) to address to persons employed in carrying the Act into effect such suggestions as might tend to the establishment of uniformity in the conduct of the common schools throughout the Province. By sec. 5 each district council was constituted a board of education for the district and was required to divide the townships and parishes of the district into school districts, and to apportion the district's school fund amongst the school districts. Section 7 provided for the annual election of school commissioners in each township and parish. It was to be the duty of these commissioners to acquire sites for school houses, to appoint and remove teachers, and to 40
regulate, for each school under their jurisdiction, the course of study to be followed and the books to be used. Section 10 provided for the collection of school rates. Section 11 made the first provision for separate schools. Whenever any number of the inhabitants of a township or parish professing a religious faith different from that of the majority should dissent from the regulations, arrangements, or proceedings of the commissioners with reference to any common school in such township or parish, it should be lawful for them

collectively to signify such dissent in writing to the clerk of the district council, with the name or names of a trustee or trustees elected by them, whereupon the clerk was to furnish a copy to the district treasurer, and the dissenting inhabitants, through their trustee or trustees (who should have all the rights and be subject to all the obligations of common-school commissioners), might establish and maintain one or more common schools, and should receive from the district treasurer their due proportion, according to their number, of the moneys appropriated by law and raised by assessment in the school district. By sec. 12 it was made a condition of the right of any common school to receive any money out of the common school fund that the school should have been open for a certain time in the school year, that a certain number of children should attend, that the required reports should be made, and that the sum raised by the inhabitants by assessment should be at least equal to the sum apportioned. By sec. 15 it was enacted that in cities and towns corporate the powers and duties exercised by and devolving upon district councils with respect to common schools in the districts should be exercised and performed by the corporation. Section 16 authorized the Governor to appoint a board of examiners for each city and town corporate, one-half of them to be Roman Catholics and the other half Protestants. The Roman Catholic half were to perform the duties of the board in respect of common schools attended by Roman Catholic children only, and the other half were to perform the duties in respect of the schools attended by Protestant children only, while the whole board must act in respect of schools attended by children of both classes.

At the same session the Legislature dealt with the grammar school fund, by the Act 4-5 Vict., ch. 19. The Act of 1839 was repealed; and the fund was taken out of the hands of the council of King's College and transferred to the Receiver-General, and provision was made for advances to the schools. The details of the Act are of no present interest.

In 1843, by 7 Vict., ch. 9, it was enacted that the annual grant of £50,000 for the maintenance and support of common schools in the Province should thereafter be divided between Upper and Lower Canada in proportion to their respective populations; and by ch. 29 the Common School Act of 1841, 4-5 Vict., ch. 18 (except the sections relating to the creation and investment of the fund and the application of the income), was repealed in so far as Upper Canada was concerned, and separate provisions were made for the establishment and maintenance of Common Schools in this part of the Province. The Provincial Secretary was made *ex officio* chief superintendent, and the Governor was given power to appoint an assistant superintendent of common schools for Upper Canada. To the Chief Superintendent was entrusted the apportionment amongst the municipalities, according to population, of any sums appropriated by the Legislature for common schools in Upper Canada, after deducting any sum which might be set aside for "model" schools. These model schools might be established by the wardens of any county or, with the approval of the council, by the school superintendent of any township, town or city in which there was no county model school. In any model school so established gratuitous instruction was to be given to the teachers of common

In the
Supreme
Court of
Ontario.

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

schools in the municipality; whenever a normal school should have been established and should be in operation in Upper Canada, no one should be appointed to be a principal teacher in a model school without producing a certificate of qualification from a professor or teacher of the normal school. For a county model school the wardens were to levy a rate; for a township, town or city school the local superintendent might appropriate a small annual sum over and above the sum to which such school would otherwise be entitled under the Act. In each township, town or city there was to be a superintendent of common schools, appointed by the council. To him was entrusted the examination of persons desirous of appointment as teachers; and the regulations that might be made by the trustees of the school districts, governing the courses of study, the books to be used and the conduct of the school, were to be subject to his approval. There was to be in each county a superintendent, appointed by the wardens. He was to have power to examine all persons desirous of teaching in the common schools of the county, and he might in certain cases revoke a certificate given by a township, town or city superintendent. The provision for separate schools was different from that of the former Act; no child was to be required to read or study any religious book, or join in any exercise of religion, objected to by his or her parents or guardians; if the teacher of a school was a Roman Catholic the Protestant inhabitants might have a school with a teacher of their own religious persuasion, upon the application of ten or more freeholders or householders resident in the school district; and where the teacher should happen to be a Protestant the Roman Catholic inhabitants had a similar right. Any separate school was to have "its share of the public appropriation" according to the number of children in attendance, and was to be "subject to the visitations, conditions, rules and obligations provided in (the) Act with reference to other common schools."

Section 6 of the Act last referred to (7 Vict., ch. 29) authorized the chief superintendent to prepare regulations for conducting all necessary proceedings under the Act and to issue instructions for the better organization and government of the common schools. Regulations and instructions were issued; but, as appears by a note on pp. 30 and 31 of the pamphlet produced, the chief superintendent was of opinion that the "nomination of school books" was left by the Act to the trustees, subject only to the approval of the township superintendent.

The Common School Act of 1843 was replaced in 1846 by the Act, 9 Vict., ch. 20. The Provincial Secretary ceased to be chief superintendent, and the Governor was authorized to appoint a superintendent of schools in Upper Canada, who should be subject to the orders and directions of the Governor. The superintendent was annually to apportion amongst the districts, townships towns and cities all moneys appropriated by the Legislature for common schools in Upper Canada. He was to issue instructions for the better organization and government of common schools; to discourage the use of unsuitable and improper books; and to use all lawful means to provide for and recommend the use of uniform and approved text-books; to take the general superintendence of the normal school when such school should be established; and to report to the Governor with suggestions relating to education generally. The Governor

was authorized to appoint not more than seven persons, of whom the superintendent should be one, to be a board of education. The board were to see to the establishment of a normal school and to examine and recommend or disapprove of all books which might be submitted to them with a view to use in schools. No school in which books were used of which the board had publicly disapproved was to share in the governmental grant. The normal school was to contain one or more elementary model schools for the instruction and practice of teachers of common schools in the science of education and the art of teaching. Each district council (or, failing the council, the Governor) was to

10 appoint a district superintendent of common schools. Each district council was annually to levy and raise for common-school purposes a sum of money at least equal to the public money apportioned to the district; and was to divide the local municipalities into school sections; and was authorized to levy money for purchasing school sites and erecting school houses and residences for teachers. Each district superintendent was to distribute the district school fund, i.e., the portion of the government grant apportioned to the district and the money raised by the district council; to inspect the common and model schools in his district; to examine candidates for positions as teachers; to

20 prevent the use of unauthorized foreign books in the English branches of education, and to recommend the use of proper books; and to act in accordance with the directions of the superintendent of schools. The common-school trustees were to build the school house, the funds being provided by rate levied by the district council; to raise by rate bill or voluntary subscription the additional money necessary for the teacher's salary and the incidental expenses of the school; to collect the sums payable by persons who sent children to the school; to ascertain the number of children over five and under sixteen years of age residing in the section, and to allow them without exception to attend the common school so long as their conduct should be agreeable to the rules; to

30 appoint the teacher; to select the books to be used in the school from a list of books made out by the board of education under the sanction of the Governor in Council; to see that the school was conducted in accordance with the regulations; and to report the branches taught and the books used. The provisions for separate common schools were as in the Act of 1843 with some verbal changes. Provision for district model schools, but not for township, town or city model schools, was continued. A district council might authorize the establishment of both "a female and male school" in any school section.

In a book of regulations issued in 1846, attention is drawn to the desirability of using only one series of reading books, one arithmetic for beginners and another for more advanced pupils, etc., in order that the scholars may be

40 classified in the several branches which they are studying; and the books published by the National Board of Education in Ireland are approved and recommended. The Superintendent points out that, although "as much has been done since the establishment of the present system of elementary education in 1841 as could have been expected under the circumstances," it is manifest that the system is still in its infancy and that much remains to be accomplished. He notes that the board of education has not as yet signified its public disapproval of any book published in the British dominions, but has recom-

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

mended the Irish books; and he urges the adoption of these and of certain elementary books printed in the United States. In further regulations issued in 1847 under the same Act he instructs the teachers in the common schools to "classify the children according to the National Books, where they are used."

In 1847 an Act, 10-11 Vict., ch. 19, was passed constituting each city and incorporated town a corporation for all common-school purposes, and giving to the councils of the cities, and to the boards of police commissioners of the towns, the powers which in the districts were exercisable by the district municipal councils. The councils and the boards of police commissioners were to appoint boards of trustees, who were to have the direction of the expenditure of the school moneys, the care of the school property, and the appointment of the teachers. They were also (sec. 5 (3)) to determine the number, sites and description of schools to be established and maintained, and whether such school or schools should be denominational or mixed. 10

On the 30th May, 1849, an Act, 12 Vict., ch. 83, was passed which, as the Chief Superintendent said in his report for that year, provided for radical changes in the whole working of the school system; but it did not come into force until the 1st January, 1850, and it was repealed by a new Common School Act passed on the 24th July, 1850, and there is no need to refer to it at any length. The right to call for the establishment of denominational schools had not been exercised very extensively—in the whole of Upper Canada, which had 3,000 school sections, there were, according to the report for 1850, only 46 such schools—and the Act of 1849 seems to evidence a temporary victory for those persons who were opposed to the continuance of the system. No person attending any "public" school (i.e., apparently any school whether normal, model or common or of any other description provided for in the Act) was to be required to read or study any book containing controverted theological dogmas or doctrines, or to join in any exercise of devotion or religion, which should be objected to by him or (in the case of a child) by his parents or guardians; but there was no provision for separate denominational schools. 20 30

A new Common School Fund Act—12 Vict., ch. 200—was passed in May, 1849, reserved for the signification of her Majesty's pleasure, sanctioned, and in May, 1850, brought into effect. By it it was enacted that all moneys that should arise from the sale of any of the public lands of the Province should be set apart for the purpose of creating a capital sufficient to produce a clear annual sum of £100,000, which capital and income should form a public fund to be called the Common School Fund; that the Common School Fund should remain a perpetual fund for the support of common schools and the establishment of township and parish libraries; that 1,000,000 acres of the public lands should be set apart by the Commissioner of Crown Lands, and that the money realized from the sale thereof (after deducting Indian annuities and the expenses of management and sale) should be invested towards the creation of the fund; that as soon as a net annual revenue of £50,000 should be derived from the fund, the annual grant out of the provincial revenue 40

for common schools should cease, but in the meantime the revenue should be applied towards paying the annual grant.

The Common Schools Act of 1850, 13 & 14 Vict., ch. 48, was, as the Chief Superintendent remarked in a circular, a renewal of the general School Act of 1846 and the City and Town School Act of 1847, combined into one Act, with a new and more simple arrangement, with some additions which the progress of the schools and the new system of municipal councils seemed to require. It restored the right to separate schools. Twelve heads of families, being Protestants, could demand such a school if the teacher of the common school was a Roman Catholic, and twelve Roman Catholics could make the same demand if the teacher was a Protestant. Negroes had a similar right, but they had had it under the Act of 1849. A separate school, whether for Roman Catholics, Protestants or negroes, was to be under the same regulations "in respect to the persons for whom such school (was) permitted to be established, as (were) Common Schools generally"; and it was to share in the school fund according to the average attendance of the pupils attending it, as compared with the whole average attendance of pupils attending the common schools in the same local municipality. The provisions of the Act of 1849 which had authorized the trustees of common schools in cities and towns to determine whether the schools should be denominational or mixed, thus placing the inhabitants of a city or town in a weaker position as regards denominational schools than the inhabitants of a rural municipality, were not re-enacted. The trustees of each school section (i.e., the trustees of rural schools) were required to permit all residents in the section between the ages of 5 and 21 years to attend the school, so long as their conduct was good and their school fees or rates were paid (but this did not apply to the children of persons on whose behalf a separate school had been established). They were also to see that no unauthorized books were used in the school, and that the pupils were supplied with a uniform series of text-books authorized and recommended according to law; and to report the branches of education taught, the number of pupils in each branch, and the text-books used. Each township municipality was given the right to raise money for the erection and support of a township model school. If such a school should be established the trustees of one or more common schools might merge their schools in it, with the consent of the township council. Power was given to each township council, after meetings called in the school sections had approved, to pass a by-law placing all the common schools in the township under one board of trustees, which board should have, in respect of the schools in the township, the same powers and duties as boards in cities and towns had in respect of the urban schools. One of the duties of the city and town boards was to determine the number, sites, kind and descriptions of schools to be established and maintained. These boards were also to see that authorized text-books were used, and that the schools were conducted according to the regulations. The responsibility for raising in the municipalities, each year, sums at least equal to the legislative grants was fixed. Each county was to appoint a local superintendent of schools for the county,

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 13
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

and county boards of public instruction were set up, composed of the trustees of the county grammar school and the local superintendents.

These county boards were to examine and give certificates of qualification to the common-school teachers; and they might (if deemed expedient) select from the books recommended by the Council of Public Instruction such books as they should think best adapted for use in schools under their jurisdiction. The local superintendents were required to see that the schools were managed and conducted according to law; to prevent the use of unauthorized and recommend the use of authorized books; to act in accordance with the regulations and instructions to be given; and to report to the chief superintendent, stating the branches taught in each school and the books used. 10

The Chief Superintendent of schools for Upper Canada was to be appointed by the Governor and was to be responsible to and subject to the direction of the Governor, communicated through such Department of Government as might be directed. He was to apportion annually all moneys granted or provided by the Legislature for common schools in Upper Canada, and not otherwise appropriated by the Act, to the several municipalities in proportion to their population; to transmit to the various officers such general regulations as should be approved by the Council of Public Instruction for the better organization and government of common schools; to take the general superintendence of the normal school; and to provide for and recommend the use of uniform and approved text-books in the schools generally. 20
The Governor was authorized to appoint a Council of Public Instruction for Upper Canada of which the chief superintendent should be a member. The council was to adopt all needful measures for the permanent establishment and efficiency of the normal school, containing one or more model schools; to make regulations for the management of the normal school, and to prescribe the terms and conditions of admission to it and instruction in it; to make regulations for the organization, government and discipline of common schools, and the classification of schools and teachers; and to examine and recommend or disapprove of text-books for the use of schools. As before, no school using books publicly disapproved of by the council could share in the legislative grant. 30

It was enacted also that a sum not exceeding £1,500 per annum should be allowed out of the legislative school grant (*i.e.*, out of Upper Canada's share of the annual grant of £50,000) for the salaries of officers and other contingent expenses of the normal school, and that a sum not exceeding £1,000 should be allowed out of the same grant to facilitate the attendance of teachers in training. By sec. 40 it was enacted that no county, city, town or village should share in the legislative school grant without raising by assessment a sum at least equal to the share of such grant apportioned to it. The name "Common School Fund" of the municipality was given to the sum made up of the apportionment and the amount raised by assessment; and it was enacted that that fund should be used for no other purpose than that of paying the salaries of qualified teachers of common schools. Section 41 empowered the Governor in Council to authorize the expenditure annually, out of Upper Canada's 40

share of the legislative school grant, of £3,000 for school libraries, £25 in every county or riding for a teachers' institute, and £200 for plans and publications for the improvement of school architecture and practical science in connection with the common schools—provided that these sums were to come out of any additional amount awarded to Upper Canada out of the grant in consideration of the increase of Upper Canada's population in proportion to that of the whole Province, and that the amount theretofore apportioned to the several municipalities in Upper Canada should not be lessened by these expenditures. Section 44 made the first provision for certificates of qualification valid throughout Upper Canada; such certificates might be given, on the recommendation of teachers in the normal school, to persons who had been students in the normal school.

In the regulations issued in 1850, under the authority of the new Act, attention was directed again to the desirability of having only one series of text-books in a school, so that the scholars could conveniently be classified (p. 59), and a list of books recommended was printed (p. 63). The books appear to be quite elementary; and the "programme of the examination and classification of teachers" prescribed by the Council of Public Instruction is one that could not have been prescribed if the common schools had been equipped for anything beyond the imparting of elementary education (p. 101 of the manual issued in 1850).

In 1851 there was an Act, 14 & 15 Vict., ch. 111, to remove certain doubts that had arisen as to the meaning of the separate-school provisions of the Act of 1850; and in 1853, by 16 Vict., ch. 185, the Act of 1850 was amended and supplemented. The powers of the boards of trustees in cities, towns and incorporated villages were made co-extensive with those of the trustees of school sections. Persons of the religious persuasion of any separate school, sending children to such school, or supporting such school by contributing thereto annually an amount equal to what (if such school had not existed) they would have been liable to pay on any assessment to obtain the annual common-school grant for the municipality, were exempted from the payment of common-school rates; each separate school was to share in the Legislative common-school grant only (and not in any school money raised by local municipal assessments) according to the average attendance of pupils attending such separate schools as compared with the whole average attendance of pupils attending the common schools in the same municipality; the trustees of each separate school were made a corporation with the same power to impose, levy and collect school rates or subscriptions upon and from persons sending children to or subscribing towards the support of the separate school as the trustees of a school section had in respect of persons sending children to or subscribing towards the support of the common school of the section. Power to unite common schools and grammar schools was given to the trustees of school sections. The chief superintendent was given authority to direct the distribution of the common-school fund of any township among the school sections according to the length of time in each year during which a school should have been kept open by a legally qualified teacher. By sec. 23 provision was made for the expenditure of whatever

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

additional money might be payable to Upper Canada out of the legislative grant or might be granted during that session of Parliament for common-school purposes in Upper Canada. Not less than £4,000 should be apportioned to the common schools; not more than £500, of which sum might be expended in special aid of common schools in new and poor townships; some money might be spent on the normal and model schools; some on books, etc., for the normal-school museums; and some might be devoted to a fund for superannuated teachers.

At the same session the law relating to grammar schools was amended by the Act, 16 Vict., ch. 186. The proceeds of the sale of lands set apart for the encouragement of grammar schools in Upper Canada, all annual grants by Parliament and all moneys otherwise available for the purpose, should form the "Upper Canada Grammar School Fund; the annual income, after the deduction of £100 for a senior grammar school in each county and certain other special appropriations, should be apportioned to the several counties in proportion to population. Local municipalities might raise money by assessment for the establishment of the county grammar school. In each county grammar school provision was to be made for giving instruction, by competent teachers, in all the higher branches of a practical English and commercial education, including the elements of natural philosophy and mechanics, and also in Latin, Greek and mathematics so far as to prepare students for University College or any college affiliated to the University of Toronto (the *King's College* of the earlier Acts), according to a programme of studies and general rules and regulations to be prescribed by the Council of Public Instruction for Upper Canada and approved by the Governor in Council, provided that no grammar school which was not conducted according to such programme, rules and regulations should be entitled to receive any part of the grammar-school fund. The Council of Public Instruction was to prepare and prescribe (subject to approval by the Governor in Council) a list of books, a programme of studies, and rules and regulations for grammar schools. The chief superintendent was to report on grammar schools, and to see that the fund apportioned was applied to the purposes prescribed and that the schools were conducted according to the rules and regulations. The trustees of each grammar school had power to appoint the master and other teachers (the master to be a graduate of a university or to hold a certain certificate of qualification); to fix the fees for tuition; to agree with common-school trustees for uniting one or more common schools with the grammar school—provided ample provision was made for giving instruction to the pupils in the elementary English branches; and they were required to make annual reports to the chief superintendent. The county municipalities were given power to set up additional grammar schools—but not until the state of the grammar-school fund should permit of the application of at least £50 annually to the new school (after paying £100 to the senior school).

In 1855 an Act, 18 Vict., ch. 132, was passed "to make further provision for the grammar and common schools of Upper Canada." It was enacted that the "additional grants" which had been made, or during the current session of the legislature should be made, for grammar and common-

school purposes in Upper Canada should be devoted annually to the establishment and maintenance of a model grammar school in connection with the normal and model schools, to the payment of inspectors of grammar schools, to providing the grammar and common schools with maps and apparatus, and to other specified purposes, the amount to be devoted to each purpose being stated, and that "the whole of the remainder of the said grants" should be expended as further aid to common schools "according to the provisions of the Common School Acts of Upper Canada and of this Act." Thus a further step was taken towards bringing the common schools and the other

10 schools together into one educational system, and grants for common-school purposes generally were distinguished sharply from grants for special purposes connected with education in the common schools and grammar schools.

In the same year what is commonly called the Taché Act, 18 Vict., ch. 131, was passed to amend the laws relating to separate schools in Upper Canada so far as they affected the Roman Catholic inhabitants. All laws inconsistent with the new Act were repealed so far only as they related to the Roman Catholics of Upper Canada, and special provision was made for the establishment of separate schools for Roman Catholics. Any five heads of families, being freeholders or householders resident within any school section

20 or within any ward of a city or town and being Roman Catholics, were given power to convene a meeting of persons desiring to establish a separate school. The meeting might elect trustees. Notice of the election might be given. Thereupon the trustees should be a body corporate. If separate schools were established in more than one ward of a city or town, the trustees of the several schools might unite to form a body corporate to be known as the board of trustees of the Roman Catholic united separate schools for the city or town. All trustees elected and forming a body corporate under the Act were to have the same power to impose, levy and collect school-rates or

30 subscriptions upon and from persons sending children to or subscribing towards the support of separate schools, and all other powers in respect of separate schools, as the trustees of common schools had and possessed under the Upper Canada Common School Act of 1850 and the supplementary Act of 1853 in respect of common schools, and they should be bound to perform all duties required of the trustees of common schools; and teachers of separate schools were to be "subject to all penalties provided against teachers of common schools." A majority of any board of trustees elected under the Act might grant certificates of qualification to teachers of separate schools under their management. The supporters of separate schools were exempted from the payment of rates for common schools and common-school libraries.

40 By sec. 13 every separate school established under the Act was declared to be entitled to "a share in the fund annually granted by the Legislature . . . for the support of common schools, according to the average number of pupils attending such school . . . as compared with the whole average number of pupils attending school in the same city, town, village or township," but not to any part or portion of school moneys arising or accruing from local assessment for common-school purposes. The trustees of each separate school were to transmit periodically to the Chief Superintendent of Education a statement

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

of the average attendance at the school, and of the number of months that the school had been kept open; and the superintendent was to determine the proportion which the trustees would be entitled to receive out of the legislative grant, and was to pay the amount to the trustees.

In 1856, in a statute, 19 Vict., ch. 54, which dealt primarily with the formation of a fund for the promotion of superior education in Lower Canada, it was enacted by sec. 18 that £5,000 currency should be appropriated yearly, out of the consolidated revenue fund, for the encouragement of superior education in Upper Canada, and should be distributed among the several "collegiate educational institutions" or such of them as the Legislature should designate by an annual vote. In the vote of the next year (20 Vict., ch. 17) something less than £800, out of this £5,000, was given to the Upper Canada grammar-school Fund, the rest of the £5,000 being apportioned amongst certain named colleges. 10

The public general statutes, whether passed by the Legislature of Upper Canada before the Union Act or by the Parliament of the Province of Canada, that applied exclusively to Upper Canada were in 1859 revised, classified and consolidated into the Consolidated Statutes for Upper Canada: C.S.U.C., ch. 1. In the consolidation, the Grammar School Act is ch. 63, the Common School Act is ch. 64, and the Separate School Act is ch. 65. At the same time 20 the public general statutes applicable to the whole of Canada were revised, classified and consolidated into the Consolidated Statutes of Canada, the Act respecting public-school lands and the fund for education becoming ch. 26, and the Act respecting Clergy Reserves, to which reference will have to be made later on, becoming ch. 25.

The Grammar Schools Act, C.S.U.C., ch. 63, was a consolidation, with no important change, of the Acts of 1853 and 1855 and sec. 18 of the Act of 1856, already mentioned, and an Act of 1855 (18 Vict., ch. 121) which provided a means for the sale of lands held for the purposes of public educational institutions when such lands could not conveniently be used for 30 such purposes (sums of money being stated in dollars, pursuant to legislation of 1853 and later, instead of in pounds currency).

The Common Schools Act, C.S.U.C., ch. 64, was a consolidation and re-arrangement of the Acts of 1850 (13 & 14 Vict., ch. 48) and 1853 (16 Vict., ch. 185) and some of the provisions of the Act of 1855 (18 Vict., ch. 132) with one or two unimportant additions—but without any of the provisions for separate schools of any class, the law as to separate schools being consolidated in the Separate Schools Act, C.S.U.C., ch. 65.

The Separate Schools Act continued the enactments of the Common Schools Acts of 1850 and 1853 relating to separate schools for Protestants 40 and for coloured people, and, with some unimportant verbal changes, the enactments of the Taché Act (18 Vict., ch. 131) relating to Separate Schools for Roman Catholics.

As has been stated, the law respecting the public school lands and the fund for education was consolidated as ch. 26 of the Consolidated Statutes of Canada. It was recited that the Commissioner of Crown Lands had, under the provisions of 12 Vict., ch. 200, set aside one million acres of public

lands for common-school purposes, and that some of the land so set aside had been sold; and it was enacted that the remainder should be sold or disposed of, and that the proceeds (after the payment of the expenses of management or sale and of all Indian annuities charged on the lands or moneys) should be applied to create a capital sum sufficient, at 6 per centum per annum, to produce a clear annual sum of \$400,000, and that the income should form "The Common School Fund." It was enacted also that, for the establishment, support and maintenance of common schools in Canada until the common-school Fund should produce an annual income of \$200,000, there

10 should be granted yearly the sum of \$200,000, made up of the annual income of the permanent fund and of such further sum (taken out of any unappropriated moneys raised for the public uses of the Province) as might be required to complete the same; and that such annual grant should constitute "The Common School Fund." This annual sum of \$200,000 was to be divided between Upper Canada and Lower Canada in proportion to their respective population; when the permanent fund should produce an annual income of \$200,000 the grant out of the provincial revenue was to cease (but was to be paid again in any year in which the revenue from the permanent fund should fall below \$200,000); one-fourth of the proceeds of the school lands in any

20 county, and one-fifth of the proceeds of unappropriated Crown lands in any county, might be reserved by the Governor in Council as funds for public improvements within the county.

It may be noted at this point that the common-school fund was not dealt with as the law directed. Most of the lands set apart (all of which were in Upper Canada) were sold, but the proceeds (except a small sum), instead of being invested, were kept as a separate fund and were credited with interest, the fund and interest being left to accumulate, and the \$200,000 being furnished annually out of the consolidated revenue fund; so that at Confederation there was a considerable fund in the hands of the Government,

30 and another large sum remained due from purchasers of lands sold, and 8,559 acres of land had not been disposed of: per Casault, C.J., in his reasons for his award in *The Province of Ontario and Province of Quebec, Dominion of Canada, in re Common School Fund and Lands* (1898), 28 S.C.R. 609, 627. Arbitrators, appointed under sec. 142 of the British North America Act, decided in 1870 that there should be deducted from the fund and placed to the credit of the Upper Canada Improvement Fund a sum of \$124,685.18, that the residue of the fund should be held by the Dominion; and that the income should be divided between the two Provinces pursuant to ch. 26 of the Consolidated Statutes; that moneys that Ontario had received from

40 purchasers since Confederation, or should receive after the award, were to be paid to the Dominion and that the income therefrom should be apportioned; and that, out of moneys received from purchasers, Ontario was entitled to retain 6 per cent. for sale and management and 25 per cent. for the benefit of the Upper Canada Improvement Fund (28 Can. S.C.R. at pp. 812-813). This award was held to be valid; and the award of the majority of the arbitrators appointed under statutes of 1891 to ascertain and determine (amongst other things) the amount of the principal of the

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

common-school fund, which award fixed the amount, as of 10th April, 1893, at \$2,457,688.62, was upheld. In 1921 Ontario's share of the corpus of the fund was \$1,483,111.36: Public Accounts, 1921, page 11; and the interest received by Ontario on account of such share was \$73,895.20; page 55.

To revert to the legislation: In 1863, by an Act, 26 Vict., ch. 5, intituled "An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools," and passed, as is stated in the preamble, for the purpose given in the title "and to bring the provisions of the law respecting Separate Schools more in harmony with the provisions of the law respecting Common Schools," the sections of the consolidated statute relating to Roman Catholic Separate Schools were repealed and other sections were substituted for them. This is the Act that was in force at Confederation: counsel for the petitioners refer to it as the "charter" of the denominational schools. The important differences between it and the consolidated statute seem to be these: (1) Separate-school sections, whether in the same or adjoining municipalities (not only, as in the former Act, the schools in one ward of a city or town) may be joined in a separate-school union section. (2) The teachers of separate schools shall be subject to the same examinations, and receive their certificates of qualification in the same manner as common-school teachers generally. (3) Supporters of separate schools who give the requisite notice shall be exempt from the payment of municipal rates for common schools and common-school libraries while they continue to be supporters of separate schools, and not merely for the current year as under the former Act; and provision is made for the withdrawal of the notice. (4) Every separate school shall be entitled to a share in the fund annually granted by the Legislature of the Province for the support of common schools, "and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the municipal authorities," according to average attendance, as before, but not to any portion of school moneys arising or accruing from local assessment for common-school purposes within the municipality. (5) The Roman Catholic separate schools, with their registers, shall be subject to such inspection as may be directed from time to time by the Chief Superintendent of Education, and shall be subject also to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada.

The enactment that every Roman Catholic separate school should be entitled to a share in all public grants, investments and allotments for Common School purposes made or to be made by the municipal authorities, but that nothing in the Act contained should entitle any such school to any part or portion of school moneys arising or accruing from local assessment, makes it desirable to refer to one fund, other than the rates, upon which some municipalities were drawing for money for school purposes, viz., the Upper Canada Municipalities Fund. A statute of 1854, 18 Vict., ch. 2, gave in the preamble the history of the Clergy Reserves, and enacted that the moneys arising from the reserves in Upper Canada should continue to form The Upper Canada Municipalities Fund; that so much of the fund as should be

available after provision was made for any stipends or allowances still charged upon it should be apportioned among the county and city municipalities in proportion to population, and should make part of the general funds of the municipality and be applicable to any purpose to which such funds were applicable. In 1856, by 19 Vict., ch. 16, this was amended and the apportionment was to be amongst the city, town, incorporated village and township municipalities; and by the consolidated statute, C.S.C., ch. 25, sec. 11, each municipality was authorized to pass by-laws to set aside its share of the fund for any special purpose. In his report for 1860, the Chief Superintendent stated (p. 5) that it appeared that the municipalities had aided the school sections from the Clergy Reserve moneys in their hands, in preference to levying special rates; and in the reports for 1861, 1862, 1863, and, presumably, in other reports, are references to considerable items of receipts described as coming from "The Clergy Reserve Fund and other sources."

The last statute passed before Confederation that need be referred to is an Act of 1865 for the further improvement of grammar schools in Upper Canada—29 Vict., ch. 23. This Act dealt with procedure—defining the rights of cities, local municipalities in counties, etc., and did not touch the character of the school. Perhaps its most important provision in the present connection was that no grammar school should be entitled to share in the grammar-school Fund unless a sum should be provided from local sources, exclusive of fees, equal at least to half the sum appropriated, and expended for the same purposes as the fund.

The course of the legislation having been traced down to Confederation, it seems to be desirable to make some mention of the reports, circulars and instructions that were referred to by counsel for the purpose of showing what had been the aim of the founders of the school system, and what had been accomplished before the passing of the British North America Act. Of course, what has to be found is what rights with respect to denominational schools Roman Catholics in Ontario had by law at Confederation, and the intention of the Legislature is to be gathered from the statutes; but an understanding of what the school system had become by 1863 when the Separate Schools Act, 26 Vict., ch. 5, was passed is important, and one of the sources of information as to what had been accomplished is the superintendent's statements, made from time to time, as to what he was still hoping to accomplish. Therefore, it was necessary to receive in evidence some documents that in one aspect are not relevant to the case, and it will be necessary to refer to some of the documents so admitted.

The earliest document referred to at the trial is a report upon "a system of public elementary instruction for Upper Canada," made in 1846 by the Assistant Superintendent of Education to the Provincial Secretary (who, under the Act of 1843, was Chief Superintendent). The Assistant Superintendent was the Reverend Egerton Ryerson, who became Chief Superintendent after provision had been made for the holding of the office by some one other than the Provincial Secretary, and who continued to be Chief Superintendent until 1876. He had been given a year's leave of absence to study educational systems in Europe, and the report, which preceded the Act

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

of 1846 by a few months, gave the result of his observations. His idea of the common school was that it was a unit of the educational system. He thought that in the system there must be a gradation of schools, "the outline" of which was "partially drawn in the statutes which provide for the establishment of elementary, model, grammar schools and colleges." He thought that the common schools ought to be made to correspond with the primary schools of France and Prussia, that the district model schools should be made Upper Canada's industrial schools, that the District grammar schools should be made to occupy the position of the French communal and Royal Colleges and the Prussian gymnasias, and that a university should complete the series. 10
He thought that, in the carrying out and completion of such a system, the courses of instruction in each class of school would be prescribed as also the qualification for admission into each of them above the primary grade. He pointed out that the development of such a system was not the work of a day, but he expressed the hope that before long the essential features of the scheme would be seen in Upper Canada.

In the same year, reporting upon the proposed amendment of the Act of 1843, Dr. Ryerson said that from an examination of the Act it was obvious that its object was "to secure to the whole people the benefits of a Common School education, providing for the establishment of both *elementary* and 20
superior common schools, . . . rendering the common schools accessible to the poor . . . and evidently contemplating the . . . co-operation of the Government and of the people in its administration." The Act was defective, however, in many respects, one of which was that the system was parochial rather than provincial. He proposed to strengthen the central administrative authority, and to do something towards securing uniformity in text-books by empowering his proposed board of education to prepare a list of books that they would approve and another of books that they would not permit to be used (Historical Educational Papers and Documents, vol. 3, p. 162). Many of the recommendations appear to have been adopted in the Act of 1846. 30

The Act of 1847, 10-11 Vict., ch. 19, referred to by the Chief Superintendent as "the City and Town School Bill," which gave to the trustees of urban schools the right "to determine the number, sites and description of schools" to be established and maintained, was another of the Acts proposed by Dr. Ryerson. In each rural school section there was only one school, which, necessarily, was a mixed school, adapted to the youngest class of pupils; therefore there could be no gradation of rural common schools. The superintendent thought that in the towns there were too many inferior schools, whereas, except private schools, there were none of a higher order; and his idea was that if all the common schools in a town were brought 40
under the jurisdiction of one board there could be primary, intermediate and high schools, either in separate buildings or in separate parts of one or more buildings, and that efficiency and economy would be promoted by the change (Historical Documents, vol. 3, pp. 185-6). The Act having been passed, the chief superintendent, in January, 1848, sent a circular to the mayors of the cities and towns, in which he told them, amongst other things, that the trustees would determine the age at which pupils would be admitted to each

kind or class of school, or to each department of a school comprising more than one department, the particular school which pupils in different localities in the town should attend, and the subjects of instruction and the text-books to be used in each school and department. In his report for the year 1847, which was the first year in which the local authorities had made returns of the subjects taught, he states that 1,773 pupils are said to have been pursuing studies additional to reading, geography, mensuration, algebra, etc., and he assumes that these "other" studies were "higher studies," for he finds that Latin was taught in 41 of the 2,727 schools, French in 60, and the elements of natural philosophy in 77; and in the report for 1849 he shows a falling off in the number of schools teaching Latin, and an increase in the number of those teaching the elements of natural science. He quotes one of the local superintendents as reporting that certain townships "boast of schools in which the teachers are capable of imparting a thorough English, and, in some instances, a good classical education."

In the report for 1850 it is stated that the placing of all the common schools of a city or town under one board has been advantageous; and the hope is expressed that there will be a further advance now that the mode of electing the trustees has been changed. The urban trustees, it is said, have been able to establish and classify the schools in such manner as to meet the needs of all ages and classes of youth, by the establishment of primary, intermediate and high schools—in some instances by setting up a large central school with primary, intermediate and high school departments, in other instances by having one high school, with intermediate and primary schools in separate buildings in different parts of the city or town. The grammar schools, it is said, are failing to fulfil the purpose for which they were established. Many of them receive very young pupils, and much of the time of the teachers is wasted on "the A.B.C. of common-school instruction"; so that, whereas the common school ought to be the feeder of the grammar school, which, in turn ought to be the connecting link between the common school and the university, having its classes filled up from the highest classes of the common school, the grammar school really is not forming a part of a general system of public instruction.

In an appendix to the report for 1850 there is a reprint of an article that had appeared in the *Journal of Education* (edited by Dr. Ryerson) in which mention is made of the "noble examples" set by the trustees in Hamilton, London and other cities and towns. What the London trustees had been doing to win this praise is stated in their report for 1852 which is printed in an appendix to the Chief Superintendent's report for that year. The trustees said that, "deeming it proper to place within the reach of every class of the community, and of every child who might evince a talent for a more extended range of studies than are generally pursued at common schools, facilities for the acquisition of literary and scientific attainments equal to those afforded by the higher order of academies," they had "directed the principal to introduce, in addition to the other studies, that of classics," and that during the past year about 25 pupils had availed themselves of the advantages afforded.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

*In the
Supreme
Court of
Ontario.*

No. 13
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

From the report for 1853 it appears that the average attendance at the common schools in Upper Canada had been something over 90,000, and that 1,800 pupils had studied algebra, 1,100 had studied geometry, and 2,300 had taken studies other than those specially mentioned. Selections from the rules prescribed by the Council of Public Instruction for the examination and qualification of teachers are printed. No knowledge of the classics was required, and the standard in mathematics was not high: first-class teachers had to be "familiar with the simple rules of algebra" and "to know the first four books of Euclid."

Some of the provisions of the Grammar School Act of 1853, 16 Vict., 10 ch. 186, have been stated. In the Chief Superintendent's Report for 1854, made pursuant to the new Act, it was said that there were in Upper Canada one normal school, two model schools, 64 county grammar schools and 3,244 common schools. It was also said that the grammar schools theretofore had had to contend with innumerable difficulties, the chief of which had been the utter absence of any recognized system of management or any curriculum or fixed standard of education; that the grammar schools had been "officially isolated from the common school—their natural source of supply—on the one hand, and from the university colleges—their natural limit of instruction—on the other"; but that "this anomalous state of things" 20 had ceased, and that a programme of classification and studies which had been adopted by the Council of Public Instruction (pursuant to the new Act) would effect a salutary change. Reference was made also to a set of rules and regulations which had been adopted and to a list of text-books which had been prescribed. In these regulations it was stated by way of preface that from the Act it appeared clearly that it was "the object and function of grammar schools not to teach the elementary branches of English," but to teach the subjects necessary for matriculation into the university; and it was ordered that pupils to be admitted to a grammar school must possess a stated knowledge of reading, spelling, writing, arithmetic, grammar and geography. In 30 a circular attached to the rules, the Chief Superintendent called attention to the fact that the office of the grammar school was that "of a preparatory school to the university for one class of pupils, and that of a finishing school to another and larger class of pupils."

In the report for 1855 there is published a report from the local superintendent at Hamilton, containing an elaborate description of the common schools maintained by the Hamilton trustees. There were primary schools in various parts of the city, to which any child over five years of age could be admitted and in which he might remain until he was qualified for promotion to the central school. Each primary school comprised two or three divisions 40 of 75 children. In the central school there were 8 divisions for boys, and 6 for girls. There were maps, charts and a "set of philosophical and chemical apparatus," and a library of 1,700 volumes. Any child entering could remain, free of charge, until he had passed through the various classes "and, if desirous, qualified himself for matriculation at the university."

The Journal of Education for February, 1855, printed what the editors called "The programme of public instruction, as provided by law in Upper

Canada, and extending from the primary school up to the university." The "order and classification of subjects taught in the common schools" was said to be that of the model school, in which all student teachers of the normal school practised. The other programmes were those of the high schools and the University of Toronto. The editors rejoiced "to be permitted to witness the realization of views and anticipations" of the development of a system in which the courses of instruction in each class of school would be prescribed, and each school would occupy its appropriate place.

10 In 1857 some 270,000 children seem to have attended the common schools for some portion of the school year. About 1,500 of them studied geometry, 3,000 studied algebra, and 4,700 (of whom 1,200 were in Hamilton) took some work not stated in the report. There were 100 separate schools, of which 26 taught algebra and 14 geometry.

The regulations for the common schools published by the Council of Public Instruction in 1858 seem to mark an advance in the extent of the central control exercised. An order and classification of studies was prescribed, definite rules being laid down as to what was to be studied in each of the three divisions of the school. In the third or higher division the work was a little in advance of what would be called elementary—for instance the first six 20 books of Euclid were to be studied, and subjects such as trigonometry and the elements of geology might be taken up at the discretion of the school authorities. The regulations for the grammar schools had appeared before, as has been noted, but they were reprinted in the report for the year, with some changes (e.g., in the programme of studies) that need not be discussed.

In an address delivered in 1860 the Chief Superintendent called attention to the voluntary character of the common schools—the central authorities could not compel the inhabitants of any municipality to set up or maintain a school—and to the need for increased provision for the support of the grammar schools, so that they could be made more efficient.

30 In 1863 there was printed for the Department of Public Instruction for Upper Canada a book intitled "The Law of 1863 relating to Roman Catholic Separate Schools in Upper Canada, together with Extracts from the Common School Acts, Departmental Regulations, etc., affecting the Roman Catholic Separate Schools—arranged with Notes and References." As Appendix "H" in this book, under the heading—"Order and classification of studies prescribed for the Common Schools in Upper Canada, as observed in the Upper Canada Model School, Toronto, and applicable to Roman Catholic Separate Schools. (Adopted by the Council of Public Instruction.)", are printed 40 tables "defining the course to be completed" in each of the three divisions of a school, which tables are exactly the same as the "Order and Classification of Studies prescribed for the Common Schools in Upper Canada" in 1858. While this book was produced in compliance with a request of counsel for the petitioners for copies of any regulations that had been passed, counsel for the petitioners do not admit that the Council of Public Instruction did in fact affect to regulate the courses of study in the Roman Catholic separate schools. There seems, however, to be no reason why less authenticity should be attributed to Appendix "H" than to any other of the printed copies of regulations

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

and circulars received in evidence; and it seems to be proper to assume—in so far as it is material—that the council did, in 1863, decree that the subjects of secular instruction should be the same in the separate and the common schools. It may be noted that the Roman Catholic Bishop of Toronto was a member of the council.

The annual report for 1863 shows that there were then 120 Roman Catholic separate schools, with nearly 16,000 pupils enrolled, of whom more than 300 were studying algebra and geometry, and more than 400, natural philosophy. It shows also that 21,000 of the pupils in the Common Schools were 16, or over 16 years of age. Mr. Justice John Wilson, who had been local Superintendent of common schools at London, had relinquished his office, and he took occasion to review the development that he had seen (Exhibit 28, p. 163). The classical department of the central school in London had been extended “so as to embrace Latin, Greek and French, and made comprehensive enough to qualify students for entering upon the study of any of the learned professions, or to matriculate in any college or university in the Province”; and within the past few years 6 students, entirely trained in the Central School, had passed their preliminary examinations with the highest credit and had entered on the study of law. 10

The manual of 1864 for the trustees of common schools contains (pp. 155-158) the programme (approved in 1858) of the entrance examination and course of studies in the normal school. The course for obtaining a first-class certificate in the senior division indicates that a teacher holding such a certificate would have been qualified to impart a good English education, but the programme contained no provision for classics. 20

In 1864 a committee of the board of common-school trustees for Toronto reported in favour of establishing a superior or “high” school for girls, but against setting up such a school for boys, because there was “some public provision for boys in this respect” already in Upper Canada College and the grammar schools. (There had been a difference of opinion as to whether girls were eligible for admission to the grammar schools, and apparently the law officers of the Crown had thought they were not.) 30

The issue of the *Journal of Education* for September, 1865, contained an article on the new Grammar School Act. It was repeated that under the old law many of the grammar schools had been doing little more than common-school work, and that some of them had been doing that work imperfectly had been “interfering” (i.e., competing) with the common schools and reducing the standard of education below that of an ordinary common school. Under the new Act, however, the grammar-school standard of education would be definitely fixed and uniformly maintained, and the efforts of the Department of Education could be directed to raising the standard of the common schools, so that each class of school could do its own work without clashing with the other. The statement that grammar schools were intended to be intermediate between the common schools and the universities was repeated; and it was said that the common-school law provided amply for giving the best kind of a superior English education in “high schools” in the cities, towns and villages, with primary ward schools as feeders (as in Hamil- 40

ton). The article has been referred to before for the "summary sketch" of the history and progress of grammar-school education in Upper Canada which it contained.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

A grammar-school manual was issued by the Department of Public Instruction in 1866. It contained a revised programme of studies, and general rules and regulations adopted by Order-in-Council in November, 1865. The qualification for admission to the schools was fixed. Examination and admission by the head master was to be provisional until the visit of the Inspector. Girls might be admitted, but they were to study French and not
 10 Latin or Greek, and they were not to be recognized or returned as pupils pursuing either of the prescribed programmes of studies; that is to say, the grammar-school fund was supposed to have been created for the purpose of providing for the higher education of boys, and the attendance of girls was not to be counted in arriving at the share that any school was entitled to on the basis of the number of pupils in attendance: *Journal of Education*, 1868, p. 85. In the manual were included various circulars issued by the Chief Superintendent. The circular addressed to the boards of trustees again expressed the opinion that the schools were intended to be the "high schools"
 20 of their respective localities, intermediate between the common schools and the university. It was stated that the great success of the common schools had been due to the intelligent liberality of the municipalities in exceeding the requirements of the law; the superintendent had no doubt that a like liberality and intelligence would soon be shown in regard to the grammar schools. The circulars addressed to the wardens of counties, to the mayors of cities and to the mayors of towns and the reeves of villages were of like import. The mayors of cities were told that the progress of the country rendered the grammar schools an "indispensable necessity." At this time there were 100 grammar schools and over 4,000 common schools.

The *Journal of Education* for May, 1867, contained further reference
 30 to the attendance of girls. It was repeated that the schools were intended for boys, and that the attendance of girls was to be discouraged: there was every legal facility for the establishment of "high schools" for girls under the Common School Act. And the *Journal* for 1868 (pp. 55-6) shows that after Confederation the Chief Superintendent continued to approve of the establishment of central or "high" schools by common-school trustees in cities and towns.

The kind of legislation to which the petitioners object began in 1871 with the passing of the Act, 34 Vict., ch 33, intituled "An Act to improve the Common and Grammar Schools of the Province of Ontario." The name
 40 "Common School" was changed to "Public School," and it was enacted that the public schools should be free schools. Each school corporation was to provide adequate accommodation for all children of school age in the division or municipality; every child from the age of seven to twelve years inclusive was to have the right to attend some school or to be educated otherwise for four months in each year; and every parent or guardian who failed to see that such a child in his care attended school or was educated was made liable to penalties. It was made the duty of the Council of Public Instruction to

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

provide for the uniform examination and classification of Public School teachers. The name "Grammar School" was changed to "High School." In the high schools provision was to be made for teaching both boys and girls the higher branches of an English education, with Latin, Greek, French and German if their parents or guardians desired it, according to a programme to be prescribed by the Council of Public Instruction. The sections to which specific objection is taken are sections 36 and 40, the former requiring the municipal councils to raise a sum equal to one-half the Government grant and, upon the application of the high-school board, such further sum as might be required for the accommodation and support of the schools, and the latter 10 authorizing the county councils to form the whole or part of one or more local municipalities into a high-school district. These two sections appear in a different form in a consolidated Act of 1874, and nothing is to be gained by discussing the question as to whether they were valid in 1871. It was also enacted that high schools which attained a certain standard should be given the name "Collegiate Institute," and should receive an additional grant out of the "Superior Education Fund" provided by the Act of 1856 (19 Vict., ch. 54) as re-enacted in the consolidation of 1859 (C.S.U.C., ch. 63, sec. 10. The petitioners see in this Act the beginning of an attempt on the part of the Ontario Legislature to "degrade" the common school (and the separate school along with it) by cutting down its work and increasing that of other schools. They suggest that the high school, in which classics were no longer obligatory, was not merely the grammar school under another name but a new school set up to do what was in part common-school work; also that, in fixing 12 years as the age after which a child had no statutory right to attend a public school (whereas theretofore the trustees of rural sections were bound to receive pupils up to the age of 21), the Legislature exhibited a disposition, which has continued, to turn the common school into an elementary school. With the fate of the common (or public) school the petitioners, of course, are not directly concerned; but later legis- 20 lation has set definite limits to the work of the public and separate schools, and the petitioners contend that this later legislation, continuing the process begun in 1871, has prejudicially affected a right with respect to denominational schools which Roman Catholics had by law in 1867. They claim that the right has been affected in two ways, first by depriving separate-school supporters of the power to conduct such schools as were being conducted by common-school trustees in London and Hamilton and elsewhere at the time of Confederation, and secondly, by making separate-school supporters liable for rates for the support of schools which have been set up to do some of the work that separate schools had and have a legal right to do. 40

Regulations for the government of high schools were passed, and in 1873 were put into operation: *Journal of Education*, 1873, pp. 97 to 109. The petitioners invite comparison of the table of studies (pp. 108-9) with the programme of studies prescribed for common schools in 1863 which has been referred to. The general impression created by such a comparison is that the standard set for the high schools in 1873 was considerably higher than that which had been set for the advanced divisions of the common

schools and separate schools in 1863, although in some subjects, e.g., geometry, the high-school table is the same as that of the third division of the common (and separate) school. But the work in the lower forms of the high schools seems to have been no more advanced than that prescribed for the upper forms of the common (and separate) schools, the reason being, as was stated in the Chief Superintendent's circular, that the Council of Public Instruction, yielding to pressure, had lowered "the standard for admission to the high schools to a point little beyond that of the third class (out of six) prescribed for the public schools."

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

10 The statutes relating to high schools and to public schools were revised and supplemented in 1874. In the Consolidated Public School Act, 37 Vict., ch. 28, the obligation of rural trustees to permit all residents between the ages of 5 and 21 years (not being the children of separate-school supporters) to attend their schools was restored (sec. 26 (19)), but the trustees of urban schools were affected, as regards the age of the pupils to be admitted, only by the section (156) which continued the right of every child from the age of 7 to 12 years inclusive to attend some school. Under the Consolidated Act of 1859, C.S.U.C., ch. 64, sec. 79 (8), the trustees of urban schools had had the right to determine the number, sites, kind and description of schools to be maintained. Under the new Act the power was to determine "the number, kind, sites, *grade* and description of schools (such as male, female, infant, central, or ward schools)"—sec. 86 (7). There is no need to make any statement as to the other provisions of this Act or as to the provisions of the Act relating to collegiate institutes, high schools, and normal schools (37 Vict., ch. 27), for each Act has been revised many times since 1874, and what is really in question is the validity of the latest legislation.

20 By an Act of 1876, 39 Vict., ch. 16, all the powers and duties of the Council of Public Instruction were transferred to a department of Government called the Education Department, and all the functions and duties of the Chief Superintendent were transferred to the Minister of Education. One of the first Acts of the new Department was, under sec. 26 of the Separate School Act of 1863, to direct that the separate schools should be inspected by one of the high-school inspectors or the county inspector; Journal of Education, 1876, p. 130.

30 The section of the Public School Act of 1874 declaring the right of urban trustees to determine the "number, sites, kind, grade and description of schools (such as male, female, infant, central or ward schools)" was repeated in the revision of 1877; and, with the omission of the word *sites*, was copied into a Separate School Act of 1886, 49 Vict., ch. 46, as sec. 33 (4). The illustrative words, "(such as male, female, infant, central or ward schools)", are to be found in the Separate School Act as late as the revision of 1897: R.S.O. (1897), ch. 294, sec. 33 (4); but they are not in the Public School Act of that revision, ch. 292, sec. 62 (5); and they are not used in the statement of the powers of the trustees either of separate schools or of public schools in the revision of 1914: R.S.O. 1914, ch. 270, sec. 45 (p), and ch. 266, sec. 73 (g).

In The Education Department Act, 1896, 59 Vict., ch. 69, provision

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

was made for the establishment of an "Educational Council" which should perform certain duties in connection with the conducting of "departmental examinations" prescribed by regulations of the Department. In a revised Public Schools Act of the same year, 59 Vict., ch. 70, it was enacted (sec. 8) that the school corporation of any municipality or section in which there was no high school should have power to establish a continuation class for pupils who had completed the course of study prescribed for public schools and had passed the public-school leaving examination, and to provide suitable accommodation for such class. The course of study for continuation classes was to be the course prescribed for the primary examination of the Education Department. Out of any money appropriated by the Legislature for the purpose, the Minister might make a certain apportionment to any schools conducting continuation classes, and the municipal councils might give further aid; but (sec. 4) nothing in the Act authorizing the levying or collecting of rates on taxable property for public-school purposes was to apply to the supporters of Roman Catholic separate schools. The object of the legislation, according to a circular issued by the Minister, was to enable pupils who had passed the entrance examination to a high school, or had finished a public-school course, to continue their studies as far as least as the second form of the high school. If a pupil had passed the leaving examination of the public school the trustees were at liberty to charge a reasonable fee for his tuition in the continuation class. 10

The Act last mentioned was amended in 1899 by 62 Vict. (second session), ch. 36. The power to conduct the continuation class might thereafter be exercised by the school corporation in connection with the public or separate School over which it had jurisdiction; and the trustees of any number of school corporations, whether of public or separate Schools, might agree to conduct continuation classes in one only of their schools, and might levy rates in their respective sections for the tuition of the pupils attending the classes. 30

The Public School Act of 1901, 1 Edw. VII, ch. 39, in the section relating to continuation classes (sec. 8) makes no provision for continuation classes in separate schools; but in 1902, by 2 Edw. VII, ch. 41, amending the Separate School Act, power was given to the boards of separate schools; and in 1906, by 6 Edw. VII, ch. 53, sec. 3, it was enacted that the trustees of public and separate Schools might unite to form such classes.

In 1908 the name "continuation class" was changed to "continuation school" by 8 Edw. VII, ch. 67, sec. 1, which repealed sec. 8 of the Act of 1901 and gave power to the trustees, where there was no high school, to establish and maintain courses of study in addition to the courses already provided for the fifth form of public schools. The classes so authorized were to be known as continuation schools. Mention was made also of "fifth classes," and it was enacted that pupils should be admitted into continuation schools and fifth classes in accordance with the regulations governing the admission of pupils into high schools. The Minister in his report for the year calls this a division of the former continuation classes into continuation schools and fifth classes. In the same year, by 8 Edw. VII, ch. 68, amending the Separate School Act, 40

the powers of separate school trustees were made the same as those of public-school trustees. (The relevant sections of the Public and Separate School Acts as they stood in 1908 are printed on pp. 276-7 of the report.) Regulations covering both the courses of study in the fifth classes and the continuation schools and the apportionment of the legislative grant were published in 1908 (pp. 278 *et seq.* of the report), but there seems to be no need to refer to them in detail: they were revised afterwards, and indeed the Acts themselves were changed in some particulars. It may be noted, however, that the grants for fifth classes were payable to the fifth forms of schools situate in municipalities or school sections in which there were no high schools, the course of study being the course prescribed for fifth forms—certain subjects being obligatory, and the trustees having the right, with the concurrence of the inspector of continuation schools, on the recommendation of the inspector of public or separate schools, to add certain subjects selected from the other subjects of the fifth form and of the middle school of the high school. It may be noted also that the amount of the grant depended largely on the standard of the class, not on the number of the pupils.

In 1909 a separate Act as to continuation schools was passed—9 Edw. VII, ch. 90. County councils were given power to establish continuation schools which should be under the management of trustees appointed by the councils. In the case of a school so established in a continuation-school district in which there was a separate school, the separate-school supporters were to have representation on the board. The other sections of the Act need not be discussed. By the regulations of the same year (printed on pp. 236-242 of the report) the course of study in continuation schools was to be that prescribed for high schools, except that the special consent of the inspectors was required before certain specified work could be taken up, and after the opening of a school by a county council no continuation school established by other authority in the same township or urban municipality was to share in the legislative grant. The inspector said (p. 266 of the report) that the continuation schools were encouraged as being a fair medium through which to offer to all children some of the advantages that the high schools extended to the few.

The Continuation Schools Act was revised in 1913 by 3-4 Geo. V, ch. 72. As revised, it was carried into R.S.O. (1914), as chapter 267. Under the last mentioned Act, a public or separate-school board, subject to the regulations and to the approval of the Minister, may establish and maintain one continuation school with a staff of at least one teacher engaged for his whole time. The suppliants contend that the Legislature had no right to say that a separate-school board shall not set up a continuation school without the Minister's approval. They say that "continuation school" is really a name given to part of the school that the pre-Confederation law gave Roman Catholics the right to maintain, and that to make the Minister's consent a condition of the exercise of the right is to affect the right pre-judicially.

The provision made by the Act of 1909 for the establishment of continuation schools by county councils is not to be found in the revised Act;

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

but it is enacted (sec. 12) that every continuation school established by a county council under the Act of 1909 shall from July 1st, 1913, be a high school and shall be subject to the provisions of the High Schools Act. The suppliants object to this section as having the effect of rendering Roman Catholic separate-school supporters liable to municipal taxation for the support of schools which, while called high schools, are really upper forms of the kind of separate school that Roman Catholics in 1867 had the right to maintain. They point to the reports of the inspectors for 1915 as showing that in fact many continuation schools are becoming high schools.

There have been many amendments of the Continuation School Act as printed in the Revised Statutes of 1914, but it is unnecessary to set them out. Perhaps the most important of them are the revisions in 1920, 1921 and 1925 of sec. 7, which relates to the obligations of the counties to contribute towards the maintenance of the schools: the section as it stands at present is (1925) 15 Geo. V, ch. 78, sec. 21.

Revised regulations and courses of study for continuation schools were published in 1914. The suppliants attack several of the regulations. Section 3 (3) of the Act provides for agreements (subject to the approval of the Minister) between two or more public-school boards, or between one or more of such boards and one or more separate-school boards, for the establishment and maintenance of a continuation school. Regulation 1 (4) says that, where practicable, public and separate-school boards which desire to establish a continuation school should unite as provided by the Act; but that if such union is impracticable by reason of one board being unwilling to bear its share of the cost of the school, the Minister may approve of the establishment of a school under one of the boards, in which case the school shall be open to the children of the supporters of both public and separate schools. Regulation 3 (5) requires that, except in the case of a grade "C" continuation school with an assistant teacher—a grade "C" school is one in which at least the equivalent of the time of one teacher, and less than the time of two, is given—the classrooms of a continuation school shall be wholly separate from those of the public or separate School. Regulation 7 (4) forbids the admission of a pupil who has not been duly admitted under the high-school entrance regulations. Regulation 15 prescribes religious exercises for continuation schools (but no pupil is to be required to take part in any such exercises objected to by his parent or guardian); and 15 (4) forbids the display of "emblems of a denominational character" in a continuation school during school hours. The suppliants contend that these (and others) of the regulations are beyond the powers of the Province. They say that the union school suggested by regulation 1 (4) would not be denominational; that to forbid the exhibition of "emblems of a denominational character" in a school conducted by separate-school trustees is to interfere with the denominational character of the school; that at Confederation the trustees of separate schools had the right at their own discretion to advance their pupils to the higher classes of their own schools; and that to make the passing of a high-school entrance examination (over which the separate schools have no control) a condition of admission to a separate continuation school is

in effect to forbid the exercise of that right. Objection is taken also to certain regulations governing the distribution of the legislative grant which will be mentioned farther on.

The suppliants make another point against the regulations of 1914. The high-school course of study is divided into the lower school, the middle school and the upper school courses (see the regulations of 1924), and provision is made whereby pupils may enter the middle school from the public and separate schools on passing the "senior high-school entrance examination"; but regulation 29 (1) of 1914 orders that only candidates who are in
10 attendance at Form V of a public or separate school, or a continuation school where only lower school work is taken up, shall be admitted to the senior entrance examination. One of the objections put forward is that this, taken with other regulations, means that if the separate-school trustees set up a continuation school in which the most advanced work permitted to continuation schools is done, the separate-school supporters can send to that school only such of their children as are not intended to take the whole of a high-school course.

Some of the regulations for public and separate schools published in 1915, and, with some amendments, still in force, are objected to by the
20 suppliants. Those to which attention was drawn are regulation 12 (3) which forbids the adding of any subject to the prescribed syllabuses without the consent of the Minister, regulation 25 (group III, (ii) (b)) which forbids the public and separate schools in their fifth forms to take up, either during or out of school hours, any of the courses prescribed for the middle and upper schools of the high or continuation schools or collegiate institutes, and a regulation (p. 76 of the book) which excludes a school situate in a high or continuation-school district from participation in the special legislative grant to fifth forms. (The regulation is intended to govern the apportionment of what is called in sec. 6 of the Department of Education Act,
30 R.S.O. 1914, ch. 265, money appropriated for fifth "classes"; i.e., in practice the words *form* and *class* are synonymous.)

In the pamphlet giving the courses of study prescribed for high schools and continuation schools (see pp. 77-8 of the 1924 edition) are set out the subjects of examination for admission to the normal schools and for matriculation. These include subjects of the middle school course of the continuation schools and high schools. It follows, as the suppliants point out, that the separate schools, being forbidden to teach the middle-school subjects, are unable to prepare pupils for the examinations mentioned. Similarly,
40 objection is taken to the regulations governing the grant of high-school teachers' certificates (see the Regulations of the High Schools and Collegiate Institutes, 1922 edition, p. 9). For instance, in order to obtain a permanent high-school assistant's certificate, the applicant must have two years' successful teaching in a high or continuation school or collegiate institute. But the trustees of a separate school situate in a high-school district cannot maintain a continuation school, and, therefore, cannot qualify persons to obtain the kind of certificate mentioned.

Two Acts of 1919, 9 Geo. V, ch. 77, respecting compulsory attendance of

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 13
Reasons for
Judgment
Rose, J.
May 13,
1926.
—*continued.*

children between 8 and 14 years of age at some school and "The Adolescent School Attendance Act, 1919," 9 Geo. V, ch. 78, were referred to at the trial, but they are not impeached in the petition and need not be discussed. The suplicants say that their objection to them will disappear if the Acts directly impeached are declared to be invalid; they think that, as matters stand, the Acts may compel a Roman Catholic child, who has completed the separate-school course, to attend an undenominational school in which he can be prepared for the matriculation examination or the examination for admission to the normal schools.

Many of the statutes attacked in the petition are statutes affecting the distribution of, and the participation of the separate schools in, the legislative grants. These have been passed over in the foregoing survey, because it has been deemed better to make the following a connected statement of the course of this part of the legislation.

The effect of section 20 of the Separate Schools Act of 1863, 26 Vict., ch. 5—has been stated. The section read as follows:

"Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township."

Under the Common Schools Act of 1859—C.S.U.C., ch. 64—it was the duty of the Chief Superintendent of Education to apportion annually all moneys granted or provided by the Legislature for the support of common schools in Upper Canada, and not otherwise appropriated by law, to the several counties, townships, cities, towns and incorporated villages according to the ratio of population in each as compared with the whole population of Upper Canada; to give notice to the clerks of the counties, cities, towns and incorporated villages stating the time when the money would be paid to the respective treasurers; and to direct the distribution of the common-school fund of any township among the school sections and parts of sections entitled to share, according to the length of time in each year during which the school had been kept open. At Confederation, therefore, there was a means of ascertaining what portion of "the fund annually granted by the Legislature" of the Province of Canada for the support of common schools in Upper Canada, and what portion of any other "public grants, investments and allotments made by the Province or the municipal authorities," should go to any given municipality; and, those amounts being ascertained, a separate school in the municipality had a right to an ascertainable share.

Reference was made at the trial to the apportionments actually made by the Chief Superintendent both before and after Confederation; but in this case the concern is not with what was done, but with statutory rights, and there

seems to be no need to set out what appears from the annual reports published in the several volumes of the Journal of Education marked as exhibits.

In the Separate Schools Act in the Revised Statutes of 1877, 1887 and 1897 there was a section in the same words as sec 20 of the Act of 1863 (except that "public" was substituted for "common" school). In 1897 this is ch. 294, sec. 62. Notwithstanding the wording of this section—"in a share in the fund annually granted . . . for the support of common schools"—the Ontario Legislature, annually from 1868 onwards, voted a sum "for common and separate schools"; and in the Department of Education
 10 Act of 1906, 6 Edw. VII, ch. 52, it was enacted that the Minister should apportion, in a manner stated, "all sums of money voted by the Legislative Assembly as a general grant for public and separate Schools" and "all sums of money voted by the Legislative Assembly as a special grant for rural public and separate Schools." The Act of 1906 introduced the principle (in the case of rural schools) of making the amount to be received by a school out of the legislative grant depend to some extent upon the salaries paid to the teachers, the character of the accommodations, the value of the equipment, and other considerations.

In 1913, on a revision of the Separate Schools Act, the section correspond-
 20 ing to sec. 20 of the Act of 1863 was changed by the deletion of all reference to legislative grants—so that the section applied thereafter only to grants, investments and allotments made by a municipal authority—and it was enacted that a grant made by a *county* council should be apportioned in like manner as the legislative grant: 3-4 Geo. V, ch. 71, sec. 76. The section as enacted in 1913 was not changed in the revision of 1914: R.S.O. 1914, ch. 270, sec. 76; nor has it been amended since 1914.

The Department of Education Act is now R.S.O. 1914, ch. 265. Section 6, as amended in one particular or another at almost every session of the Legislature held since 1914, lays down the rules to be followed by the
 30 Minister in distributing the legislative grants. The section as revised in 1914 and two of the amendments—those of 1922 (12 & 13 Geo. V, ch. 98, secs. 2 and 3) and 1924 (14 Geo. V, ch. 82, sec. 2)—are among the statutes directly attacked in the petition. The effect, so far as it need be stated, of the section as amended is as follows:—(1) All sums appropriated as a *general* grant for *urban* public and separate Schools are divisible amongst the cities, towns and villages proportionately to population, and (2) each municipality's share is divisible between the public and separate Schools according to the average number of pupils who attended such schools respectively during the year preceding the division, and (3) is to be paid to the
 40 trustees on the warrant of the public or separate-school inspector. (4) Subject to the regulations, all sums appropriated as a *special* grant for *urban* public and separate Schools are to be apportioned among the cities, towns and villages, regard being had to the value of the property liable for taxation for school purposes, the expenditure of the board upon education, and such other considerations as in the opinion of the Minister should affect the apportionment: 14 Geo. V, ch. 82, sec. 2 (1); and (5) the amounts apportioned are to be paid to the respective boards of trustees upon the warrants of the

In the
 Supreme
 Court of
 Ontario.

No. 13.
 Reasons for
 Judgment
 Rose, J.
 May 13,
 1926.
 —continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

inspectors. (6) Subject to the regulations, all sums appropriated as a *general* grant for *rural* public and separate schools are to be apportioned among such schools, regard being had to the value of the property liable to taxation for school purposes, the attendance at the schools, the expenditure of the board upon education and to such other considerations as in the opinion of the Minister should affect the apportionment: 14 Geo. V, ch. 82, sec. 2 (2). (7) In apportioning the special grant for urban schools and the general grant for rural schools, the Minister is to allot to the separate schools a sum which bears the same ratio to the whole grant as the average number of pupils who attended such schools during the preceding year bears to the whole average number of pupils who attended both public and separate schools, and he is to apportion among the public schools the sum so allotted to them, and among the separate schools the sum so allotted to them, on the respective bases fourthly and sixthly above mentioned: R.S.O. 1914, ch. 265, sec. 6 (2). (8) Sums appropriated for assisted schools in poor districts, continuation schools, fifth classes, kindergartens, night schools, art schools, and other special sums from time to time appropriated are to be apportioned subject to the regulations; but (9) all money appropriated for fifth classes, kindergartens or night schools or for other educational purposes not specially mentioned in the clause partly stated in "(8)" above which is applied for the purposes of "primary education" (i.e., education in the public or separate schools), shall be allotted, divided and apportioned as provided in sec. 6 (2), (i.e., upon the bases fourthly and sixthly above mentioned.)

The effect of the regulations governing the distribution of the grants for public and separate schools is stated in instructions issued to the inspectors in 1925. The rules are somewhat complicated, and no attempt to state their effect in a summary way is desirable. Attention, however, may be directed to two grants, the "special grant on certificates" for urban schools and the "supplementary grants on salaries" for rural schools, since the rules as to the payment of these grants are indicative of the whole scheme of the regulations. The first mentioned grant is used in paying a sum per teacher, which sum varies with the length of the teacher's experience and the grade of his certificate, and also with the location of the school; it is larger in a town school than in a city school, and it is larger in a school in a town in an unorganized district than in a school in a town in a county. The "supplementary grants on salaries" for rural schools are percentages of the salaries paid in excess of certain amounts. If the salary is small the grant may be no more than 5 per cent. of the excess; if the salary is large the grant may be as much as 40 per cent. If the value of the property liable for assessment for school purposes is small there may be a grant on an assistant teacher's salary of \$200; whereas if the value of the assessable property is great there will be no grant in respect of salaries of less than \$700.

The total amount distributable in any year for any one of the special purposes will be ascertained by looking at the estimates and supplementary estimates and the Appropriation Act. For instance, in the estimates for 1922, "vote 20" is a sum for "Public and Separate School Education," and details are given consisting of 108 separate items, for instance, "Rural Public and

Separate Schools (counties), General Grants and Contingencies" and "Special grants to schools at" named places. The schedule to the Act then specifies a sum granted for the purpose named in vote 20 of the estimates, but gives none of the details. The distribution of the grants for fifth forms (item 24 and other items of vote 20 in the estimates for 1922) is governed by regulations set out in a pamphlet called "Special Departmental Grants: Public and Separate Schools: 1924"; the regulations governing the distribution of the grants for continuation schools (items 16 and 23 of vote 20) are stated in a circular issued in 1924; and the distribution of the grants for high schools 10 and collegiate institutes (vote 29) is governed by regulations of 1922.

The question as to the validity of the Ontario legislation (except the legislation affecting participation by the separate schools in the legislative grants of money for the support of schools) will be answered when an answer is found to the question: "What was the right or privilege in respect to denominational schools that Roman Catholics in Upper Canada had by law on the 30th June, 1867; was it a right to establish and conduct schools in which, at the discretion of the trustees, instruction might be given in all branches of education suitable for pupils between the ages of 5 and 21 (subject 20 to the limitation that the schools should not usurp the functions of the universities, and should confine themselves to preparing pupils for admission to the universities and to providing an education which would properly be called a thorough education for those pupils who were not about to proceed to university degrees), with the incidental right (at least in the case of the trustees of town and city schools and of united rural sections) to grade the schools and to send each pupil to the school best adapted to give the instruction that he required, and with the further incidental right to exemption from the payment of municipal rates imposed for the support of such undenominational schools as were or might be set up for the purpose of providing the kind of education 30 or was it a right to establish, and to conduct under denominational auspices, schools which at all times should correspond in the secular aspect with the undenominational schools called "common," and which should go step by step with those undenominational schools in the general scheme of education, as that scheme existed or should develop with the growth of the country and the advances or changes that might be expected in educational methods?"

The answer to the question just stated is not to be found in the evidence as to what the trustees of separate or common schools were doing, or were permitted or encouraged to do immediately before Confederation: *Maher v. The Town Council of Portland* (1874), Wheeler's Confederation Law of 40 Canada 338, *City of Winnipeg v. Barrett* (1892), A.C. 445, *Ottawa Separate School Trustees v. Mackell* (1917), A.C. 62: the right or privilege that the British North America Act preserves was a right or privilege that the law gave and that could have been exercised even in the face of opposition. The difficulty is in choosing between the alternative ways of stating the legal right. The opinion that I have formed as to the correct statement will appear from what follows.

The separate schools which Roman Catholics in Upper Canada were by

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

law entitled to set up were from the beginning, and until Confederation continued to be, schools of the kind called "common," set aside for the children of Roman Catholics and managed by Roman Catholic trustees. Perhaps the grants made for grammar schools in 1789, 1797 and 1807 were made with the intention of founding schools that should resemble, as closely as the circumstances of the Province would permit, the English Public Schools; and it may be that the reason for passing the first Common School Act in 1816 lay in the fact that the grammar schools were available only to the few and that no public educational facilities had been provided for the mass of the inhabitants. Gradually, however, the two schools were brought together. 10
The Common Schools Act of 1850 made provision for county boards of public instruction composed of the local superintendents of schools and the trustees of the county grammar schools; power to unite common schools with a grammar school, was conferred in 1853—subject always to the obligation to provide elementary instruction; in the same year the Council of Public Instruction was given power, with the approval of the Governor in Council, to prescribe rules and regulations and a programme of studies for the grammar schools; and from that time, at the latest, the common (and separate) schools and the grammar schools were parts of the general educational system, the common (and separate) schools being intended to be the primary schools 20 of that system, and the grammar schools being intended to be the secondary schools. The system had not been fully developed before Confederation. The grammar schools, or some of them, were doing work which they were not intended to do; and some of the common schools were doing work which really was the work of secondary schools. Thus there was an overlapping, such as was to be expected in the absence of regulations clearly defining the respective spheres of activity of the two classes of school indeed, such as, perhaps, is to some extent inevitable in any system of schools, no matter how well regulated.

The trustees, whether of the common schools or of the separate schools, 30 were school corporations. The Acts establishing the corporations did not put any express limitation upon the corporate power to teach; but it is not correct to say that the trustees had the corporate capacity to teach whatever may be taught in schools. Their corporate capacity of teaching was to teach what might properly be taught in "common" schools, that is, in the case of Upper Canada, what ever might properly be taught in the primary schools of the Upper Canada educational system. The separate schools were by sec. 26 of the Act of 1863 made subject to such regulations as might be imposed from time to time by the Council of Public Instruction for Upper Canada; and the Council of Public Instruction had express power, under 40 sec. 119 (4) and (5) of the Common School Act of 1859, to make such regulations from time to time as it deemed expedient for the organization, government and discipline of common schools and for the classification of schools and teachers, and to examine and at its discretion recommend or disapprove of text-books for the use of schools. Moreover, the powers by sec. 7 of the Act of 1863 given to the trustees of Roman Catholic separate schools, in respect of their schools, were the powers that the trustees of

common schools had and possessed under the provisions of the Act relating to common schools; and by sec. 27 (18) of the last-mentioned Act it was made the duty of each board of trustees of rural common schools to see that no unauthorized books were used in the schools, and that the pupils were duly supplied with a uniform series of authorized text-books, sanctioned and recommended by the Council of Public Instruction; by sec. 79 (15) it was made the duty of each board of trustees of urban common schools to see that all the pupils in the schools were duly supplied with a uniform series of authorized text-books, and by sec. 79 (16) these urban trustees were required to

10 see that all the schools under their charge were conducted according to the authorized regulations. The result of this legislation, in my opinion, was that the trustees of the separate schools would have been bound to obey any regulation which the Council of Public Instruction for Upper Canada had seen fit to pass with the object of fixing the point of commencement of the grammar-school course and the point beyond which the education of pupils in the common schools should not proceed.

Counsel for the suppliants lay stress upon the right of the trustees of common schools in cities, towns and villages, and in townships in which all the common schools had been brought under the management of a single board

20 under sec. 32 of the Common School Act of 1859, to determine the number, sites, kind and description of schools, which power, they submit, included a power to grade the schools in the way in which the schools of some of the larger towns had been graded. In support of their claim of a power to grade, they cite *Ottawa Separate Schools Trustees v. Mackell* (1917), A.C. 62, in which the Judicial Committee of the Privy Council expressed the opinion that the "kind" of school referred to in sec. 79 (8) of the Act of 1859 is the grade or character of school, for example, "a girls' school," "a boys' school," or "an infants' school." It is suggested, on the other hand, that, while the *Mackell* case decides that the "kind" of school referred to in section 79 (8) was some-

30 thing other than a school where any special language was in common use, it does not decide that the trustees had the power of grading that is contended for in this case. It is suggested that the power to determine the "kind" of schools, being part of a general power to determine the "number, sites, kind and description" of schools, may well have been a power to determine the kind of school-house: and that, as it was not necessary in the *Mackell* case to determine whether there was a power to grade the schools, but only whether there was a power to prescribe the language of instruction, their Lordships are not to be taken to have intended to say that, if and when a question arose as to whether "kind of school" meant "grade of school" or "kind of school-house,"

40 the decision must be in favour of "grade of school." The suppliants refer also to the Public School Act of 1874, under which the power was to determine the number, kind, sites, *grade* and description of schools (such as male, female, infant or ward schools)", and to the later Acts similarly worded.

In my opinion, even if the Ontario legislation did show what meaning the members of the Ontario Legislature attached to the Acts of the Legislature of the late Province of Canada—and it is by no means clear that it does—it would not be a sufficient basis for a finding. The rights of Roman Catholics in

In the
Supreme
Court of
Ontario.

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926,
—continued.

Ontario could not be prejudiced by an Ontario statute which professed to declare what rights Roman Catholics in Upper Canada had in respect to denominational schools at Confederation; nor can any inference of an admission by the Ontario Legislature establish the fact that the pre-Confederation rights were such as are contended for by the suppliants: see *City of Winnipeg v. Barrett* (1892), A.C. 445, at page 458. But, even apart from the judgment in the *Mackell* case, and from any inference to be drawn from the legislation mentioned, sec. 79 (8) of the Act of 1859 seems to me to have a wider meaning than that suggested by counsel for the Attorney-General; and having regard to the judgment (even if what is said as to the meaning of "kind of schools" is not a necessary part of it) my opinion is that it must be found that there was a power to grade. 10

Probably the meaning of the words in sec. 7 of the Separate Schools Act of 1863, "shall have all the powers in respect of separate schools that the trustees of common schools have and possess under the provisions of the Act relating to common schools," was that the trustees of separate schools situate in cities, towns or villages, or in townships in which the schools had been brought under one board, should have all the powers that the trustees of common schools had in respect of common schools similarly situate; and that the trustees of separate schools in other school sections should have all the powers that were possessed by the trustees of common schools in similar sections. If that was the meaning, the suppliants, who are the trustees of a separate-school section in a township, would not have had the powers mentioned in sec. 79 (8) of the Common School Act of 1859; but the petition is presented on behalf of all boards of trustees of Roman Catholic separate schools in Ontario, and what has to be decided is the rights of Roman Catholics and of the trustees of their schools generally, and not merely the rights of the petitioning trustees. Therefore the question is to be discussed in its larger aspect, and not with reference only to the rights of the trustees in any particular school section. Considering the question, then, in that larger aspect, my opinion, as I have said, is that the trustees of Roman Catholic separate schools had the right to grade their schools. This, however, does not carry the petitioners very far; for the schools that were to be graded were "common" schools, and any grading that was to be done was to be done for the purpose of facilitating the doing of common-school work; and the fact that trustees had a right to order that the primary common-school work should be done in certain buildings, and the more advanced common-school work in other buildings, each building being designated by an appropriate name, is of no more importance than the fact that the trustees of any common school had the right—as of necessity they must have had—to cause the several grades of the work of their school to be done in separate class-rooms. The question is not, how many schools the common-school trustees of a given municipality had the right to establish and maintain, or what distribution of the common-school work they had the right to make amongst the schools set up, or what names they had the right to give to the several schools. It is, on the contrary: what work had they by law the right to do in their school or schools? And the answer, in my opinion, is: They had the right to do such 20 30 40

work as the regulations of the Council of Public Instruction should declare to the work of common schools.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

The suppliants also point to the fact that, under secs. 27 (16) and 79 (18) of the Act of 1859, the trustees of rural common schools were bound, and the trustees of urban common schools had the right, to permit persons between the ages of 5 and 21 years to attend their schools; and they say, surely there was the right, which no regulation could affect, to give the instruction needed by persons of the ages mentioned. That argument seems to me to be fallacious. If a person of 20, resident in a town-
10 ship, desired to attend the common school he had a right to do so, but he had to take the school as he found it. If, as a child, he had learned what the school could teach, he would not apply for admission, or if he did apply he could not compel the trustees to provide instruction in the higher branches of learning. The trustees were under no obligation to provide tuition suitable to *all* persons of 20; and they had no right to teach what was not properly the subject of a common-school course; and what was proper to the common-school course is to be ascertained, not by finding how old a person had to be before the trustees could refuse to admit him as a pupil, but by considering the place of the common school in the educational system.

20 If the common schools (whether separate or undenominational), the grammar schools, the normal school, the model schools, the model grammar schools and the university were all parts of a general state-aided system of education; if the intention of the statutes was that the common schools should be the primary schools, and the grammar schools should be the secondary schools of that system; and if the Council of Public Instruction had authority, with the object of causing the common schools and the grammar schools properly to perform their respective functions, to decree that the common-school course should stop and the grammar-school course should begin at a certain point, the petitioners' case, in my opinion, must depend upon the fact
30 that the Council had not exercised its power and that no regulation passed before Confederation had forbidden the trustees of common or separate schools to carry on advanced work; that is to say, the argument must be that, although the legal right of Roman Catholics in Upper Canada immediately before Confederation was a right to establish and conduct schools that were subject to be regulated in the way mentioned, the British North America Act, by prohibiting any prejudicial interference with the right that existed, forbade the Council to make regulations, and so, in effect, perpetuated (or created) a right to establish and conduct unregulated schools—unregulated, that is, in the particular now under discussion. An argument that leads
40 to any such result is opposed to the reasoning in *Ottawa Separate School Trustees v. Mackell* (1917), A.C. 62, as I read the judgment. Throughout the judgment, the existence, before Confederation, of the right to regulate, rather than the fact that there had been no regulation, is treated as the important consideration in connection with such regulations as were there in question. Take, as a particular instance, the question as to the right to appoint teachers. Section 79 (8) of the Common School Act of 1859 conferred power upon the trustees to whom it was applicable to determine "the teacher or teachers to

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

be employed," while sec. 98 (4) made it the duty of the county and circuit boards of public instruction to examine and give certificates of qualification to teachers—three members of the board, including a local superintendent of schools, being a quorum for the purpose (sec. 96). The local superintendents were appointed by the school trustees (sec. 79 (2)). Thus the power of the trustees to "determine the teacher or teachers to be employed" was a power to select a teacher or teachers from those duly qualified, but the certificates of qualification were granted by a board on which the trustees had representation. The regulations complained of are set out in the report of the judgment pronounced at the trial—(1914), 32 O.L.R. 245. Clause 13 10 prescribed certain qualifications for teachers. The Judicial Committee held that even if sec. 96 of the Act of 1859 could have been revived there would have been nothing to prevent the establishment of special conditions as conditions with which the teachers must comply before any certificate could be given. Their Lordships, of course, recognized the fact that a regulation prejudicially affecting the schools in their denominational aspect could not validly have been passed after 1st July, 1867, but they held that the regulation complained of did not work to the prejudice of the right preserved by the British North America Act.

It is true that what is complained of in this case interferes with the 20 denominational right, as that right is understood by the petitioners. The theory of the supporters of denominational schools is, of course, that to give the child his secular education in the religious atmosphere of the denomination is to promote his welfare, that there are subjects of secular education which will be taught differently in denominational and in undenominational schools, and that it is important to the child that during the whole of his school life he shall be subject to the influence of the denominational school. Therefore any shortening of a course of instruction which the separate-school trustees had by law the right to conduct affects the denominational right in a way in which a regulation like, for instance, the regulation as to 30 teachers' qualifications that was complained of in the *Mackell* case cannot affect it. But if there was no legal right at Confederation to maintain schools which, like the Hamilton and London schools, could qualify the pupils for admission to the university, but only a right to maintain schools in which such work as the regulations might prescribe should be done, my opinion is that both upon authority and principle the right preserved by the British North America Act was the right to maintain schools that could be regulated in the way suggested. That being so, the right to regulate still exists, and for the purposes of the present case it is immaterial whether the regulation takes 40 the form of an Act of the Legislature or of an order made by the body in which the power formerly exercisable by the Council of Public Instruction is now vested.

The suppliants suggest that if it is permissible so to regulate the common and separate schools as that they will be able to continue the education of pupils only up to a certain point or until a certain age is reached, it would be permissible to order those schools to do only the most elementary work—to turn them in effect into kindergartens. The answer to that suggestion is

two-fold: first, the character of the schools as common schools, that is, schools fitting into the place which the common schools dealt with by the Act of 1859 were intended to occupy, must be maintained; and, secondly, the appeal against an unfair exercise of the provincial power is not to the courts but to the Governor-General in Council, under sec. 93 (3) of the British North America Act.

Now to consider the validity of the legislation and regulations impeached.

In the petition, certain sections of Acts passed before 1914, the corresponding sections in the Revised Statutes of 1914, and certain amendments 10 to the Revised Statutes are set out and attacked; but there seems to be no reason to discuss anything but the sections as they stand at present, that is to say, the sections of the Revised Statutes as last amended. The first of these is sec. 6 of the Department of Education Act, which, as has been stated, deals with the distribution of the legislative grant. It will be considered separately.

The second Act mentioned is the High Schools Act, R.S.O. 1914, ch. 268. The sections complained of are secs. 33, 34, 37, 38 and 39. Sections 33 and 34 have been amended and as they stand at present are to be found in (1925), 15 Geo. V, ch. 78, sec. 17. The sections impeached require 20 the municipalities to furnish certain money for the support of the high schools (the expression "high school" including collegiate institutes) and to levy rates for the purposes, for which rates the supporters of separate schools are liable with the other ratepayers. The objection, as has been mentioned, is that the high schools are not the successors of the grammar schools (for the support of which separate school supporters could be assessed before Confederation) but are new schools which have been set up to do what was, in part at least, the work that the common schools had by law the right to do. The history of the schools appears from the foregoing review of the legislation, and need not be repeated. My opinion is that every high school and col- 30 legiate institute existing to-day, whether it was in existence in 1871 and had its name changed by 34 Vict., ch. 33, or was set up under one of the High School Acts, or, having been established in the first instance as a county continuation school, become a high school in 1913 by force of the statute 3 & 4 Geo. V, ch. 72 (R.S.O. 1914, ch. 267, sec. 12), is a school for the support of which rates may be imposed upon Roman Catholic separate-school supporters. These schools, whatever their origin, fill the intermediate place that the grammar schools were intended to fill, and while they are not necessarily classical schools (as the grammar schools were intended to be) they cannot be called common schools; and the only right of freedom from 40 municipal assessment that separate-school supporters had by law at Confederation was the right to be exempt from assessment for the support of common schools. It is true that the regulations permit the public and separate schools, in their fifth forms, to teach practically what is required to be taught in the lower schools of the high schools, and that if a public or separate school which maintains a fifth form is situate elsewhere than in a high or continuation-school district it can earn the special departmental grant for fifth forms: Public and Separate-School Regulations (1924 edition),

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

In the
Supreme
Court of
Ontario.

No. 13
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

pp. 54 *et seq.*, and 76. But it does not follow that the high schools are doing common-school work: it is more accurate to say that the public and separate schools, if situated where there is no easy access to a high or continuation school, are encouraged, for the convenience of the children of the neighbourhood, to do some of the high-school work. Moreover, as has been suggested already, some over-lapping of courses is probably inevitable; and my opinion is that it proves nothing.

From a comparison of the separate-school course authorized by Appendix "H," to the instructions of 1863 with the high-school course of to-day, it may appear that in some subjects the separate school of 1863 was expected to do work equivalent to that which is done in the lower forms of the high school to-day—although the two tables are so differently worded that comparison is difficult; but even evidence (if it could be adduced) that the course of study prescribed for the third division of the separate schools of 1863 was more advanced than the course now prescribed for the lower forms of the high schools, would not establish the petitioners' contention that the present-day high school is really a part of the old common school; it would establish only that the regulations had been changed; and, without proof that the change had been made with the ulterior object suggested by the petitioners, it would be of no value. In fact, it is hardly suggested, and nothing that has been brought to my attention indicates, that the various changes have been made with any other object than that of improving the educational system and enabling each unit to perform its function more successfully.

The Continuation Schools Act is not in the schedule of Acts impeached, but the petitioners seek a declaration that the courses of study prescribed for continuation schools are courses which the trustees of separate schools are entitled to conduct in the separate school, that all regulations purporting to prohibit or limit the right claimed or to affect it prejudicially are void, and that separate-school supporters cannot lawfully be taxed for the support of continuation schools not conducted by separate-school trustees, and other objections made at the trial have been noted in the foregoing review of the legislation.

The purpose of the continuation schools, as stated in a circular issued in 1924 and as appears from the Acts and regulations, is to continue educational work for pupils of rural and small urban districts, by providing two or more years of high-school training for those who have passed the Ontario high-school entrance examination. The courses, subject to some restrictions, being those of the high schools, the continuation schools afford, to the inhabitants of the localities in which they are maintained, opportunities which would not be open if there was no continuation school but only a fifth class in a public or separate School. The municipalities are made liable to contribute to the support of the schools, and there is provision for raising the amount of the contribution by local assessment: See, *e.g.*, the circular of 1924 and sec. 7 of the Act as revised in 1925 by 15 Geo. V, ch. 78, sec. 21 (in reading sec. 7 (1), note that the reference to subsec. 1 of sec. 33 of the High Schools Act is to that subsection as revised in 1925 by 15 Geo. V, ch. 78, sec. 17). If, then, it happens

that a continuation school is set up by the trustees of a common school the separate-school supporters may be assessed for its support.

The objections to the legislation and regulations affecting continuation schools are all based upon the proposition that the work assigned to the continuation schools is in reality part of the work that the trustees of separate schools had by law the right to cause to be done in their schools before Confederation. The schools, as has been seen, grew out of the continuation classes, which in 1908 were, as the Minister put it in his report, divided into continuation schools and fifth classes. My opinion is that, like the fifth class (or form), the present-day continuation school is a unit of the educational system, new since Confederation and set up for the purpose of doing some of the secondary work which the old grammar school was intended to do. Therefore, in my opinion, no right or privilege that Roman Catholics had by law at Confederation is affected prejudicially, either by the legislation as to local taxation for the support of the schools, or by the requirement of the Minister's consent to the establishment of a continuation school by separate-school trustees, or by the prohibition against the giving in separate schools of instruction which continuation schools are set up to give, or by any other part of the legislation or of the regulations to which attention has been directed.

What has been said with reference to the regulations passed with the specific intent of delimiting the respective spheres of activity of the public and separate schools, the high schools and collegiate institutes and the continuation schools applies to every statute and regulation attacked as an interference with the right of the trustees of separate schools to exercise the rights and privileges that the trustees of Roman Catholic separate schools had by law in Upper Canada at the Union (except the right of sharing in the school funds, which right remains to be discussed). Nothing to which my attention has been directed seems to me prejudicially to affect any right or privilege in respect to denominational schools which the law, as I understand it, gave to the Roman Catholic inhabitants of Upper Canada.

The attack upon sec. 6 of the Department of Education Act, which controls the Minister in his distribution of the school grants, and upon the regulations made under the section, takes two forms: first, there is a claim for a declaration that the section is invalid, and secondly, there is a demand by the petitioners, as trustees of the Roman Catholic separate school for school section number 2 of the Township of Tiny, for the sum (over and above the sum that has been paid to them) that they say they would have been entitled to receive for the school year 1922, if the law that was in force at Confederation had not been changed.

The section of the Act (R.S.O., 1914, ch. 265, sec. 6) as amended in 1916, 1917, 1918, 1919, 1920, 1921, 1924 and 1925, and some of the regulations made under it have been referred to already. (The Act with its amendments was printed in pamphlet form by the Department in 1925.) As has been stated, the plan of distribution now in force is much more complex than the plan followed before Confederation. It is necessarily complex, because there are so many kinds of schools now in operation, and there are so many

*In the
Supreme
Court of
Ontario.*

No. 13
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

*In the
Supreme
Court of
Ontario.*
No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

special grants for schools and classes of particular descriptions, and in many instances the amount to be allowed to a school in respect of some particular (e.g., the salary paid to the teacher) depends upon many stated considerations and to some extent upon the discretion of the Minister. The petitioners take the report of the Minister for 1923. They find (p. 79) that the public and separate schools are said to have received \$2,976,712 out of legislative grants in the year 1922, and that the continuation schools (p. 90) are said to have received \$1,038,602, and the collegiate institutes and high schools (p. 91) \$276,889, out of the legislative grant in the school year 1922. They say that the total of these sums (or in any case the sum received 10 by the public and separate schools) was a fund granted by the Legislature for the support of common schools and for common school purposes, and therefore ought to have been apportioned among the counties, townships, cities, towns and incorporated villages, according to the ratio of the population of each, as required by sec. 106 of the Common School Act of 1859. They say that on such an apportionment \$4,669 would have come to the township of Tiny, and that their share, under sec. 20 of the Separate Schools Act of 1863, would have been \$1,116, whereas they received in fact \$380. Therefore they claim \$736. Alternatively they say that if only the sum received by public and separate schools is to be treated as granted 20 for common-school purposes, their share would have been \$1,027, and that they are entitled to judgment for \$647.

Even if the suppliants' contention as to the manner in which the legislative grant is to be distributed is sound, the correctness of the calculation of the amount payable to the separate-school trustees of the township of Tiny is questionable. To mention only some of the difficulties, it may be noted, first, that the period covered by the report seems not to be the same as the fiscal year of the Province, and, the estimates and grants being for the fiscal year, it is difficult to say whether the sum used as the basis of the computation was or was not the sum actually granted for the year for which the computa- 30 tion is made; and, secondly, that if the estimates and the supply votes are taken as the basis of the computation it is apparent at once that the total vote (No. 20 of 1922) for "Public and Separate Schools, Education" covers many items that could not fall to be distributed under sec. 106 of the Act of 1859 if that Act were still in force—for instance, \$134,000 for inspection of public and district schools and \$130,000 for departmental examinations. However, the amount claimed is not very large, and, it was agreed at the trial, without prejudice to any other question, that if it was found that the petitioners were entitled to judgment for some amount, the amount could be taken to be one of those alternatively claimed. 40

Section 20 of the Act of 1863 declared that each separate school should be entitled to a share (1) in the fund annually granted by the Legislature of the Province of Canada for the support of common schools, and (2) in all other public grants, investments and allotments for common-school purposes at the time of the Act made or thereafter to be made (a) by the Province or (b) by the municipal authorities; but sec. 21 enacted in effect that nothing in the Act contained should entitle any separate school to any part of the moneys

arising from local assessment for common-school purposes. The money now in the hands of the Dominion Government representing the proceeds of the sale of the lands set apart, under 12 Vic., ch. 200 and later Acts, for the support of common schools, from which fund Ontario now derives an annual income of something over \$70,000, is perhaps an investment made by the Province of Canada for common-school purposes, within the meaning of sec. 20 of the Act of 1863; and any grant that a municipality might make for public-school purposes out of its revenue arising from the Upper Canada Municipalities Fund, or out of any other moneys available except moneys raised by local assessment, might perhaps be a public grant made by a municipal authority for common-school purposes. But the petition does not raise, and counsel did not discuss, any question as to rights in respect of the Common School Fund or of moneys granted by municipalities: the right that is said to have been affected prejudicially is the right to share in the money granted annually by the Ontario Legislature.

The attack upon the legislation and regulations by which the right to share in the annual legislative grants is said to have been affected prejudicially fails, in my opinion, for several reasons.

The first reason—and it goes to the root of the matter—is that even if the Ontario legislation had not purported to repeal or vary sec. 20 of the Act of 1863, that section would not entitle the separate schools to share in to-day's grants. The Act of 1863 was an Act of the Legislature of the Province of Canada; the right given to every separate school to "a share in the fund annually granted by the Legislature of this Province for the support of common schools" was a right to share in Upper Canada's share of the \$200,000 granted annually for the support of common schools in the Province of Canada; and the right to "a share in all other public grants . . . and allotments for Common School purposes . . . made or . . . to be made by the Province" was a right to a share in all such grants and allotments made or to be made by the Province of Canada. After the 30th June, 1867, there was no Province of Canada. Therefore, if at any time after Confederation but before 1877, when the Act of 1863 was repealed (R.S.O. 1877, Proclamation, p. *lviii*, and schedule A, page 2278), a separate school had claimed a share of a sum granted by the Ontario Legislature for the support of common schools, the claim, if resisted, would have failed. It is true that by virtue of sec. 129 of the British North America Act all laws in force in Canada at the Union continued in Ontario as if the Union had not been made, but subject to repeal or alteration by Parliament or by the Legislature of Ontario, according to the respective legislative authorities of Parliament and the Legislature; but to enact that a law shall continue in force after the Union is not to declare that the meaning of that law shall be changed by the Union, and there is nothing in the British North America Act to indicate that a law relating to the distribution of moneys voted by the Legislature of the Province of Canada should, after the Union, govern the distribution of moneys voted by the Legislature of Ontario. Therefore a claim made between 1867 and 1877 to a share in any moneys granted by the Ontario Legislature for common-school purposes would have failed, not because the Act of 1863 had ceased to have force,

*In the
Supreme
Court of
Ontario.*

No. 13.,
Reasons for
Judgment
Rose, J.
May 13,
1926.

—continued.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

but because of the non-existence of any fund to which sec. 20 could apply. If that is so, it follows that no right which separate schools had at the Union to share in legislative grants for common-school purposes has been affected prejudicially by the repeal or amendment of sec. 20 of the Act of 1863, and that the attack upon the Ontario legislation fails. The legislation, instead of destroying rights that existed by law at Confederation, confers new rights.

Counsel for the petitioners refer to the fact that in the years following Confederation the chief superintendent, in apportioning the annual legislative grants for common-school purposes, followed the practice that he had followed before Confederation, which practice was conformable to sec. 106 of the Common Schools Act of 1859 (C.S.U.C., ch. 64) and sec. 20 of the Separate Schools Act of 1863—as appears by a comparison of the report on the “Apportionment of the legislative school grant for Upper Canada for 1867” (Journal of Education, 1867, p. 113) with the report on the “Apportionment of the legislative school grant to public schools in Ontario for 1876” (Journal of Education, 1876, p. 82). They refer also to the fact already stated that the Separate Schools Act as revised in 1877 (R.S.O. ch. 206) contained a section, 37, in the same words as sec. 20 of the Act of 1863 (except for the substitution of the expression “public school” for “common school”), and that the same section was repeated in the revisions of 1887 and 1897. It seems to me, however, that neither the practice followed before the revision of the statutes in 1877 nor the enactment of sec. 37 of the Act of 1877 affords a reason for saying that sec 20 of the Act of 1863 gave the separate schools a right to share in the grants made by the Ontario Legislature. Before 1877, the superintendent may have thought that in apportioning the money placed under his control by the Legislature he was bound to follow the scheme established by the Acts of 1859 and 1863; and in 1877 and afterwards the members of the Ontario Legislature may have believed that they were bound to deal with moneys voted by them for public-school purposes in the way in which the Legislature of the Province of Canada had dealt with Upper Canada’s share of moneys voted for the common schools of the Province of Canada—or, without considering any question of legal obligation, they may have done what they believed to be just and right; but whatever the superintendent or the Legislature may have believed, the fact, in my opinion, was that the Act of 1877 created a new right.

Another reason why the claim must fail is that even if the opinion just expressed is erroneous, and the class of persons represented by the petitioners had by law at the Union a right to a share, ascertainable in a way fixed by statute, in such moneys as might be granted by the Ontario Legislature for common-school purposes, there is no proof that the legislation and regulations affect that right prejudicially.

The petitioners endeavoured to prove that the sum received by them in 1922, for their school in the township of Tiny, was less than the sum that would have come to them if the moneys granted in that year for what are properly “common-school purposes,” within the meaning of the Act of 1863, had been apportioned in the manner required by the Acts of 1859 and 1863. There may be some doubt, as has been stated, whether the fact is established

by the evidence; but even if it is established it is not, by itself, proof that the right of the class has been affected prejudicially. The "class" whose rights are preserved by the British North America Act is composed of the Roman Catholic inhabitants of the Province or the supporters of Roman Catholic separate schools; and from the fact that individuals of that class have received less money than they would have received if the pre-Confederation law had not been altered it does not necessarily follow that a right of the class as a whole has been affected prejudicially. Counsel for the petitioners contend that *Ottawa Separate School Trustees v. Ottawa Corporation* (1917), A.C. 76, decides 10 the contrary, but in my opinion, it does not. The legislation there in question affected a right of the class by depriving certain members of the class of their legal right to manage certain schools; and it was held that those members were entitled to maintain the action. But in the present case the question is as to the validity of legislation which affects all Roman Catholic separate schools in Ontario; and there is nothing in the judgment in the *Ottawa* case, as I read it, to suggest that if the legislation does not prejudicially affect, or even may be beneficial to those schools as a class, it must be declared to be invalid because under it some of the schools receive less money than they would receive under such an apportionment as the Acts of 1859 and 1863 prescribed.

20 My opinion is, as stated, that proof of prejudice to the school in the township of Tiny would not necessarily establish prejudice to the class. But it is said that the right of the class is affected prejudicially in that, whereas the pre-Confederation law gave every separate school a right to a share in the grant, proportionate to the number of pupils in attendance, as compared with the number attending all the schools in the municipality, the present law makes the amount of the share to depend to some extent upon the salaries paid to teachers, the value of the equipment and other considerations—that, as counsel put it, the separate schools "have to earn their grant." This, it is said, may prejudice the separate schools in various ways. For instance, the 30 teachers in a separate school may be members of a religious community who receive little or nothing in the way of salary as teachers, and that school's share in the grant may therefore be less than the sum paid to a neighbouring school of the same grade and efficiency.

As has been stated, separate sums are voted each year for "rural public and separate schools (counties), general grants and contingencies" (estimates for 1922, vote 20, item 1), "urban public and separate schools, general grants and contingencies" (vote 20, item 2) and "rural public and separate schools (districts), general grants and contingencies" (vote 20, item 5); and these sums (which are three of the large items of the vote) are apportioned between 40 the public and separate Schools as nearly as is practicable in the manner prescribed by the Acts of 1859 and 1863. The general grant for urban schools (item 2) is distributed among the urban municipalities in proportion to population, and each municipality's share is divided between the public and separate Schools proportionately to the numbers of pupils in attendance (Department of Education Act, sec. 6 (1) (a) (b) (c)); and the general grants for rural schools are divided between the public and separate schools in proportion to the attendance at all the rural public schools and at all the rural separate schools

*In the
Supreme
Court of
Ontario.*
No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1925.
—continued.

respectively, and the part allotted to the separate schools is apportioned among the several separate schools in proportion to attendance, the expenditure of the school board upon education, and certain other considerations (sec. 6 (2) and 6 (1) (*d*) and (*g*)). The method thus established of distributing these general grants differs, it is true, from the method that prevailed before Confederation, and it may result in the allotment to a particular school of less money than that school would receive if the pre-Confederation method were adhered to; but it is not apparent that the difference is prejudicial to the schools as a class: there is no evidence that under the new system of apportionment the separate schools receive a smaller portion of the total than they would receive if the former system were restored. The attack, therefore, must fail in so far as it is an attack upon the method of distributing the general grants. 10

As to the special grants included in vote 20, the public and separate schools are treated alike, but each school, whether public or separate, must earn the right to participate. This, the suppliants say, has a prejudicial effect upon the right of every separate school to receive a share proportionate to the number of pupils in attendance. This contention, in my opinion, arises from an erroneous reading of the law that was in force at Confederation. Section 20 of the Act of 1863 gave to every separate school a right to a share in the grants, proportionate to the number of pupils attending such school as compared with the whole number of pupils attending school in the same local municipality. That is to say, when the amount coming into the municipality out of the moneys mentioned in the section, and the numbers of pupils attending the particular school and all the schools, respectively, had been ascertained, the amount payable to the particular school was a mere matter of calculation. But neither sec. 20 nor any other section of the Act of 1863 provided for the allotment of any money for use in any municipality, and in order to find what money was to come into the municipality resort had to be had to the Common School Act of 1859; and the Common School Act did not provide for the distribution amongst the municipalities of the whole of "the fund annually granted by the Legislature . . . for the support of common schools" or of the whole of "all other public grants, investments and allotments for public-school purposes." What sec. 106 of the Common School Act did was to direct the Chief Superintendent to apportion annually to the several municipalities, according to their respective populations, "all moneys granted or provided by the Legislature for the support of common schools in Upper Canada, and not otherwise appropriated by law;" so that if the Legislature, in granting a sum for the support of common schools in Upper Canada, had appropriated it to some particular common-school purpose, that sum would not have been apportioned by the Chief Superintendent to the several municipalities pursuant to sec. 106 of the Common School Act, and the separate school of a particular municipality would not have taken a share of it under sec. 20 of the Act of 1863. Take, for instance, the Supply Bill of 1866 (29 & 30 Vict., ch. 8). There is a grant of an "additional sum for common schools, Upper and Lower Canada, the proportion for Upper Canada to be applicable to grammar schools." (Schedule p. 39.) The Chief Superintendent could not have appor- 30 40

tioned Upper Canada's share of that sum under sec. 106 of the Common Schools Act, although the sum was expressed to be granted "for common schools;" and no separate school could have demanded a share under sec. 20 of the Act of 1863. The right that a separate school had by law at the Union was, in my opinion, not what the petitioners contend, but, at most, a right to share in such grants for common-school purposes as, being unappropriated by law, fell to be apportioned by the Chief Superintendent under sec. 106 of the Common School Act. If that is a correct description of the right that every separate school had by law at the Union, no right of the class of persons represented

10 by the petitioners is affected prejudicially by a statute which enacts that money granted by the Legislature of Ontario for the assistance of schools that need assistance, or for a particular school which has to contend with special difficulties, or for the encouragement of training in the industrial arts, or for continuation schools, or for fifth classes, or for the assistance and encouragement of trustees who pay large salaries or engage teachers possessed of special qualifications, or for summer schools, or for any other of the special purposes mentioned in the several items of vote 20, shall be applied to the purpose for which it was granted, and shall not be apportioned to the municipalities according to their respective populations, and shared in by every separate school in

20 the manner stated in sec. 20 of the Act of 1863. If the Legislature of the Province of Canada could have made these special grants without repealing sec. 20 of the Act of 1863 or prejudicially affecting any right which any class of persons had under that Act—and it is very difficult to see what stood in the way of its doing so—the Ontario Legislature can do so to-day without infringing any right preserved by sec. 93 of the British North America Act.

Further answers to the petitioners' money-demand and to the attack upon the Act and regulations governing the distribution of the legislative grants were made by counsel for the Attorney-General at the trial; but my opinion being that this part of the case fails for both of the reasons stated, I do

30 not deem it necessary to discuss other reasons.

Upon the whole case my opinion is that the statutes and regulations impeached do not prejudicially affect any right or privilege with respect to denominational schools which the class of persons represented by the suppliants had by law in Upper Canada at Confederation. The petition therefore will be dismissed. It was agreed at the trial that whatever the judgment might be there should be no order as to costs.

*In the
Supreme
Court of
Ontario.*

No. 13.
Reasons for
Judgment
Rose, J.
May 13,
1926.
—continued.

JUDGMENT OF MR. JUSTICE ROSE AT TRIAL

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE ROSE | Thursday the 13th day of May, 1926 (Stamp \$2.20)

*In the
Supreme
Court of
Ontario.*
No. 14.
Judgment of
Mr. Justice
Rose at trial,
May 13th,
1926.

IN THE MATTER OF A PETITION OF RIGHT.
BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOL FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY, ON BEHALF OF ITSELF AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO. *Suppliants.*

—and—

HIS MAJESTY THE KING.

Respondent.

The Petition of Right of the above named Suppliants coming on for trial the 24th day of December, 1925, and the 11th, 12th, 13th, 14th, 15th, 18th, 19th and 20th days of January, 1926, at the sittings holden at the City of Toronto, in the County of York, for trial of actions without a Jury in presence of counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment and the same coming on this day for judgment.

2. THIS COURT DOTH ORDER AND ADJUDGE that the Suppliants are not entitled to the relief sought by their said Petition of Right herein.

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that there be no order as to costs.

JUDGMENT, SIGNED this 17th day of August, 1926.

"E. HARLEY,"
Senior Registrar, S.C.O.

30

Entered J.B. 33, page 361.
August 17th, 1926.
"BJC."

NOTICE OF APPEAL

IN THE SUPREME COURT OF ONTARIO.

IN THE MATTER OF A PETITION OF RIGHT.

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOL FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY, ON BEHALF OF ITSELF AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO,

Suppliant.

—and—

HIS MAJESTY THE KING.

Respondent.

*In the
Supreme
Court of
Ontario.*

No. 15
Notice of
Appeal,
June 8th,
1926.

10

TAKE NOTICE that the Suppliant appeals to a Divisional Court from the judgment pronounced by the Honourable Mr. Justice Rose on the 13th day of May, 1926, on the following grounds.

1. That the judgment of the learned trial Judge is against law and evidence and the weight of evidence.

20

2. That the learned trial Judge erred in holding that the Statutes and regulations objected to by the Suppliant as being *ultra vires* so far as they affect the Suppliant, were *intra vires*.

3. That the learned trial Judge erred in holding that the rights and privileges of the Roman Catholic Separate Schools and the trustees thereof were subject to the limitations set forth in the reasons for said judgment.

4. That the learned trial Judge erred in holding that Roman Catholic Separate School supporters were liable to be assessed for the support of High Schools, Collegiate Institutes and Continuation Schools, not established and conducted by Boards of Separate School Trustees.

30

5. That the learned trial Judge erred in holding that Section 20 of 18 Victoria (1863), Chapter 5 does not, in respect of Roman Catholic Separate Schools, govern the distribution of moneys granted by the legislature of the Province of Ontario for Public (formerly Common) Schools and for Public (formerly Common) School purposes.

6. That the learned trial Judge erred in holding that the Suppliant was not a class of persons within the meaning of Section 93 of the British North America Act (1867), 30-31 Vic., Ch. 3, (Imperial).

Dated at Toronto the 8th day of June, A.D. 1926.

40

THOMAS F. BATTLE,
302 Bay Street, Toronto,
Solicitor for the Suppliant.

To—

Messrs. Tilley, Johnston, Thomson & Parmenter,
255 Bay Street, Toronto.
Solicitors for the Respondent.

**REASONS FOR JUDGMENT OF APPELLATE DIVISION
DELIVERED 23rd DECEMBER, 1926**

MULOCK, C.J.O.:—

This is an appeal from the judgment of Rose, J. dismissing the petition of right.

The suppliant is the Board of Trustees of the Roman Catholic Separate School for School Section No. 2, in the Township of Tiny and sues on behalf of the said Board and all other Boards of Trustees of Roman Catholic Separate Schools in the Province of Ontario and complains that certain rights and privileges with respect to Roman Catholic Separate Schools secured to them by Sec. 93, Provision 1, of the British North America Act, being Imperial Act, 30 & 31 Vict. ch. 3 (1867) have been invaded by subsequent Acts passed by the Legislature of Ontario, and asks for appropriatere lief. Sec. 93, provision 1, is as follows:—

“In and for each Province the Legislature may exclusively make laws “in relation to education, subject and according to the following provisions,

“(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.”

Apparently for the purpose of assisting the court in determining what rights and privileges in respect of Roman Catholic separate schools existed at the Union, much documentary and opinion evidence was given at the trial in regard to the conduct and government of various kinds of schools receiving public aid prior to the passing of the British North America Act, but the Judicial Committee of the Privy Council having in *Ottawa Separate Schools Trustees v. Mackell* (1917) A.C. 62, at p. 69, declared that “the right or “privilege reserved in the provision is a legal right or privilege and does not “include any practice, instruction, or privilege of a voluntary character which “at the date of the passing of the Act might be in operation,” I think the rights and privileges enjoyed by Roman Catholic separate schools, within the meaning of sec. 93, provision 1, are limited to those expressly conferred by the Legislature of the late Province of Canada and in force at the Union.

I shall now discuss the suppliant’s various contentions, one being that Roman Catholic separate schools are not being paid each year the amount of moneys to which they are entitled by virtue of the Separate Schools Act, 26 Vict. ch. 5, sec. 20, (1863). That section is as follows:—

“20. Every separate school shall be entitled to a share in the fund “annually granted by the Legislature of this Province for the support of “common schools and shall be entitled also to a share in all other public “grants, investments and allotments for common school purposes now “made or hereafter to be made by the Province or the municipal authorities, “according to the average number of pupils attending such school during

“the twelve next preceding months, or during the number of months which
 “may have elapsed from the establishment of a new separate school, as
 “compared with the whole average number of pupils attending school in
 “the same city, town, village or township.”

*In the
 Supreme
 Court of
 Ontario.*

The annual grants in this section referred to are those provided by the Act respecting Common Schools in Upper Canada, being C.S.U.C. 1859, ch. 64, sec. 106, which is as follows:—

No. 16
 Reasons for
 Judgment of
 Appellate
 Division.
 (Mulock,
 C.J.O.)
 —continued.

10 “It shall be the duty of the Chief Superintendent of Education, and he
 “is hereby empowered—(1) to apportion annually, on or before the first
 “day of May, all moneys granted or provided by the Legislature for the
 “support of common schools in Upper Canada, and not otherwise appro-
 “priated by law to the several counties, townships, cities, towns and incor-
 “porated villages according to the ratio of population in each, as com-
 “pared with the whole population of Upper Canada,” etc.

The moneys in which, by the Separate Schools Act, 1863, sec. 20, separate schools are entitled to share, are: (a) “annual grants by the Legislature of the Province of Canada for the support of common schools;” and (b) “other public grants, investments and allotments for common school purposes.”

20 Such annual grants mean, I think, grants for division amongst all common schools in the Province, and do not include grants of a less general character, as for example a grant to a particular school or for some special common school purpose: e. g., suppose a common school finds itself financially unable to restore its school-house which has been destroyed by fire, and the Legislature were to make a special grant for restoration, such grant would not, I think, be a grant “for the support of common schools” within the meaning of sec. 20. A particular does not include a general.

30 When the Separate Schools Act of 1863 was passed, sec. 106 of the Common Schools Act, C.S.U.C. 1859, ch. 64, was, and unless repealed by implication, has ever since continued to be, in full force. That section does not apportion among all the common schools, but only so much thereof as the Legislature “has not otherwise appropriated by law,” the balance only being separate schools, in my opinion, are entitled to share. To give effect to the suppliant’s contention would involve holding that sec. 20 of the Act of 1863 amended sec. 106 of the Act of 1859 by expunging therefrom the words “not otherwise appropriated by law.” There is nothing in sec. 20 of the Act of 1863 which is inconsistent with anything in sec. 106 of the Act of 1859. Full effect can be given to each section, and therefore sec. 20 does not impliedly repeal sec. 106.

40 Another contention of the suppliant is, that continuation schools, high schools, and collegiate institutes are common schools, and that therefore the moneys annually granted for their support are part of the annual grants to common schools, in which separate schools are entitled to a share. I shall later discuss the question whether continuation schools, high schools and collegiate institutes have become common schools, but may here observe that, even if they have, still for the reason above stated annual grants to them are appro-

priations by the Legislature out of the total vote in support of common schools, and thus are excepted from the fund divisible amongst all common and separate schools.

As to the suppliant's rights in respect of "other public grants, investments, and allotments for common school purposes now made or hereafter to be made," the only money of this nature is the common school fund mentioned in C.S.C. 1859, ch. 26, an Act of the late Province of Canada, respecting the Public School Lands and Fund for Education. That Act declares that the moneys realized and to be realized from the sale of certain Crown lands shall form a capital sum which is to be invested and that the income therefrom shall form a common school fund, and sec. 3, subsec. 2, declares that "the said fund and the income thereof shall not be alienated for any other purpose whatsoever, but shall remain a perpetual fund for the support of common schools, and the establishment of township and parish libraries." 10

This Act and the trust thereby created were in full force at the Union. The whole income from the fund, less what the Legislature may apply in the establishment of township and parish libraries, being by the Act declared to be solely for the support of common schools, separate schools are entitled to share in the same as declared by sec. 20 of the Separate Schools Act of 1863.

It was not shown before us that the income from this fund had not been applied in accordance with the terms of the trust. If there be any question on this point, before the order on this appeal issues, the suppliant may, if desired, have an opportunity of showing whether or not the terms of the trust have been observed. 20

I shall now deal with the following contentions of the suppliant:—

(a) That the continuation schools, high schools, and collegiate institutes are common schools.

(b) That the suppliant by virtue of sec. 93, provision 1, of the B.N.A. Act has the uncontrollable right to conduct in separate schools the courses of study carried on in continuation schools, high schools and collegiate institutes. 30

(c) That the Legislature has no right to limit the courses of study in Roman Catholic separate schools.

(d) That the annual grants for the support of continuation schools, high schools, and collegiate institutes are part of the moneys in which by virtue of sec. 20 of the Separate Schools Act of 1863, they are entitled to share.

(e) That the supporters of Roman Catholic separate schools are entitled to exemption from taxation in respect of continuation schools, high schools, and collegiate institutes. 40

At the Union there existed in the Province common schools, Roman Catholic separate schools and grammar schools, creatures of the Legislature and subject to its plenary authority. It had supreme power to determine what subjects might and what might not be taught in each kind of school, and what class of school should be a common school, what a separate school and what a grammar school. In classifying them it did not say that the classification should depend upon the character of the educational work which they might

respectively carry on, but for its own reasons determined what should be a common school, what a separate school and what a grammar school. There were fundamental differences in the Constitution in respect of each class of school: for example, the trustees of a common school section were to be elected by such ratepayers as were not supporters of separate schools; were a corporation in respect of such section and the school property therein; its management and that of the school were vested in said trustees; and the jurisdiction of the trustees was confined to the limits of the school section in question; and separate school supporters were exempt from taxation in aid of common schools. The

10 trustees of a grammar school were appointed by the county council, were a corporation, and had certain powers and responsibilities in respect of all grammar schools in the county, and grammar school property in the county was vested in the county grammar school corporation. The Grammar Schools Act, C.S.U.C. 1859, ch. 63, required that one grammar school be established in each county or union of counties, and sec. 12 of that Act declared that instruction should be given in each grammar school "in all the higher branches of a practical English and commercial education including the elements of natural philosophy and mechanics, and also in the Latin and Greek languages and mathematics so far as to prepare students for University College, or any

20 college affiliated to the University of Toronto.

The Common Schools Act, C.S.U.C. 1859, ch. 64, did not specify what subjects were or were not to be taught in common schools. Under the Separate Schools Act of 1863 the trustees of separate schools were to be elected by Roman Catholics, and were a corporation for the separate schools in the school section in which they were situate. The separate school property of each section was vested in the corporation for such section, the jurisdiction of the trustees was limited to the section, and supporters of public schools were exempt from taxes in respect of separate schools.

By legislation since the Union, common schools are now public schools, and grammar schools are "high schools," as are also continuation schools and collegiate institutes.

30

The suppliant alleges, and it probably is correct, that some public schools are doing some of the same class of work as is done in high schools and collegiate institutes and argues therefrom that all high schools and collegiate institutes have in consequence ceased to be high schools or collegiate institutes and have become public schools. If such overlapping of work operates as a merger, it would be quite as reasonable to suggest that the public school system has merged in the high school system and therefore ceased to exist.

The Grammar Schools Act in the consolidation of 1859 having created a

40 scheme whereby boards of trustees of grammar schools (now high schools) might each become a corporation clothed with power to establish and carry on grammar schools within its territorial district, and that Act not otherwise providing, each board on its incorporation became entitled in perpetuity to retain and exercise its corporate powers. There is nothing in the Act to support the suppliant's contention that the right of a high school to retain its statutory existence and powers is dependent on the character of the educational work which it may from time to time carry on. Having been given the unconditional

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Mulock,
C.J.O.)
—continued.

statutory character of a high school it must continue to retain it until the Legislature otherwise provides. These observations are equally applicable in respect of separate schools and common schools. Thus all these various kinds of schools continue to preserve their statutory character and it follows that supporters of Roman Catholic separate schools are not exempt from taxation in respect of high schools, continuation schools and collegiate institutes.

I shall now proceed to deal with the contention that the Legislature has no right to limit the course of study in separate schools, and that the trustees of separate schools have the uncontrollable right to carry on therein whatever courses of study may be carried on in public schools, high schools, and collegiate institutes. 10

By the Separate Schools Act of 1863, sec. 7, trustees of separate schools are given "all the powers in respect of separate schools, that the trustees of "common schools have and possess under the provisions of the Act relating "to common schools," and sec. 26 declares that "the Roman Catholic "separate schools (with their registers) shall be subject to such inspection as "may be directed from time to time by the Chief Superintendent of Educa- "tion, and shall be subject also to such regulations as may be imposed from "time to time by the Council of Public Instruction for Upper Canada." 20

The powers of trustees of common schools in regard to instruction in common schools are to be found in the following sections of the Act, C.S.U.C. 1859, ch. 64.

By sec. 27, subsec. 17, the trustees of each township common school are "to visit from time to time each school in their charge and see that it is "conducted according to the authorized regulations."

By subsec. 18, they are "to see that no unauthorized books are used in "the school and that the pupils are duly supplied with a uniform series of "authorized text books, sanctioned and recommended by the Council of "Public Instruction." 30

By sec. 27, subsec. 23 (4), they are to make an annual report to the local superintendent, showing "the branches of education taught in the "school the text books used"

Section 79, subsec. 12 (15), makes it the duty of the board of school trustees of every city, town or village "to see that all the pupils in the school "are duly supplied with a uniform series of authorized text books." Section 79, subsec. 16, requires them "to see that all the schools under their charge "are conducted according to the authorized regulations."

Section 53 declares it the duty of the county council each year to appoint a local superintendent, and sec. 91, subsec. 6, declares it to be the duty of the local superintendent "to see that all the schools are managed and conducted "according to law, to prevent the use of unauthorized, and to recommend the "use of authorized, books in each school." 40

Section 91, subsec. 12 (c) requires him to transmit to the Chief Superintendent of Education an annual report stating "the branches taught . . . "the books used"

Section 98, subsec. 3, makes it the duty of each county and circuit board of public instruction "to select (if deemed expedient) from a list of text "books recommended or authorized by the Council of Public Instruction, "such books as they may think best adapted for use in the common schools "of the county or circuit."

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Mulock,
C.J.O.)
—continued.

Section 106, subsec. 5, makes it the duty of the Chief Superintendent of Education to cause "such general regulations as may be approved by the "Council of Public Instruction for the better organization and government "of common schools to be transmitted to the officers required to execute the 10 "provisions of this Act;" and subsec. 10 requires the Chief Superintendent of Education "to use his best endeavours to provide for and recommend the "use of uniform and approved text books in the schools generally."

Section 114 empowers the Governor in Council to appoint a council of public instruction for Upper Canada, one of whom is to be the Chief Superintendent of Instruction.

Section 119, subsec. 4, declares it to be the duty of the Council of Public Instruction "to make such regulations from time to time as it deems expedient "for the organization, government and discipline of common schools;" and subsec. 5 requires it "to examine and at its discretion recommend or 20 "disapprove of text books for the use of schools."

Section 128 enacts as follows:—

"No person shall use any foreign books in the English branches of "education in any model or common school without the express permission "of the Council of Public Instruction and no portion of the legislative school "grant shall be applied in aid of any common school in which any book is "used that has been disapproved of by the Council of Public Instruction, "and public notice given of such disapproval."

I think these provisions in the Act of 1859 require trustees of common schools to conduct education in them in accordance with the regulations of the 30 Chief Superintendent of Education (now the Minister of Education) and by secs. 7 and 26 of the Separate Schools Act of 1863 the like duty rests upon trustees of separate schools.

The suppliant attacks 1924, 14 Geo. V, ch. 82, sec. 2. That section deals with what it calls "special grants for urban and separate schools," and also what it calls the general grant for rural, public, and separate schools.

As already observed, an annual grant to come under the operation of sec. 20 of the Act of 1863 must, I think, be a grant for all the common schools of this Province. Neither of these last mentioned grants is of that nature, and therefore they are not part of the grant in which separate schools are 40 entitled to share.

In his reasons for judgment the learned trial Judge pointed out that the fund in which sec. 20 of the Act of 1863 declared separate schools entitled to share was a fund annually granted "by the Legislature of this Province" (the old Province of Canada), and that the Province of Canada, together with its legislature, having at the Union, ceased to exist, there is now no such fund. I agree with this view.

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Mulock,
C.J.O.)
—continued.

By consent of the Court, and on the fiat of the Attorney-General, the Record was amended by adding as a suppliant The Board of Trustees of the Roman Catholic Separate Schools for the City of Peterborough.

For the foregoing reasons I am of opinion that there is nothing in any Act passed since the Union which prejudicially affects any right or privilege with respect to denominational schools which Roman Catholics had by law in the Province at the Union, and this appeal fails and should be dismissed.

MAGEE, J.A.:—

No. 16
Reasons for
Judgment of
Appellate
Division.
(Magee, J.A.)

The reasons of Mr. Justice Rose deal, as I think, so fully and satisfactorily with the questions raised that I cannot usefully add to them. Recognizing 10 that the spirit of the British North America Act evinced in its provisions for the protection of the existing rights of minorities in Quebec and Ontario should be interpreted and effectuated in abounding good faith, and still doubting that any power of interference with the otherwise absolute jurisdiction of the Provincial Legislature over the subject of education was ever intended to be left with the courts or elsewhere than where provided, that is, with the Governor-General and the special remedial power of the Dominion Parliament, I cannot but consider that the Court is bound by the wording of the various pertinent statutes and of the orders and regulations which shewed the bounds of the rights existing in 1867 when Confederation was effected. We cannot 20 legislate but only interpret. The Legislature was not bound unless by good faith to improve the legal status of the separate schools or to provide organization for other than the local educational bodies already constituted, and neither any one of those small bodies nor all combined could claim moneys intended for broader and higher organizations such as High Schools and Collegiate Institutes, which the restricted powers of the small school section would not enable it to make effective use of for the intended objects; nor in my opinion do their boards of trustees represent as corporate bodies the rights of the individual ratepayers.

I would dismiss the appeal both as to the original and added suppliants. 30

HODGINS, J.A.:—

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J. A.)

The suppliants claim, among other things a declaration, with consequent relief, that by legislation subsequent to Confederation the Provincial Legislature has prejudicially affected some right or privilege with respect to denominational schools which the suppliants, as a class of persons, had by law at the union (B.N.A. Act, sec. 93 (1)).

The claim is far-reaching. It involves in effect a share of all grants for education made for continuation schools, high schools, and collegiate institutes since Confederation, as flowing from a right, equally extensive, to completely control, save as to text books, all education in separate schools. 40 As I agree with the judgment pronounced after the trial, and the reasoning on which it is founded, I only desire, on account of the public importance of the case, to add some considerations which occur to me.

The whole argument for the suppliants appears to me to rest on a false basis. The contest out of which emerged the Act of 1863 was waged with vigour on both sides, and what was enacted as its outcome needs therefore careful scrutiny.

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment
of Appellate
Division.
(Hodgins,
J.A.)

—continued.

There was a desire on one side, the religious one, to secure a right to teach the rising generation something of religion, this desire was yielded to and there followed the establishment of denominational schools, or, as they were afterwards called "separate schools." But, as I read the Statutes and records of the time as evidenced by the exhibits, there was never any idea of letting
10 such schools cut loose from the then system of elementary education or permitting the setting up of a new sort or kind of school. All schools were common schools and were to continue so, but the initiation, establishment, and internal management of those known as denominational schools were entrusted to religious bodies, members of which desired such a school. These schools were to be staffed by teachers qualified as common schools teachers, while the educational authority indicated and controlled the secular education given in them. They shared in public grants made for common schools for exactly the same reason as did the latter class of school. I find no trace,
20 except as to religious instruction, of any intention to allow the education given therein to be more or less extensive or different in character from that which obtained in the common schools. Apparently all were to remain in the same category and advance or recede as the educational policy of the Province dealt with its common school education. In this view, it is not necessary to lay down the exact definition of a "common school," nor the precise extent and limitations of such an education in 1867. These separate schools were, so far as I can judge, educational institutions, part of the common school system, and, in all the changes of educational policy and in the classification and division of schools, whatever was a common school
30 from time to time was also a separate school, and the right of the latter class of school to public support was therefore just as plain as was that of the ordinary common schools. This view contrasts sharply with the suppliants' claim to teach whatever they like without control or restraint (except in respect of text books) and to share in grants for objects not within common school purposes or designated therefor. An examination of the legislation dealing with education will indicate that this view is correct.

The rights protected by sec. 93 (1) are those in regard to denominational schools (whatever that expression may mean, which will be discussed later), and in all else the Provincial Legislatures are supreme, save where they infringe rights in regard to education created by a separate school system, in which event the Federal Parliament must act.

40 The Act in force at Confederation dealing with separate schools was passed in 1863 (26 Vic. (Can.) ch. 5). This Act, by sec. 129 of the B.N.A. Act, was "to continue in Ontario . . . as if the Union had not been made; . . . "subject nevertheless . . . to be repealed, abolished, or altered . . . by the Legislature of the respective Province, according to the authority of . . . that Legislature under this Act."

In the
Supreme
Court of
Ontario.

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J.A.)
—continued.

Section 20 of the Act of 1863 is relied on to establish a legal right to share, in the prescribed proportion, in every grant made for the support of common schools or for common school purposes, by the Province of Ontario since the Union. That section is as follows:—

“Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of common schools and shall be entitled also to a share in all other public grants, investments and allotments for common school purposes now made or hereafter to be made by the Province or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new separate school, as compared with the whole average numbers of pupils attending school in the same city, town, village or township.” 10

This section deals only with grants “by the Legislature of this Province,” i.e., of the then Province consisting of both Upper and Lower Canada, which Province passed out of existence on the enactment of the B.N.A. Act. The fact that the Act of 1863 remained as it was till altered or amended by the Province of Ontario, changes neither its wording nor its effect, because it continued, as expressed by sec. 29 of the B.N.A. Act “as if the Union had not been made;” that is, as if the two Provinces of Canada had not been separated. Section 129 is not expressed to be in force and apply to each Province separately, as in sec. 84, which provides that all the laws in force at the union in the Provinces of Ontario and Quebec as to matters relating to Parliamentary qualifications and elections are to apply to elections of members to the respective and newly created Assemblies of Ontario and Quebec. This makes it impossible to construe the section in question, so as to read into it the new Province of Ontario instead of the old Province of Canada, and the learned trial Judge has so held. 20

The constitutions of the Provinces entering Confederation were either distributed between them and the Federal Government, according to Lord Watson (*Liquidators of the Maritime Bank of Canada v. Receiver General of New Brunswick* [1892] A.C. 437, 442) or, as expressed by Lord Haldane, were surrendered to the Imperial Parliament, and by it granted afresh to the Provinces and to the Dominion (*Bonanza Creek Gold Mining Co. Ltd. v. The King* [1916] 1 A.C. 566, 579). Consequently the powers of those former provinces were at an end, and their Legislature did not survive. Legislatures were newly created for each Province. Apart from this point the case may be dealt with on broader lines. The grants which were dealt with by sec. 20 were for common school purposes, and it can hardly have been the intention that any schools, separate or otherwise, should participate in them without being obliged to give in their schools that common school education the maintenance of which was the fundamental purpose of those grants. Denominational domestic control could easily be given without impairing that purpose. On this point it is instructive to quote the views of several of the Judges in Upper Canada as to the status and position of separate schools at a time when they could be established by Protestant and coloured 30 40

people as well as by Roman Catholics. *In re Risdale & Brush* (1862), 22 U.C.R. 122, Burns, J., speaking for the Court comprising McLéan, C.J., and Hagarty, J., used these words:

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J.A.)

—continued.

10 "We take it to be perfectly plain, from reading the Common School Act, chapter 64 of the Consol. Stats. of U.C., chapter 65, providing for "separate schools, and chapter 55, the Assessment Act, that the legislature intended the provisions creating the common school system, and "for working and carrying that out, were to be the rule, and that all the "provisions for the separate schools were only exceptions to the rule, and "carved out of it for the convenience of such separatists as availed them-
"selves of the provisions in their favour."

Speaking at later dates, Gwynne, J., for the Court of Common Pleas in *Harling v. Mayville* (1871) 21 U.C.C.P. 499, Hagarty, then Chief Justice of that Court, in *Free v. McHugh* (1874) U.C.C.P. 13; and Meredith, J., in *Trustees R.C. School of Arthur v. Arthur* (1891) 21 O.R. 60, all adopt and approve of this language, as still applicable.

"The provisions in their favour" obviously refer to the initiation, establishment, internal management, and religious teaching, none of which touched the secular education to be imparted to the pupils.

20 These views that separate schools were still part of the system of common schools, under a strictly denominational influence, are borne out by a reference to the earlier Acts. In 1841 the trustees elected by those who dissented from the "regulations, arrangements, or proceedings of the Common School Commissioners" were given power "to establish and maintain *one or more Common Schools* in the manner and subject to the Visitation, Conditions, rules and obligations in this Act provided," and they were to share in moneys "appropriated by law, and raised by assessment for the support of Common Schools" (4 & 5 Vict., c. 18; sec. 11). This is the first enactment of the United Provinces on this subject and carries out the idea that these dissentient schools were to
30 be formed and maintained as common schools but under their own trustees. It was the difficulty of grafting into the system of common schools these dissentient schools, and later schools called separate, as a part of that system that has led to most of the complications arising thereafter.

The Act of 1843, dealing wholly with Upper Canada and with Common Schools, repealed that of 1841, and introduced the religious element as a reason for the establishment of separate schools. But they were still common schools and were to be "subject to the visitations, conditions, rules and obligations, provided by this Act *with reference to other Common Schools*, or to other town or city schools established under this Act" (1843) 7 Vict. ch. 29,
40 sec. 56. The town or city schools referred to were to be established by the Board of Trustees therein, and not, as provided with regard to common schools, by the members of any religious denomination—and the Board of Trustees were not, until 1847 (10 & 11 Vict. ch. 19, sec. 5, sub-sec. 3), given power to determine whether such schools should be denominational or mixed.

It is unnecessary, in view of the very excellent summary of the later Acts to be found in the judgment in appeal, to follow those enactments throughout. I do not, however, find anything in them indicating any departure from the

In the
Supreme
Court of
Ontario.

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J.A.)
—continued.

maintenance of these separate schools as part of a system of education, and in that part known as common school education, though with some differences in regard to their origin, constitution, domestic management, and religious exercises. This will be seen when the provisions of the Act of 1863 are considered.

Turning now to the claim upon public grants, it appears that by sec. 20 every separate school was entitled to a *share* in the fund annually granted by the Legislature for the support of common schools, and to a *share* in other moneys granted for common school purposes. What that share was to be is not stated, though it is always to bear the same proportion to the whole grant as the average number of pupils in the separate schools bore to the whole average number of pupils in the same city, town, village or township. Why was this average selected? Evidently not because the school was a "separate" school, but so as to ensure the pupils getting a common school education in all schools whether town or city schools or mixed common schools or separate schools. This provision in no way ties the hands of the granting authority so as to cause it to lose control over the proper application of the funds so granted, nor over the character or standards of the schools, in the matter of education. This appears by the other provisions to be found in the Act of 1863. By sec. 26 the separate schools are to be subject to inspection and regulation by the Council of Public Instruction for Upper Canada. By sec. 13 separate school teachers are required to possess the same qualifications and to submit to the same examinations as are demanded from common school teachers. Visitors are also provided for, and of these Roman Catholics are only a section. Nor does that Act taken as a whole, in my view, prevent the new Legislature from dealing with and making special appropriations for school purposes other than in the form of a general grant for those known as common schools. I cannot construe the section as extending to anything but a grant in which every city, town, village or township is entitled to participate for the giving of common school education, and not to a specific grant for defined and different purposes. My view, in short, as to the position of separate schools, is that they are a part of a system of common school education doing, under denominational auspices, the work of common schools, that they have always had that character and position and that their right to share in grants for public school purposes is based on that position, and is therefore limited to moneys definitely assigned for the support of public schools, the definition and limits of which is for the Legislature of Ontario to declare from time to time. If this view is right, it assists in ascertaining the precise meaning of the provisions of sec. 93 of the British North America Act. The rights in respect of *denominational* schools, generally speaking, were the establishment and conduct of them by and under the immediate supervision of the Church which desired them, either in Quebec or Ontario, subject to regulations made pursuant to statute law. Rights and privileges in such schools, so far as they were "in relation to education" (as carried on by them) if affected, were to be dealt with by the Legislatures of the Provinces, subject to an appeal, not to the Courts, but to Federal authority, which was to correct any infringement of those rights and privileges. These belonged

not to a denomination as the creator and guardian of separate schools, but to the schools themselves, as part of a system of education. It was to the Provinces that education was committed and it is right that the systems of education established by them and the rights flowing therefrom, should be governed by their Legislatures and not by the Courts.

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J.A.)
—continued.

It was in this sense that Blake, V. C., in *Belleville Separate School Trustees v. Grainger* (1878) 25 Gr. 570, dealt with the question and held it to be no infringement under sec. 93 (1) when the "machinery for carrying on its work" under separate school trustees was assimilated to that of the public schools.

10 The case of the *Ottawa Separate Schools Trustees v. Ottawa Corporation* [1917] A.C. 76 only deals with the right to elect and have trustees to manage the internal operation of the school, something quite different from a right regarding education as such. It was a strictly denominational right which was granted, wholly because of the desire of the Roman Catholic Church to impart religious instruction according to the tenets of that Church, as stated by Meredith, C.J.O., in a previous case, *Mackell v. Ottawa Separate School Trustees* (1915), 34 O.L.R. 335. This is clear from the judgment in [1917] A.C., 76, of which I quote the following (p. 82):—

20 "It may be pointed out, however, that the decision in this appeal in "no way affects the principle of compulsory free primary education in the "province established under the Common Schools Act, 1859, and that if "the appellant board and their supporters fail to observe the duties inci- "dent to the rights and privileges created in their favour the result is that "the children of Roman Catholic parents are under obligation to attend "the common schools, and thus lose the privileges intended to be reserved "in their favour under provision 1 of sec. 93 of the British North America "Act, 1867."

30 The earlier case to which I have referred was taken to the Privy Council: *Ottawa Separate School Trustees v. Mackell* [1917] A.C. 62. In it Lord Buck- master, L.C., referring to sec. 26 of the Act of 1863 which provided that the separate schools were subject "to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada," clearly differentiated the denominational and educational rights in these words (p. 71):—

40 "The schools must be conducted in accordance with the regulations, "and their Lordships can find nothing in the statute to take away from the "authority that had power to issue regulations the power of directing in "what language education is to be given. If, therefore, the trustees of "the common schools would be bound to obey a regulation which directed "that education should, subject to certain restrictions, be given in either "English or French, the trustees of the separate schools would also be "bound to obey a regulation of the same character affecting their school, "provided that it does not interfere with a right or privilege reserved "under the Act of 1867, i.e., a right or privilege attached to denominational "teaching."

He adds:—

“The objections to the instructions which were urged before their Lordships, however, were not chiefly based on the allegation that they “prejudicially affected in any special manner denominational teaching, “but on the wider ground.”

This wider ground was that the regulations in question interfered with the alleged right of the trustees to give education in such language as the trustees thought fit.

This contention is dealt with in reference to sec. 129 of the Common Schools Act, 22 Vict. ch. 64, thus (pp. 72, 73):

“The second paragraph of the circular is important. The regulations and courses of study prescribed for the public schools, which are not inconsistent with the provisions of the circular, are applied to the English-French schools, with the following modifications: ‘The provision for religious instruction and exercises in public schools shall not apply to separate schools, and separate school boards may substitute the Canadian Catholic readers for the Ontario public school readers.’”

“These modifications bring the instructions into agreement with the provisions as to regulations affecting religious instruction in the Common Schools Act and the Separate Schools Act, the only reference to religious instruction to which their Lordships were referred in these statutes is sec. 129 of the former statute. This section provides that no person shall require any pupil to read or study in or from any religious book or join in any exercise of devotion or religion objected to by his or her parents or guardian, and this provision preserves these rights. Indeed the clause, in their Lordships’ opinion, indicates that the whole course of religious teaching in the separate schools is outside the operation of the circular, for the circular applies to public schools and separate schools alike and impartially, and if it contained provisions with regard to religious instruction in the public schools, by virtue of this clause those provisions would not apply to the separate schools; throughout the whole of the circular, however, there is nothing whatever to indicate that it is intended to have any application, excepting it may be in the case of public schools, to anything but secular teaching, and it is in this connection that clause 3 must be read. This is the clause which regulates the use of French as the language of instruction and communication, and it is against these provisions that the complaint of the appellants is mainly directed. The clause refers equally to public and separate schools, and directs that modifications shall be made in the course of study in both classes of schools, subject to the direction and approval of the chief inspector.”

And at pp. 74, 75:—

“The right to manage does not involve the right of determining the language to be used in the schools. Indeed, the right to manage must be subject to the regulations under which all the schools must be carried on; and there is nothing in the Act to negative the view that those regulations might include the provisions to which the appellants object. If,

10

20

30

40

“therefore, the regulation as to which the trustees of the common schools were bound to carry on the class of school committed to their charge did in fact, under the Act of 1859, enable directions to be given as to the medium of instruction, the power possessed by the trustees of the separate schools would have been subject to the same limitation, and the question as to interference with the powers of management does not arise as an independent question.”

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J. A.)

—continued.

This brings the provisions of sec. 93 (1), I think, into complete harmony with the authority given to the Provinces as part of their legislative powers.

10 The statute of 1863 was expressly made subject to change, as stated in the B.N.A. Act, by legislation passed by the new Province of Ontario. It is not to my mind conceivable that it was intended by sec. 93 (1) to create and preserve as a right by law, the power to forbid any alteration in the Act of 1863, needed or expedient in the interest of expanding education, not affecting separate schools in their establishment or in their nature as denominational schools, but as dealing with them in their aspect of purely educational institutions, as part of common school education which was at Confederation their only ambit. In this aspect, whatever the Province made the common schools it also made the separate schools, so that if and so long as the Province

20 enlarged the sphere of the common schools just so much and so long did it increase that of the separate schools. This in itself relieves the Court from determining exactly what kind or description of school the separate school trustees had power in 1863 to manage, and enables it to construe the legislation regarding grants in a way that does no injustice to either class of school. Public grants must always be subject to, and safeguarded by, the conditions and provisions which Parliament chooses to annex to them, and while, if a grant is made, a share may be demanded, yet that demand cannot be legally made or acceded to unless these conditions and provisions are complied with.

30 A grant of public money is the free gift of Parliament, and may be accompanied by special appropriations or by money grants for certain designated purposes. If these should reduce the aggregate of general grant which is divisible among common and separate schools, then all would suffer, and common schools would lose in a very much larger degree. This is a practical safeguard against any undue diminution of the divisible fund and a fact which would make it unlikely to occur in any considerable degree. But, while it is unlikely that either the common schools or separate schools had a fixed and unalterable status in the matter of education, the inevitable development of popular education would rather tend to develop the teaching in the direction of an advance over what these schools were originally intended to impart.

40 To cope with this expansion new schools and new methods and classifications would be needed. The increasing pressure for better and higher education would also necessarily compel particular consideration in the matter of grants of money in aid of its larger fields. Whether this tendency would equally increase the scope and importance of the public or common schools, was to be a matter for the individual Provinces, and if decided upon would benefit similar schools described as denominational.

In the
Supreme
Court of
Ontario.

No. 16
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J. A.)
—continued.

Another argument may be considered here. Section 106 of the Common Schools Act C.S.U.C. 1859, ch. 64, made it the duty of the Chief Superintendent (now the Minister of Education) to apportion annually all moneys granted by the local Legislature for the support of common schools as well as special grants "not otherwise appropriated by law," to the several municipalities according to population. This was relied on as giving a right to the separate schools to a share in the grants mentioned without regard to the specific items which made up the bulk sum. But a consideration of the mode of granting moneys by the Legislature shows that these grants, made in general terms, may be, and always are, specifically appropriated to the objects and purposes set out in the estimates. From the form of the statutes granting supply (see for example, that of 1864, 27 & 28 Vict., ch. 1, and the corresponding statute in 1922, 12 & 13 Geo. V, ch. 1,) it will appear that no vote of public moneys is or was made unless recommended by the Lieutenant-Governor in a message to the House. And this message is always accompanied by detailed estimates, as is recited in the preamble to the Supply Act. The Interpretation Act, R.S.O. 1914, ch. 1, sec. 9, makes this preamble part of the Act. So that each item in the estimates accompanying the message of the Lieutenant-Governor as finally passed by the Legislative Assembly is "otherwise appropriated by law" unless it is specifically granted for common or separate school purposes. I think the difference between a specific appropriation and a general grant was early realized in connection with the right of separate schools to participate, and was expressed by Robinson, C.J., in *Belleville R.C. School Trustees v. Belleville School Trustees* (1853), 10 U.C.R. 469, where he held that the Separate School Trustees were entitled to a share in any sum raised by local assessment to equal the Government grant, if raised "for payment of teachers generally and not upon an estimate for a specific purpose."

I cannot, therefore, read the grant of supply in 1922 apart from the estimates, which indicate what was "otherwise appropriated by law."

I agree with the judgment appealed from as to what the words "kind and description" of school were intended to cover. The *Mackell* case gives no assistance to the plaintiffs on that point, and it may be interesting to note that the Court of King's Bench in Upper Canada in 1871, in *In re Hutchison and Board of School Trustees of St. Catharines*, 31 U.C.R. 274 took the view that "kind" meant either the plan and materials, or, as the Privy Council indicated, "boys' or girls' schools."

I have not found it necessary to go further into the question raised in regard to continuation schools, high schools, or collegiate institutes because, as I have indicated, it is entirely for the Provincial authorities to provide and regulate education and they must have the right to declare what is to be primary and what is to be secondary or higher education. In so doing they infringe no legal right or privilege in regard to denominational schools which were possessed by them in 1867. If, however, they affect prejudicially any rights or privileges then existing in regard to education as such, the remedy is not in the Courts, but by appeal to the Governor-General under the later subsections of sec. 93 of the B.N.A. Act.

I cannot imagine a more chaotic system of education than would result if the claims made by suppliants before us were given effect to. Separate schools established before 1867, it was contended, were so completely autonomous that any regulation that prevented them from carrying on their schools so as to include all subjects from the teaching of the alphabet to preparing pupils for the matriculation examinations, became not regulation, but prohibition. This would mean that, side by side with a system of education scientifically organized, classified, and regulated there would exist a wholly uncontrolled system, managed by urban and rural trustees according to their individual notions and yet entitled to share in every public grant whether specific or general, and to use it at their own will, and regardless of what designation the Legislature had given it. I do not think the separate school legislation existing in 1867 can possibly be stretched so far as that.

As I agree with the judgment of the learned trial Judge and because of that, I do not consider it necessary to deal with many of the points taken in the arguments addressed to us, which have, I think, been satisfactorily dealt with by him.

I would dismiss the appeal.

FERGUSON, J.A.:—

As I agree with the judgment appealed from and the reasoning on which it is founded, I would dismiss the appeal.

GRANT, J.:—

An appeal from the judgment pronounced on the 13th day of May, 1926, by Mr. Justice Rose, who tried the cause without a jury.

The proceeding was by way of petition of right. It appeared upon the argument before this Court that there is, or might be deemed to be, some difference between the rights of rural and urban boards of separate school trustees.

As both parties were desirous of having the matters in issue determined upon their merits, by consent and by leave of this Court, the Board of Trustees of the Roman Catholic Separate Schools of the City of Peterboro, Ontario, was added as a suppliant.

Expressed in general terms, the complaint of the suppliants is two-fold. It is alleged that suppliants have not been and are not being paid their rightful share of the fund or funds granted by the Ontario Legislature for common school purposes, the grants for the year 1922 being taken as a concrete example. In respect of that year, it is claimed that the suppliant board of trustees of Tiny township was by law entitled to the sum of \$1,116, and received only \$380, and therefore suffered a loss of \$737. In the alternative, in case it should be found not to be entitled to share in moneys granted in 1922, for continuation schools and collegiate institutes and high schools, this suppliant

*In the
Supreme
Court of
Ontario.*

No. 16.
Reasons for
Judgment of
Appellate
Division.
(Hodgins,
J. A.)

No. 16
Reasons for
Judgment of
Appellate
Division.
(Ferguson,
J.A.)

No. 16
Reasons for
Judgment of
Appellate
Division.
(Grant, J.)

claims to have been deprived of the sum of \$647, to which it is entitled, by computation based upon the average attendance at both common public and common separate schools in the township of Tiny.

The other branch of the claim is briefly that what are now called continuation schools and collegiate institutes and high schools, are in reality the more advanced grade or grades of what were, at and prior to 1867, common schools; that the suppliants at the last-mentioned period, were by law entitled to and did conduct such advanced grade or grades in their separate schools and are therefore entitled to continue so doing; that statutes enacted and regulations passed preventing their so doing are *ultra vires*, as prejudicially affecting the suppliants' rights as granted by 26 Vict. (1863) ch. 5, and secured by the B.N.A. Act, 30-31 Vict. (1867) ch. 3, sec. 93; and that the suppliants are entitled to share in funds granted by the Legislature each year for continuation schools, collegiate institutes and high schools, as being funds granted for common school purposes within the meaning of the legislation just mentioned. 10

The solution of the problem involves consideration of the statutory provisions bearing upon the matter, and this again necessitates careful study of the legal rights of the Suppliants, or their predecessors, at Confederation. The learned trial Judge, in his reasons for judgment, has given a careful and exhaustive historical account of the legislation upon this subject, from time to time enacted in the Province of Canada prior to the passing of the B.N.A. Act. It is not my intention to repeat what has been so accurately narrated by him, save in so far as reference thereto may appear necessary to an understanding of the legislation bearing directly upon the issues involved. Approving, as I do, the decision of the learned trial Judge, yet I have felt impelled to set down in my own words, my views upon what seems to me to be the main branch of the case. 20

The B.N.A. Act contains (*inter alia*) the following provisions:

"93. In and for each Province the Legislature may exclusively make 30
"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.

"3. Where in any Province a system of separate or dissentient
"schools exists by law at the Union or is thereafter established by the
"Legislature of the Province, an appeal shall lie to the Governor-General
"in Council from any Act or decision of any Provincial Authority affecting
"any right or privilege of the Protestant or Roman Catholic minority of 40
"the Queen's subjects in relation to education."

Then what were the "*rights and privileges with respect to denominational schools which Roman Catholics (as a 'class of persons') had by law in the Province at the Union?*" The answer is to be found in the Statute which was in force at the time of Confederation which is Ch. 5 of the Statutes of Canada, (1863) 26 Vict. of the Statutes of Canada. That Act is intitled "An Act

to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools." The preamble, which furnishes the key to an understanding of the purpose of the enactment, reads as follows:—

*In the
Supreme
Court of
Ontario.*

"Whereas it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to separate schools, and to bring the provisions of the Law respecting Separate Schools more in harmony with the provisions of the Law respecting Common Schools: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:"

No. 16
Reasons for
Judgment of
Appellate
Division.
(Grant, J.)
—continued.

Briefly the purpose is both to restore certain rights previously enjoyed, and also to harmonize the laws respecting separate schools more nearly with those respecting common schools.

Various provisions are made for the formation of school sections, the election of trustees, &c., to which no particular reference is necessary.

The endeavour to harmonize the laws relating to separate and common schools, is witnessed by the frequent use of such expressions as "as in common school sections", "as trustees (or teachers) of common schools," etc.

The following Sections may, with advantage, be quoted in full:

"7. The trustees of separate schools forming a body corporate under this Act, shall have the power to impose, levy and collect school rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of such schools, and shall have all the powers in respect of separate schools, that the trustees of common schools have and possess under the provisions of the Act relating to common schools.

"9. The trustees of separate schools shall take and subscribe the following declaration before any Justice of the Peace, Reeve or Chairman of the Board of Common Schools: 'I, _____, will truly and faithfully, to the best of my judgment and ability, discharge the duties of the office of school trustee to which I have been elected.'

"And they shall perform the same duties and be subject to the same penalties as trustees of common schools and teachers of separate schools shall be liable to the same obligations and penalties as teachers of common schools.

"13. The teachers of separate schools under this Act shall be subject to the same examinations, and receive their certificates of qualifications, in the same manner as common school teachers generally; provided that persons qualified by law as teachers, either in Upper or Lower Canada, shall be considered teachers for the purposes of this Act."

Section 14 provides (in effect) that supporters of separate schools shall be exempted from payment of rates imposed for the support of common schools, and common school libraries, or for the purchase of land or erection of buildings for common school purposes:

"20. Every separate school shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of common schools, and shall be entitled to a share in all other public

“grants, investments and allotments for common school purposes now made or hereafter to be made by the Province or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new separate school, as compared with the whole average number of pupils attending School in the same city, town, village or township.

“26. The Roman Catholic separate schools, (with their registers), shall be subject to such inspection, as may be directed from time to time, by the Chief Superintendent of Education, and shall be subject also to such regulations, as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada.”

Suppliants point to Sec. 7, as giving them powers of which they have since been unlawfully deprived, and to Sec. 20 as entitling them to moneys which, they allege, have been wrongfully withheld.

Dealing first with the powers conferred upon trustees of separate schools, it is found by sec. 7 that these are “*all the powers . . . that the trustees of common schools have and possess under the provisions of the Act relating to common schools.*” This last-mentioned Act is found in the Consolidated Statutes of Upper Canada (1859) ch. 64. The powers of trustees of township school sections are set out in sec. 27; those of trustees in cities, towns and villages in sec. 79.

I do not find any support for the contentions of the suppliants in the language of sec. 27 with its numerous subsections. On the contrary, by para. 4 of subsec. 23 (which requires an annual report to be made upon a form provided by the Chief Superintendent) it is directed that the trustees shall specify “*the branches of education taught in the school; the numbers of pupils in each branch; the text-books used,*” etc., indicating, in my opinion, an intention that the Superintendent shall thereby be enabled to ascertain whether or not the trustees are complying with the regulations from time to time in force.

Suppliants point to the language of subsec. 8 of sec. 79 of the Act of 1859, authorizing the trustees of cities, towns and villages, “to determine (a) the number, sites, *kind and description* of schools to be established and maintained “in the city, town or village” and contend that this empowers them to determine whether or not the more advanced grades should be included; for example, the grades in which Latin and Greek and the higher mathematics should be taught. They urge that the words “*kind and description*” are sufficiently wide in their meaning, as commonly understood, to support their position. They contend also that, by this subsection, they are, in effect, authorized to determine what subjects shall be taught in their schools, and that in so doing they cannot be interfered with, provided that they use authorized textbooks and employ duly qualified teachers.

Apart from other considerations to be expressed, it seems to me that such contentions run counter to the whole spirit of the legislation. Consideration of the course of legislation leading up to the statutes of 1859 and 1863, has convinced me that the then legislature, while endeavouring to harmonize the

10

20

30

40

laws governing common and separate or denominational schools, at the same time was following a fairly definite policy, having as one of its aims, the establishing of a general system of education covering the entire Province.

The intention is manifested, that all children, irrespective of creed, should be assured of, at least, a rudimentary education, to be obtained in common or separate schools. The ordinary management of the business affairs of a school, was placed in the hands of its trustees. The determination of the education which was to be made available to all children was placed in the hands of the central authority, the Council of Public Instruction, appointed
10 by the legislature.

By this central authority, the qualifications of teachers were fixed, text-books were authorized, and regulations were passed, applicable to common and separate schools alike. The intention to make all these schools, in the matter of the education to be imparted, subject to the control of the central authority appointed by the legislature, seems to me as manifest as is the desire to harmonize the laws applicable to them. The Act of 1863 restored certain rights respecting separate schools, but only such rights and privileges as were so given, were continued to the suppliants or their predecessors.

It seems to me to be clearly intended that, while enjoying such rights and
20 privileges, the separate schools were to be maintained in the same manner, with the same standards, and under the same system, subject always to the control of the legislature, as were other common schools.

By sec. 93 provision 1 of the B.N.A. Act there is preserved to any denomination, the right to carry on schools taught by its own (duly qualified) teachers, using authorized text-books, surrounding their children with the denominational atmosphere and giving them denominational instruction, but always the legislature is supreme and shall determine the "education" to be furnished.

That Parliament distinguished between rights respecting the schools, on the one hand, and rights or authority respecting the education to be imparted
30 therein on the other, is, in my opinion, clearly shown by the language of this Sec. 93 and its several provisions.

Section 93, in its main enactment, provides that the Legislature may exclusively make laws in relation to *education*.

Provision 1 protects rights or privileges with respect to "*denominational schools*" (not with respect to *education*).

Provision 3 affords to any Protestant or Roman Catholic minority a right of appeal to the Governor-General in Council from any Provincial Act or decision affecting any right or privilege "*in relation to education.*"

The choice of words seems to me to be quite significant, and in keeping
40 with the outline given above, of the course and policy of the Provincial Legislation. The denomination may carry on the schools, but the Province controls the education. If rights respecting the schools are prejudicially affected, resort may be had to the courts to have the Provincial legislation declared invalid, as being an invasion of legal rights; if the Act or decision complained of, be with respect to *education*, as to which the Province has exclusive jurisdiction, no legal right being invaded, the courts would have no jurisdiction, and the only recourse would be that afforded by provisions 3 and 4.

In the
Supreme
Court of
Ontario.

No. 16
Reasons for
Judgment of
Appellate
Division.
(Grant, J.)
—continued.

In the
Supreme
Court of
Ontario.

No. 16
Reasons for
Judgment of
Appellate
Division.
(Grant, J.)
—continued.

If the construction put forward by the suppliants were the right one, there would have been no need for provisions 3 and 4 of sec. 93, because in that case any prejudicial act in respect of education (save only such as came strictly within express provisions outlining Provincial powers, such as authorizing text-books, determining qualifications of teachers, or making regulations) would have been invalid, by law, and would be so declared by the Courts.

No other remedy would have been required. It seems to me that giving a right to appeal to the Governor-General in Council, of necessity, presupposes jurisdiction in the Legislature to pass the Act complained of. Remedial legislation would not be necessary to relieve from a wrong done by Provincial 10
legislation that is *ultra vires*.

The courts can take care of any such matters, as has frequently been demonstrated.

Adverting to the Act of 1859, it is to be noted that the words "*kind and description*" in subsec. 8 of sec. 79, are used in respect only of trustees in cities, towns, and villages. If these words are given the wide meaning put forward by the suppliants, it would follow that trustees in cities, towns and villages would be given extensive powers in respect of education, which are withheld from trustees of township schools.

It is also to be noted that express authority is given (Sec. 27, subsec. 6) 20
to trustees of rural school sections, with consent of the local superintendent, to establish a female as well as a male school in the section. No such explicit provision is made in respect of urban trustees, unless they have the power under sub-sec. 18 of Sec. 79. Are we to understand from this that trustees in rural school sections may establish male and female schools, but that trustees of urban schools may not? Is it not rather to be inferred that Parliament, having in mind the more extensive provision of educational facilities rendered necessary by the greater density of population in cities, towns, and villages, used the general words "kind and description" to include "male and female" 30
as well as other words similarly descriptive? Such as, for example, "Infant's School," "main school," "or central school," and "branch school," or "ward school."

This agrees with the interpretation placed upon these words by the Judicial Committee of the Privy Council in the *Mackell* case [1917] A.C. 62 at p. 71, although their Lordships do not give the above as a reason for reaching their conclusion upon the point.

Furthermore the language used in stating the powers of trustees, must be interpreted in such manner as will be compatible with the other provisions of the statutes placing in the hands of the central authority the determination 40
of the qualification of teachers, the authorization of text-books, and the making of regulations to be observed by all common schools, denominational and otherwise. Such regulations, be it noted, cover the organization, government, and discipline of the schools, and also the *classification* of the schools and teachers. The very general construction insisted upon by the suppliants, seems to me to be quite incompatible with these other provisions. The suppliants' construction, in my opinion, would come with greater fitness, under the "*classification of schools*," covered by regulations, than under the words

“*kind and description*,” especially when these words follow the words “*number*” and “*sites*.” As was stated in the *Mackell* case, at p. 74 “the right to manage” (the separate schools) “must be subject to the regulations under which all “the schools must be carried on.” The suppliants claim, acceded to, would give the trustees of each separate school throughout the Province, the control of the education to be furnished in that particular school. Subject to their using authorized text-books, in no two of such schools in the Province, or even in a municipality, need the same standards of education be adopted. It would require very clear language to convince me that Parliament intended any such

10 result.

In the *Mackell* case it is stated that “ ‘the kind’ of school referred to in “subsec. 8 of sec. 79, is . . . the grade or character of school, for example, “ ‘a girls’ school,’ ‘a boys’ school’ or ‘an infants’ school,’ and a ‘kind’ of “school, within the meaning of that subsection, is not a school where any “special language is in common use” (p. 71). This interpretation appears to make the word “kind” referable to the persons who are to attend the school, rather than to the education to be furnished therein.

The *Mackell* case decided that sub-sec. 8 does not authorize the trustees to determine the language (French or English) which shall be used in imparting

20 “instruction in the schools.” If they are not empowered to determine the medium by which the instruction shall be given, *à fortiori*, (in my opinion) the words of the sub-section would not authorize them to determine of what the instruction shall consist, which appears to me to be a matter of much greater importance.

Stress was laid by counsel for the suppliants upon the fact that, prior to 1867, in some of their schools, classes were conducted in higher branches of education, and such as are now conducted in some grades of the high schools and collegiate institutes. Apart from the fact that this was true of some only, of their schools, the question for solution is not, what were they doing?

30 but what “rights and privileges with respect to denominational schools” did they, by law, enjoy? The question must be answered out of the statutory provisions in which these rights and privileges were set forth, and not by ascertaining what may have been done in some schools conducted under conditions which were not common to all separate schools.

The rights or privileges respecting “*denominational schools*” were, in general terms, to have their schools managed by their own trustees, with their children being taught together by (duly qualified) teachers of their own faith (always using only authorized text-books and being subject to the central regulating power), and to have denominational teaching. The schools would be denomi-

40 inational in their teaching, and management, their atmosphere and environment; the education would be what the Legislature, or the central authority by it appointed, might from time to time determine.

As I understand the provisions of the B.N.A. Act, what is forbidden to the Provinces, is interference with rights respecting schools in their denominational aspect, and does not touch upon the educational features.

In this view of the legislation, all common schools in the Province would be carried on with the same standards; the children in public and separate

*In the
Supreme
Court of
Ontario.*

No. 16
Reasons for
Judgment of
Appellate
Division.
(Grant, J.)
—continued.

schools would be treated alike, and afforded substantially the same opportunity for securing at least an elementary education.

Other aspects of this question were discussed upon the argument. I do not think any good purpose would be served by my dealing with them further than to state that my views are quite in accord with those expressed by the learned trial Judge.

Upon the other branch of the case, dealing with the distribution of grants and the shares therein to which the suppliants are entitled, I have no wish to add anything to what has been expressed by Rose, J., whose opinion commends itself to my judgment.

My conclusion therefore is, that the appeal of the suppliants should be dismissed.

10

No. 17

*In the
Supreme
Court of
Ontario*

No. 17
Order of the
Appellate
Division.

ORDER OF THE APPELLATE DIVISION

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE THE CHIEF JUSTICE OF ONTARIO
THE HONOURABLE MR. JUSTICE MAGEE
THE HONOURABLE MR. JUSTICE HODGINS
THE HONOURABLE MR. JUSTICE FERGUSON
THE HONOURABLE MR. JUSTICE GRANT

Thursday, the 23rd
day of December,
1926.

20

IN THE MATTER OF A PETITION OF RIGHT.

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR SCHOOL SECTION NUMBER TWO IN THE TOWNSHIP OF TINY AND THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH, ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO,

Suppliants,

30

—and—

HIS MAJESTY THE KING,

Respondent.

1. UPON MOTION made unto this Court on the 25th, 26th, 27th, 28th and 29th days of October, 1926 by Counsel on behalf of the Suppliants in the

presence of Counsel for the Respondent by way of appeal from the judgment pronounced by the Honourable Mr. Justice Rose on the 13th day of May, 1926, upon hearing read the Petition of Right and the Statement of Defence herein, the evidence adduced at the trial and the said judgment, and this Court on the hearing of the said motion having given leave to the Suppliant, the Board of Trustees of the Roman Catholic Separate Schools for School Section Number Two in the Township of Tiny to add as a party Suppliant the Board of Trustees of the Roman Catholic Separate Schools for the City of Peterborough, an urban Board of Separate School Trustees, upon the consent
10 in writing of the last-mentioned Board being filed and the same having been filed; and the Petition of Right and Statement of Defence having been amended; and the Lieutenant-Governor having granted his fiat that right be done on the Petition of Right as amended; and the said last-mentioned Board, by its Counsel, appearing on the said motion by way of appeal and consenting to be bound by the proceedings herein as fully as if originally a Suppliant; and upon hearing what was alleged by Counsel aforesaid and judgment upon the said motion having been reserved until this day.

2. THIS COURT DOTH ORDER that the addition of the said Board of Trustees of the Roman Catholic Separate Schools for the City of Peterborough
20 as a party Suppliant herein and the amendment of the Petition of Right and the Statement of Defence be confirmed and allowed.

3. AND THIS COURT DOTH FURTHER ORDER that the said appeal be and the same is hereby dismissed.

4. AND THIS COURT DOTH FURTHER ORDER that there be no order as to costs.

"E. HARLEY,"
Senior Registrar, S.C.O.

10/3/27

"C.B."

Entered C.O.B. 95 page 11,

30 March 10, 1927.

"M.S."

ORDER OF APPELLATE DIVISION GRANTING LEAVE TO APPEAL

IN THE SUPREME COURT OF ONTARIO

In the Supreme Court of Ontario.

No. 18
Order of Appellate Division granting leave to appeal.

THE HONOURABLE THE CHIEF JUSTICE OF ONTARIO, THE HONOURABLE MR. JUSTICE MAGEE, THE HONOURABLE MR. JUSTICE HODGINS, THE HONOURABLE MR. JUSTICE FERGUSON, THE HONOURABLE MR. JUSTICE SMITH,	}	Monday the 31st day of January, 1927.
---	---	---

IN THE MATTER OF A PETITION OF RIGHT.

10

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR SCHOOL SECTION NO. 2 IN THE TOWNSHIP OF TINY, AND OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF PETERBOROUGH ON BEHALF OF THEMSELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO.

Suppliants.

—and—

HIS MAJESTY THE KING.

20

Respondent.

UPON motion made to this Court on the 31st day of January, 1927, in the presence of Counsel for the Respondent, for an Order giving leave to the Suppliants to appeal to the Supreme Court of Canada from the Judgment of this Court herein dated the 23rd day of December, 1926, after hearing read the said Judgment and the pleadings and proceedings in the action, and upon hearing what was alleged by Counsel aforesaid.

1. THIS COURT DOTH ORDER that the Suppliants be and they are hereby granted leave to appeal from the said Judgment to the Supreme Court of Canada.

30

2. AND THIS COURT DOTH FURTHER ORDER that the costs of this motion be costs in the said appeal.

18/2/27
"C.K."

"E. HARLEY,"
Senior Registrar, S.C.O.

Entered C.O.B. 94, pages 31-32,
February 18, 1927,
"M.S."

ORDER OF MR. JUSTICE FERGUSON

In the
Supreme
Court of
Ontario.

THE HONOURABLE MR. JUSTICE FERGUSON
in Chambers:

} Friday, the 18th day
of February, 1927.

No. 19
Order of
Mr. Justice
Ferguson.

IN THE MATTER OF A PETITION OF RIGHT.

BETWEEN:

10

THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE
SCHOOLS FOR SCHOOL SECTION NO. 2 IN THE TOWNSHIP OF TINY,
AND OF THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE
SCHOOLS FOR THE CITY OF PETERBOROUGH ON BEHALF OF THEM-
SELVES AND ALL OTHER BOARDS OF TRUSTEES OF ROMAN CATHOLIC
SEPARATE SCHOOLS IN THE PROVINCE OF ONTARIO.

Suppliants.

—and—

HIS MAJESTY THE KING.

Respondent.

1. UPON the application of the above named Suppliants, upon hearing
read the Notice of Motion and the material therein referred to, and upon
hearing what was alleged by Counsel for all parties.

20

2. IT IS ORDERED that the sum of \$500 paid into the Bank of Commerce,
as appears by the receipt of the said Bank dated the 14th day of February,
1927, as security that the Suppliants will effectually prosecute their appeal to
the Supreme Court of Canada from the Judgment of this Court dated the 23rd
day of December, 1926, and will pay such costs and damages as may be
awarded against them by the Supreme Court of Canada, be and the same is
hereby allowed as good and sufficient security.

3. AND IT IS FURTHER ORDERED that the costs of this application be costs
in the said appeal.

"E. HARLEY,"
Senior Registrar, S.C.O.

30

18/2/27
"C.K."
Entered C.O.B. 94, pages 30, 31,
February 18th, 1927,
"M.S."

RECORD OF PROCEEDINGS

Part II—Exhibits

EXHIBIT 43

(Respondent's)

Book containing legislation and educational pamphlets between 1841 and 1845

(Not printed)

EXHIBIT 57

(Respondent's)

**Report on a system of public elementary instruction for Upper 10
Canada, by Egerton Ryerson, March 26th, 1846**

(Page 1)

*Letter from the Assistant Superintendent of Education (Canada West), to the
Provincial Secretary.*

EDUCATION OFFICE, WEST,
Cobourg, March 27th, 1846

SIR,

I have the honor to transmit herewith, to be laid before His Excellency, a Report on a system of Public Elementary Instruction for Upper Canada,—the result of my observations in Europe, and the commencement of the task 20 assigned to me by the late revered Governor General.

Having some time since communicated all the remarks and suggestions I had to offer relative to the Common School Act, I have made no reference to it in the following Report; nor have I given any historical or analytical view of the systems of Public Instruction which obtain in any of the countries that I have recently visited. I have only referred to them in as far as appeared to be necessary to illustrate the conclusions at which I have arrived, in respect to a system of Elementary Instruction for Upper Canada.

I cannot expect that an implicit and unqualified assent will be given to every remark which I have made, or to every opinion I have expressed; but 30 I trust the general principles of my Report will meet the approbation of His Excellency, and that the several subjects discussed will be deemed worthy of the consideration of the public.

In availing myself as far as possible of the experience of other countries, and the testimony of their most enlightened Educationists, I have not lost sight of the peculiarities of our own country, and have only imitated distinguished examples of other nations. Prussia herself, before adopting any important measure or change in her system of Public Instruction, has been wont

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 43
Book con-
taining
legislation
and educa-
tional
pamphlets
between
1841 and
1845.

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.

to send School Commissioners into other countries to collect all possible information on the subjects of deliberation. France, England, and other European Governments have done the same. Three enlightened Educationists from the United States have lately made similar tours in Europe, with a view of improving their own systems of Public Instruction. One of them spent upwards of two years in Europe, in making educational inquiries,—aided by a Foreign Secretary. I have employed scarcely half that time in the prosecution of my inquiries; and without having imposed one farthing's expense upon the public. Though the spirit of censure has been in some instances indulged on account of my absence from Canada, and my investigating, with practical views, the Educational Institutions of Governments differently constituted from our own, I may appeal to the accompanying Report as to the use which I have made of my observations; and I doubt not but that His Excellency, and the people of Upper Canada generally, will appreciate the propriety of such inquiries, and respond to the spirit of the remarks which that distinguished philosopher and statesman, M. Cousin, made on a similar occasion, after his return from investigating the systems of Public Instruction in several countries of Germany:

20 "The experience of Germany, (says M. Cousin,) particularly of Prussia, ought not to be lost upon us. National rivalries or antipathies would here be completely out of place. The true greatness of a people does not consist in borrowing nothing from others, but in borrowing from all whatever is good, and in perfecting whatever it appropriates. I am as great an enemy as any man to artificial imitations; but it is mere pussillanimity to reject a thing for no other reason that that is has been thought good by others. With the promptitude and justness of the French understanding, and the indestructible unity of our national character, we may assimilate all that is good in other countries without fear of ceasing to be ourselves. Besides, civilized Europe now forms but one great family. We constantly imitate

30 "England in all that concerns outward life, the mechanical arts, and physical refinements; why, then, should we blush to borrow something from kind, honest, pious, learned Germany, in what regards inward life and the nurture of the soul?"

But I have not confied my observations and references to Germany alone; the accompanying Report is my witness, that I have restricted myself to no one country or form of Government. but that I have "borrowed from all "whatever" appeared to me to be "good," and have endeavoured to "perfect," by adapting it to our condition, "whatever I have appropriated."

I have the honor to be,

Sir,

Your most obedient humble servant,

EGERTON RYERSON.

The Honorable D. Daly,
Secretary, &c., &c., &c.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.

—continued

CONTENTS

(Page 2)

PART FIRST

PRINCIPLES OF THE SYSTEM AND SUBJECTS TO BE TAUGHT

Instructions of Lord Metcalfe.—Means employed to give them effect.—Progress of Educational Systems in other Countries.

1st. What meant by Education—should be provided for the *whole* people—testimonies to its importance as a remedy against pauperism, and a benefit in all respects to mechanical and agricultural laborers.

2nd. Should be practical.

3rd. Should be founded upon *Religion and Morality*, (not Sectarianism)— 10
American testimonies to the evils of omitting religious and moral instruction in Schools—testimonies and examples in favor of it—the *Holy Scriptures* the basis of it—French law and testimonies—how taught in Prussian Schools as testified by two Americans—may be taught in mixed Schools—examples of the French Government—Irish National Board—Prussian law, and Programmes of Religious instruction in Prussian Schools—duty of the Canadian Government on this subject.

4th. Should develop all the *intellectual* and *physical* powers.

5th. Should provide for the proper teaching of the following subjects:—

(1.) *Biblical History and Morality.*

(2.) *Reading and Spelling*—bad methods of teaching the Alphabet—how it should be taught—Prussian examples of teaching it by an American—reading should be taught before spelling—three cardinal qualities of good reading, and how taught in the German and British Schools—defective and improved methods of teaching spelling.

(3.) *Writing*—defects in the common modes of teaching it—method recommended by the French and English Governments—influence of drawing upon writing.

(4.) *Arithmetic*—defectively taught—how taught in the British and Prussian Schools—*Book Keeping*—usefulness of the knowledge and practice 30 of keeping accounts to Farmers and Mechanics.

—The foregoing the fundamental objects of Common School Teaching.

(5.) *Grammar*—remarks and examples on the best modes of teaching it.

(6.) *Geography*—absurdly taught in many instances—examples of the natural and true method of teaching it.

(7.) *Linear Drawing*—its various uses in common life—the learning of it facilitates proficiency in other studies—how taught in the Scotch, English, and Prussian Schools

(8.) *Vocal Music*—the practice of it viewed by experienced Teachers as promoting the progress of the pupils in other studies—importance of it— 40

method of teaching it recommended by the French and English Governments—American testimonies—examples of the moral influence of it in Germany and Switzerland.

(9.) *History*—some of its uses—to what extent and how it should be taught in the Elementary Schools.

(10.) *Natural History*—universally taught in European Schools—uses of it—how taught.

10 (11.) *Elements of Natural Philosophy*—taught in the German and English National Elementary Schools—the great utility of some knowledge of it in the three grand departments of human industry.

(12.) *Agriculture*—to what extent it should be taught to agricultural pupils.

(13.) *Human Physiology and Mental Philosophy*—elementary and practical lessons on them have been and may be easily and usefully taught.

(14.) *Civil Government and Political Economy*—the elementary principles of our Constitution, and some of its practical applications should be taught.

Explanatory Remarks on the preceding view of a course of Public Elementary Instruction, and the manner in which it should be taught—Irish National School Books embrace it—an objection as to its comprehensiveness answered.

In the Supreme Court of Ontario.

Exhibits

No. 57
Report on a system of public elementary instruction for Upper Canada, by Egerton Ryerson, March 26th, 1846.

—continued.

20

PART SECOND.

MACHINERY OF THE SYSTEM.

1st. *Schools*—gradation of Schools required.

2nd. *Teachers*—Normal School training.

3rd. *Text-Books*—evils of a great variety of—how to be remedied.

4th. *Control and Inspection*—great importance of it—to what objects it should be directed—remarks on the Prussian Law, which requires the education of every child in the land.

30 5th. *Individual Efforts*—absolute necessity for them—how employed in Europe—visiting the Schools—conferences of Teachers—Libraries—Conclusion.

REPORT

To The Right Honorable The EARL OF CATHCART, Governor General, &c. &c. &c.

* * * *

(Page 4)

By Education, I mean not the mere acquisition of certain arts, or of certain branches of knowledge, but that instruction and discipline which qualify and dispose the subjects of it for their appropriate duties and employments of life, as Christians, as persons of business, and also as members of the civil community in which they live.

In the
Supreme
Court of
Ontario.

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.
—continued.

The basis of an educational structure adapted to this end should be as broad as the population of the country; and its loftiest elevation should equal the highest demands of the learned professions, adapting its gradation of schools to the wants of the several classes of the community, and to their respective employments or professions, the one rising above the other—the one conducting to the other; yet each complete in itself for the degree of education it imparts; a character of uniformity as to fundamental principles pervading the whole: the whole based upon the principles of Christianity, and uniting the combined influence and support of the Government and the people. 10

The branches of knowledge which it is essential that all should understand, should be provided *for all*, and taught to all; should be brought within the reach of the most needy, and forced upon the attention of the most careless. The knowledge required for the scientific pursuit of mechanics, agriculture and commerce, must needs be provided to an extent corresponding with the demand, and the exigencies of the country; while to a still more unlimited extent are needed facilities for acquiring the higher education of the learned professions.

Now, to a professional education, and to the education of the more wealthy classes, no objection has been made, nor even indifference manifested. 20 On the contrary, for these classes of society, less needing the assistance of the Government, and having less claims upon its benevolent consideration than the laboring and producing classes of the population, have liberal provisions been made, and able Professors employed: whilst Schools of Industry have been altogether overlooked, and primary Instruction has scarcely been reduced to a system; and the education of the bulk of the population has been left to the annual liberality of Parliament. Nay, even objections have been made to the education of the labouring classes of the people; and it may be advisable to shew, at the outset, that the establishment of a thorough system of primary and industrial Education, commensurate with the population of the country, 30 as contemplated by the Government, and as is here proposed, is justified by considerations of economy as well as of patriotism and humanity.

* * * *

(Page 37)

Civil Government is a branch of moral science. Every pupil should know something of the Government, and Institutions, and Laws under which he lives, and with which his rights and interests are so closely connected. Provision should be made to teach in our Common Schools an outline of the principles and constitution of our Government; the nature of our institutions; the duties which they require; the manner of fulfilling them; some notions of our Civil, and especially Criminal Code. 40

Political Economy is the science of national wealth, or “the means by which “the industry of man may be rendered most productive of those necessities, “comforts and enjoyments, which constitute wealth.” It is therefore connected with the duties and wants of social life, and involves our relations to most of the objects of our desires and pursuits. Its elementary and funda-

mental principles—like those of most other sciences—are simple, and its generalizations extensive; though its depths and its details have exhausted the most profound intellects. To treat formally of production, exchange, distribution, and consumption, would exceed the province of the Common Schools and the capacity of their pupils. But the simple elements of what is comprehended under the terms, value, capital, division of labor, exchange, wages, rents, taxes, &c., may be taught with ease and advantage in every School.

These are the topics which I think should be embraced in a system of Common School instruction, and for the teaching of which provision should be made. The instruction should be universal—accessible to every child in the land.

* * * *

(Page 37)

The only objection which I can conceive may be made to the preceding view of a system of Common School Instruction is, that it is too extensive and therefore chimerical. To this objection I answer:

1st. All the subjects enumerated are connected with the pursuits and well-being of the community, and should therefore be made accessible to them in the Common Schools. If the higher classes are to be provided by public endowments, with the means of a University Education; the common people,—the bone and sinew of the country, the source of its wealth and strength—should be provided by the State with the means of a Common School Education.

2ndly. The apparatus and machinery necessary to teach all the subjects mentioned, are surprizingly simple and inexpensive; and by means of properly qualified Teachers, and judicious modes of teaching, every one of those subjects may be taught in little more time than is now wasted in imperfectly learning in many instances next to nothing at all.

3rdly. All the subjects above enumerated, have been and are taught in the Elementary Schools of other countries in the mountains and valleys of Switzerland, in the interior and not fertile and wealthy countries of Germany—in many parts of France—and in many of the Schools of Great Britain and Ireland, and in a considerable number of Schools in the Eastern and Middle States of America.

* * * *

(Page 38)

PART SECOND

Having explained the nature of the Education which I think should be given in an efficient system of Common School Instruction, the extent to which it ought to be diffused, and the principles upon which it should be founded; I now proceed to consider the *machinery* necessary to establish and perpetuate such a system.

This will be most conveniently presented under the several heads of Schools, Teachers, Text-Books, Control and Inspection, and Individual efforts.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.

—continued.

1st. Schools: Of these there should be a gradation; and to supply them with proper Teachers, Normal School training is requisite.

As to the gradation of Schools, the outline is partially drawn in the Statutes which provide for the establishment of Elementary, Model, Grammar Schools, and Colleges. A Normal School is required, as well as the adaptation of the Schools already established for specific and appropriate purposes.

To illustrate what I would respectfully submit on this point, I will briefly advert to the gradation of Schools existing in France and Prussia.

I shall not burden this Report with any account of them, but merely allude to them so far as may be useful to my present purpose. In both these great Countries, Public Instruction is substantially divided into three departments,—Primary, Secondary, Superior. 10

Primary Instruction includes the Elementary and Normal Schools.

Secondary Instruction in Prussia includes the Real and Trade Schools, and the Gymnasia; in France it includes the Communal, and Royal Colleges, Industrial and Polytechnic Schools, and Normal Seminaries to prepare Teachers for the Colleges.

Superior Instruction includes the Universities in Prussia, and the Academies in France, together with a Normal School for the training of Professors, and to which none but those who have taken a degree in Letters or Science are admitted. 20

The Courses of Instruction in each of these classes of Institutions is prescribed by law, as also the qualifications for the admission of pupils or students. There is therefore a systematic and complete division of labor. Each School has its own province; there are no two classes of Schools supported by the Government teaching one and the same thing, or the same class of pupils. This is economy both in regard to labor and pecuniary expenditure.

In France Primary Schools are of two classes,—Primary Elementary and Primary Superior. The former comprehends moral and religious instruction, reading, writing, elements of the mother tongue, arithmetic, and the legal system of weights and measures; the latter comprehends, in addition to a continuation of the subjects taught in the former, the elements of geometry and its common applications, particularly to linear drawing and land measurement, elements of the physical sciences and natural history applicable to the uses of life, singing, the elements of geography and history, and especially of the geography and history of France. 30

This two-fold division of primary instruction in Prussia is included under the heads of Primary and Middle Burgher Schools,—the term burgher signifying a citizen who pays taxes. The same subjects are taught in the Primary Schools of Prussia which are taught in those of France, but more extensively and thoroughly. 40

In the elementary Schools of both countries small cabinets of mineralogy and natural history are common; and black-boards, maps, globes, models and engravings are universally used, though not in all cases of course to the same extent.

In Prussia, however, the system is so complete, practically as well as theoretically, and all the Teachers being trained up to the same standard

and after the same methods, the country village Primary Schools are little if at all inferior to those of the cities. In France the system is comparatively new, having received its principal développments since 1830.

In the Secondary Department of Public Instruction in Prussia we have the Higher Burgher Schools, the Real and Trade Schools, and the Gymnasia.

The Higher Burgher Schools teach the elements of the ancient and modern languages, mathematics, preparatory to the introduction of the pupils in the Gymnasia, where they are prepared for the University,—which is not merely literary as in England and America, but *professional*,—where every student
10 enters one of the Faculties, and studies his profession.

In the Higher Burgher Schools the shop-keepers, &c., in large cities usually finish their education,—adding an acquaintance with French, sometimes English, and some knowledge of the mathematics, to that of the common branches of education.

Here also pupils prepare for the Trade Schools. The Higher Burgher Schools are therefore, the connecting link between the Primary and Secondary Schools in Prussia. It will be seen also, that the higher Burgher Schools include three classes of pupils—those who go from thence into the shop, counting-house, &c.,—those who proceed to the gymnasia with a view of
20 entering the University,—and those who go from thence into the Real or Trade Schools, with the view of becoming architects, engineers, manufacturers, or of preparing themselves for the different branches of Commerce.

Real Schools received their peculiar designation, from professing to teach *realities* instead of words—the practical sciences instead of dead languages. The Trade Schools are the highest class of Real Schools established in the principal Cities of Prussia, and analagous to the great Polytechnic Schools of Vienna and Paris, though on a less magnificent scale.

The industrial and Polytechnic Schools of France are the counterpart of the Real and Trade Schools of Prussia.

A detailed account of these invaluable institutions and their influence upon the social and public interests of society, as connected with all kinds of manufactures, buildings, roads, railways, and other internal improvements, would be extremely interesting, but does not fall within the prescribed limits of this Report.
30

The introduction of courses for Civil Engineers, into the University of Durham, and into the King's and University Colleges of the London University, and also into the Dublin University, is a commencement of the same description of Schools by Government in Great Britain and Ireland.

To the Superior, or University Institutions of Prussia and France, I need
40 not further allude; I pass unnoticed various ecclesiastical, private and partially public establishments, as well as Schools of the Fine Arts, Sciences, & c.

It is thus that in those countries an appropriate education for the commercial, manufacturing, and mechanical classes of the community is provided, as well as for the laboring and professional classes.

In many of the Schools lessons and exercises are given in agriculture; and this important branch of instruction is receiving increased attention, especially in France and England.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.
—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.

—continued.

The Agricultural Institute, and Model Farm, connected with the Dublin National Normal School is an admirable establishment; and when I visited it in November last, the master (a scientific and practical farmer,) was preparing a book on the subject of agriculture for the use of Schools, to be published under the direction of the National Board, as one of their excellent series of School Books.

Now, in the application of the foregoing remarks to this Province, in illustration of what I mean by the gradation of Schools, and the importance of it, I would observe that our Common Schools should answer to the Primary Schools of France and Prussia; that our District Model Schools should be made our country's Industrial, or Real or Trade Schools; that our District Grammar Schools should be made to occupy the position and fulfil the functions of the French Communal and Royal Colleges, and the Prussian Higher Burgher Schools and Gymnasia: a Provincial University or Universities completing the series. In the course of a few years, the population of the principal if not all the Districts might each be sufficiently large to sustain and require three Model or Real Schools, instead of one; when another division of labour could be advantageously introduced—providing one School for the instruction of intended mechanics—a second for agricultural pupils—a third for those who might be preparing to become manufacturers, and merchants. 10

Under this view the same principles and spirit would pervade the entire system, from the Primary Schools up to the University; the basis of education in the Elementary Schools would be the same for the whole community—at least so far as public or governmental provisions and regulations are concerned—not interfering with private Schools or taking them into the account; but as soon as the pupils would advance to the limits of the instruction provided for all, then those whose parents or guardians could no longer dispense with their services, would enter life with a sound elementary education; those whose parents might be able and disposed would proceed, some to the Real School to prepare for the business of a farmer, an architect, an engineer, a manufacturer, or mechanic, and others to the Grammar School to prepare for the University, and the Professions. 20 30

In the carrying out and completion of such a system, the courses of instruction in each class of Schools would be prescribed, as also the qualifications for admission into each of them, above the Primary Schools; each School would occupy its appropriate place, and each Teacher would have his appropriate work; and no one man in one and the same School, and on one and the same day, would be found making the absurd and abortive attempts of teaching the a, b, c's, reading, spelling, writing, arithmetic, grammar, geography, (in all their gradations,) together with latin, greek, and mathematics. 40

I think it is true in the business of teaching, as well as in every other department of human industry, that where there is a suitable division of labor, each laborer is more likely to become more thoroughly master of his work, and imbued with the spirit of it, than where his time and attention and energies are divided among a nameless variety of objects; and as the example of England may be appealed to in proof of the almost miracles which may be per-

formed in regard both to the amount and qualities of manufactures, by a skilful division and application of labour, so may the examples of other countries of Europe be adduced in illustration of what may be achieved as to both the cheapness, the thoroughness, the various practical character, and the general diffusion of education, by a proper classification of Schools and Teachers, their appropriate training and selection by competition, together with an efficient system of inspection over every class of Schools,—the latter being the chief instrument of the wonderful improvement and success in the Holland system of Public Instruction.

10 The full development of such a system of Schools, is not the work of a day; but I hope the day is not distant when its essential features will be seen in our own system of public instruction, and when its unnumbered advantages will begin to be enjoyed by the Canadian people. The Schools with which this Report has immediately to do, being viewed as parts of a general system, I have considered this brief epitome and illustration of it necessary, in order to place in a proper light the mutual dependence and relations of all its parts in the gradation of public Schools.

2nd Teachers. There cannot be good Schools without good Teachers; nor can there be, as a general rule, good Teachers, any more than good

20 Mechanics, or Lawyers, or Physicians, unless persons are trained for the profession. M. Guizot, the present Prime Minister of France, said, on introducing the Law of Primary Instruction to the Chamber of Deputies in 1833: "All the provisions hitherto described *would be of none effect*, if we took no pains to procure for the public School thus constituted an able Master, and worthy of the high vocation of instructing the people. It cannot be too often repeated, that *it is the Master that makes the School.*"

30 "What a well-assorted union of qualities is required to constitute a good Master! A good Master ought to be a man who knows much more than he is called upon to teach, that he may teach with intelligence and with taste; "who is to live in an humble sphere, and yet have a noble and elevated spirit; "that he may preserve that dignity of mind and of deportment, without which he will never obtain the respect and confidence of families; who possesses a rare mixture of gentleness and firmness; for, inferior though he be, in station, to many individuals in the *Communes*, he ought to be the obsequious servant of none; a man not ignorant of his rights, but thinking much more of his duties; shewing to all a good example and serving to all as a counselor; not given to change his condition, but satisfied with his situation, because it gives him the power of doing good; and who has made up his mind to live and to die in the service of primary instruction, which to him is the service

40 "of God and his fellow creatures. To rear up Masters approaching to such a model is a difficult task, and yet *we must succeed in it, or we have done nothing for elementary instruction.* A bad Schoolmaster, like a bad Priest, is a scourge to a *Commune*; and though we are often obliged to be contended with indifferent ones, *we must do our best to improve the average quality.*"

The French Government has nobly carried out these benevolent and statesmanlike suggestions, and France is rapidly approaching Prussia in the

In the
Supreme
Court of
Ontario.

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.

—continued.

character and number of her Normal Schools, and the completeness and efficiency of her whole system of Public Instruction.

It is now universally admitted that *Seminaries* for the *training of Teachers* are absolutely necessary to an efficient system of public instruction,—nay, as an integral part, as the vital principle of it; this sentiment is maintained by the Periodical Publications in England, from the great Quarterlies to the Daily Papers, by educational Writers, and Societies with one consent—is forcibly and voluminously embodied in Reports of the Privy Council Committee on Education, and is efficiently acted upon by Her Majesty's Government in each of the three Kingdoms. 10

The same sentiment is now generally admitted in the United States; and several of them have already established Normal Schools. The excellence of the German Schools is chiefly ascribed by German Educationists to their system of training Teachers. The science of School-teaching forms a part of their University course,—an essential part of the education of every Clergyman—as well as the work of more than eighty Normal Schools in Prussia alone.

M. Cousin, in his Report on Public Instruction in Prussia, has given an interesting and elaborate account of the principal Normal Schools in that country, justly observing, in accordance with his distinguished colleague, M. Guizot, that, “the best plans of instruction cannot be executed except by “the instrumentality of good Teachers; and the State has done nothing for “popular education, *if it does not watch that those who devote themselves to teaching* “be well prepared.” 20

Three years after visiting Prussia, M. Cousin made a tour in Holland with a view of investigating the educational system of that country. The result of his further inquiries on this subject is contained in the following words: “I “attach the greatest importance to Normal Primary Schools, and *I consider* “*that all future success in the education of the people depends upon them.* In “perfecting her (Holland) system of Primary Schools, Normal Schools were 30 “introduced for the better training of Masters. All the School Inspectors “with whom I met in the course of my journey, assured me that they had “brought about an entire change in the condition of the Schoolmaster, and “that they had given the young Teachers a feeling of dignity in their profession, “and had thereby introduced an improved tone and style of manners.”

I deem it superfluous to add any labored arguments on the necessity of a Normal School in this Province. The Legislature has virtually recognized it in several enactments; and the importance of it is generally felt and acknowledged.

What I have stated in the former part of this Report, on the proper subjects and modes of teaching, is sufficient to evince the need and importance of the regular training of Teachers. Some of the advantages which I anticipate from the training of Teachers are the following: 40

1st. The elevation of School-teaching into a profession. Those who are educated for it in other countries regard it as their vocation,—become attached

to it as do men to other professions,—and pursue it during life. In no country where Teachers have been regularly trained, has there been any complaint that they have shown an inclination to leave the profession of School-teaching for other employments. In all countries where School Teachers are regularly trained, the profession of teaching holds a high rank in public estimation, so that ignorant and worthless persons could no more find employment as Schoolmasters, than they could as Professors, or Physicians, or Lawyers. Thus the infant and youthful mind of a country, by the law of public opinion itself, is rescued from the nameless evils arising from the ignorance and pernicious examples of incompetent and immoral Teachers.

Such characters, and men who have failed in other employments, will have no encouragement to look to School-teaching as a last resort, to “get a living some-how”—as the last means of wronging their fellow-men. The all important and noble vocation of School-teaching will be honored; and School-teachers will respect themselves, and be respected as other professional men.

2nd. The pecuniary interests of Teachers will be greatly advanced. The value of systematic School-teaching above that of the untaught and the accidental Teacher, will become apparent, and the demand for it will proportionally increased. It is true in School-teaching as in every other means of knowledge, or in any article of merchandize, that it will command the price of its estimated value. Increase its value by rendering it more attractive and useful, and the offered remuneration for it will advance in a corresponding ratio.

It is true there is much popular ignorance and error existing on this subject, and many parents look more to the salary, than to the character and qualifications of the Schoolmaster. But these are exceptions rather than the general rule—and the exceptions will diminish as intelligence advances.

In a long proportion of neighbourhoods there is a sufficient number of intelligent persons to secure a proper selection, who know that the labors of a good Teacher are twice the value of those of a poor one

Wherever Normal Schools have been established, it has been found thus far that the demand for regularly trained Teachers has exceeded the supply which the Normal Schools have been able to provide. It is so in the United States; it is so up to the present time in France; it is most pressingly and painfully so in England, Ireland and Scotland. I was told by the Head Masters of the great Normal Schools in London, in Dublin, in Glasgow, and in Edinburgh, that such was the demand for the pupils of the Normal Schools as Teachers, that in many instances they found it impossible to retain them in the Normal School during the prescribed course—even when it was limited to a year. I doubt not but the demand in this Province for regularly trained Teachers would exceed the ability of any one Normal School to supply it.

* * * *

(Page 44)

The responsible, and delicate and difficult task of selecting and recommending books for Schools can, I think, be more judiciously and satisfactorily

In the
Supreme
Court of
Ontario.

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.
—continued.

performed by a Provincial Board or Council, than by any individual Superintendent. A mere recommendatory authority in such a body would, I am inclined to believe, be quite sufficient to secure the introduction and use of the proper books in School.

* * * *

(Page 45)

These remarks suggest a collateral subject to which I desire to draw attention—not with a view of recommending its adoption, but in order to impress upon all concerned the principle which it involves. I allude to the compulsory attendance of children at School, as required by the laws of Prussia and several other States of Europe.

10

The prevalent impression is, that such a law is arbitrary—despotic—inconsistent with the rights of parents and the liberties of the subject. But what is the principle on which this law is founded? The principle is this, that every child in the land has a right to such an education as will fit him to be an honest and useful member of community,—that if the parent or guardian *cannot* provide him with such an education, the *State is bound* to do so,—and that if the parent *will* not do so, the *State will* protect the *child* from such a parent's cupidity and inhumanity, and the State will protect the community at large against any parents (if the term can be applied to such character) sending forth into it, an uneducated savage, an idle vagabond, or an unprincipled thief.

20

The parent or guardian is not isolated from all around him,—without social relations or obligations. He owes duties to his child,—he owes duties to society. In neglecting to educate, he wrongs his child,

* * * *

(Page 48)

MAY IT PLEASE YOUR EXCELLENCY,

I have thus endeavored to accomplish the first part of the task assigned me by Your Excellency's distinguished predecessor, in respect to an efficient system of Elementary Education, by attempting to delineate its leading features in the principal subjects which it embraces, and most material parts of the machinery it requires. I am deeply sensible of the defectiveness of this primary attempt on a subject so varied and complex. Several important topics and many details I have left unnoticed, either because they are not adapted to this Province, or because they can be introduced and discussed to greater advantage in an ordinary Annual Report; and most of the topics which I have introduced have been merely explained, without being professedly discussed. My object has been to describe the outlines—leaving the filling up to time and future occasions. The completion of the structure of which I have endeavored to lay the foundation and furnish the plan, must be the work of years—perhaps of an age.

30

40

* * * *

All of which is respectfully submitted, by

Your Excellency's

Most obedient, and

most humble servant,

EGERTON RYERSON.

EDUCATION OFFICE, C. W.,
March 26th, 1846.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 57
Report on a
system of
public
elementary
instruction
for Upper
Canada, by
Egerton
Ryerson,
March 26th,
1846.

—continued.

EXHIBIT 6

(Suppliants')

10 **Historical Educational Papers and Documents of Ontario
1853-1868 (Vol. 3)**

No. 6
Historical
educational
papers and
documents of
Ontario,
1853-1868
(Vol. 3.)

Extract from the circular of the Chief Superintendent to the Mayors of
Cities and Towns in Upper Canada, dated at Toronto, 15th of January, 1848,
at pp. 196 and 197 of this volume.

(Page 196)

II. THE CIRCULAR TO THE MAYORS OF CITIES AND TOWNS IN UPPER CANADA.

The Act of 1847: 10th and 11th Victoria, Chapter XIX., intituled:—

20 "An Act for amending the Common School Act of Upper Canada,"
designed to establish a better system of Schools in Cities and Incorporated
Towns in Upper Canada, comes into full operation at the commencement of
the current year; and, with the view of promoting its objects, I deem it my
duty to explain, through you, to the Corporation over which you preside, and
to the Board of Common School Trustees which the Corporation have
appointed, and over which you also preside, the origin and design of that Act,
and offer some suggestions as to the manner in which it may be most
beneficially carried into effect.

* * * *

(Page 197)

GENERAL REGULATIONS FOR THE GOVERNMENT OF CITY AND TOWN SCHOOLS
SUGGESTED.

30 In this system of free Schools each Board of School Trustees will be able
to establish its own system of School discipline; and, on the efficiency of that
the character and success of the Schools essentially depend. The Board of
Trustees will, of course, determine the age at which pupils will be admitted, in
each kind, or class, of Schools, or in each department of a School comprising
more than one department; the particular School which pupils in the different
localities of a City, or Town, shall attend; the condition of admission and
continuance in each School; the subjects of instruction and the Text-Books to

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 6
Historical
educational
papers and
documents of
Ontario.
1853-1868
(Vol. 3.)
—continued.

No. 8
The journal
of Educa-
tion for
Upper Can-
ada. Volume
2 for the
year 1849.

No. 7
Annual re-
port of the
Normal,
Model and
Common
Schools in
Upper Can-
ada for the
year 1849,
(dated
8th August,
1850.)

be used in each School, and in each department; as also the days and hours of instruction, and the Regulations for the whole internal management of the Schools under its care.

(Page 197)

* * * *

EXHIBIT 8

(Suppliants')

The Journal of Education for Upper Canada, Volume 2 for the Year 1849

NOTE:—Extracts from this Journal appear at pages 95 and 96 of the Record.

10

EXHIBIT 7

(Suppliants')

Annual Report of the Normal, Model and Common Schools in Upper Canada, for the Year 1849

Extracts from this Report.

(Page 6)

V.—CLASSIFICATION OF PUPILS, AND SUBJECTS TAUGHT IN THE SCHOOLS.

Table B also exhibits the classification of Pupils, and the number instructed in each subject or branch of study in the Schools of each District in Upper Canada. It will be seen that there are five Reading Classes, in harmony with the five Readers of the National Board of Education for Ireland—the first being the lowest, and the fifth the highest Reading Class. The Returns of Pupils in Arthimetic include three divisions—those who are in the first Four Rules, those in the Compound Rules and Reduction, and those in Proportion and above. The same Table shows the number of Pupils in each District, in Grammar, Geography, History, Writing, Book-keeping, Mensuration, Algebra, Geometry, Elements of Natrual Philosophy, Vocal Music, Linear Drawing, and other Studies, such as the Elements of the Latin and Greek Languages, &c., which are taught in some of the Common Schools. By referring to the bottom of Table B, the totals of the Returns for 1848, under the same heads will be found; and it will be observed, that under every head except one, there is an improvement in favour of 1849. The Returns of 1848 showed a similar advance on those of 1847—the first year that this kind of Educational Statistics was ever collected in Upper Canada. It is also gratifying to observe that the teaching of Vocal Music is beginning to be introduced into the Schools—one of the early fruits of the present suestem of Elementary Instruction.

20

20

* * * *

(Page 14)

Henry A. Clifford, Esquire, Superintendent of Common Schools for the Simcoe District, remarks:—

“I am happy to say that each succeeding year furnishes proof in this District of the good effects that have arisen from the school laws: the apathetic feeling first exhibited by the people in reference to educational matters has decidedly changed into something like a desire not only to continue laws to encourage our schools, but also to elevate them in character and usefulness; and I consequently find that the number of our first class schools has nearly
10 doubled; that of the second class has trebled; and that of the third class has diminished in nearly the same ratio, so that the townships of West Gwillimbury, Tecumseth, Inisfil, Vespra, Tiny, St. Vincent, and Orillia, now boast of schools in which the teachers are capable of imparting a thorough English, and, in some instances, a good classical education. Contrast this with the state of these townships six years ago, when in four of them not a single school was kept continuously in operation; and when in several townships in the District, not one had been established.

* * * *

(Page 50)

It is also worthy of remark, that the Board of Trustees in each city and incor-
20 porated town in Upper Canada, has authority to establish Male and Female Primary, Secondary and High Schools, adapted to the varied intellectual wants of each city and town; while in each country School Section, it requires the united means of intelligence of the whole population to establish and support one thoroughly good School.

* * * *

(Pages 24-25)—Table C—(Not printed).

EXHIBIT 9

(Suppliants')

Annual Report of the Normal, Model and Common Schools in Upper Canada for the Year 1850

30 NOTE:—Extracts from this Report appear at pages 97 and 98 of the Record.

(Page 75)—Table B—Subjects taught (not printed).

(Page 97)—Table C—Text books used (Not printed).

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 7

Annual report of the Normal, Model and Common Schools in Upper Canada for the year 1849 (dated 8th August, 1850.)
—continued.

No. 9
Annual report of the Normal, Model and Common Schools in Upper Canada for the year 1850 (dated 29th July, 1851.)

EXHIBIT 10

(Suppliants')

Annual Report of the Normal, Model and Common Schools in Upper Canada, for the Year 1852

NOTE:—An extract from this Report appears at page 99 of the Record.

(Page 41)—Table B—Branches of Instruction (Not printed).

40 (Page 43)—Table C—Text books used (Not printed).

No. 10
Annual report of the Normal, Model and Common Schools in Upper Canada for the year 1852 (dated 31st December 1853.)

EXHIBIT 11

(Suppliants')

**Annual Report of the Normal, Model, Grammar and Common Schools
in Upper Canada for the Year 1853**

The following is set out as Appendix I to this Report.

(Page 157)

APPENDIX I.

SELECTIONS FROM THE GENERAL FORMS AND INSTRUCTIONS FOR EXECUTING THE
PROVISIONS OF THE COMMON SCHOOL ACTS, 13TH AND 14TH VICTORIA,
CHAPTER 48; AND 16TH VICTORIA, CHAPTER 185. 10

[The following selections from the General Forms and Instructions include
only those in constant use by the local school authorities, or which are required
for more frequent reference.]

*No. 1. Programme for the Examination and Classification of Teachers of Common
Schools, by the County Boards, prescribed by the Council of Public Instruction
for Upper Canada.*

TO BE IN FULL FORCE UNTIL REPEALED OR REVISED BY THE COUNCIL.

N. B.—Candidates are not eligible to be admitted to examination, until
they shall have furnished the examiners with satisfactory evidence of their
strictly temperate habits and good moral character. 20

QUALIFICATIONS OF THIRD CLASS TEACHERS.

Candidates for certificates as third class teachers, are required:

- 1 To be able to read intelligibly and correctly any passage from any
common reading book.
2. To be able to spell correctly the words of an ordinary sentence dictated
by the Examiners.
3. To be able to write a plain hand.
4. To be able to work readily, questions in the simple and compound rules
of arithmetic, and in reduction and proportion, and to be familiar with the
principles on which these rules depend. 30
5. To know the elements of English grammar, and to be able to parse any
easy sentence in prose.
6. To be acquainted with the elements of geography, and the general
outlines of the globe.
7. To have some knowledge of school organization and the classification of
pupils.
8. In regard to teachers of French or German, a knowledge of the French
or German grammar may be substituted for a knowledge of the English
grammar; and the certificates to the teachers expressly limited accordingly.

QUALIFICATIONS OF SECOND CLASS TEACHERS.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 11
Annual re-
port of the
Normal,
Model,
Grammar
and
Common
Schools in
Upper
Canada for
the year
1853.
(dated 21st
October,
1854).
—continued.

Candidates for certificates as second class teachers, in addition to what is required of candidates for third class certificates, are required:

1. To be able to read with ease, intelligence, and expression, and to be familiar with the principles of reading and pronunciation.
 2. To write a bold free hand, and to be acquainted with the rules of teaching writing.
 3. To know fractions, involution, evolution, and commercial and mental arithmetic.
- 10 [Female candidates for this class of certificates will only be examined in practice and mental arithmetic.]
4. To be acquainted with the elements of book-keeping.
 5. To know the common rules of orthography, and to be able to parse any sentence in prose or poetry, which may be submitted; to write grammatically, with correct spelling and punctuation, the substance of any passages which may be read, or any topics which may be suggested.
 6. To be familiar with the elements of mathematical, physical, and civil or political geography, as contained in any school geography.

QUALIFICATIONS OF FIRST CLASS TEACHERS.

- 20 Candidates for certificates as first class teachers, in addition to what is required of candidates for third and second class certificates, are required:
1. To be acquainted with the rules for the mensuration of superficies and solids, and the elements of land surveying.
 2. To be familiar with the simple rules of algebra, and to be able to solve problems in simple and quadratic equations.
 3. To know the first four books of Euclid.
 4. To be familiar with the elements and outlines of general history.
 5. To have some acquaintance with the elements of vegetable and animal physiology, and natural philosophy, as far as taught in the fifth book of national readers.
- 30 6. To understand the proper organization and management of schools and the improved methods of teaching.

N. B.—Female candidates for first class certificates will not be examined in the subjects mentioned in the first three paragraphs under this head.

By order of the Council of Public Instruction for Upper Canada,

(Signed,)

J. GEORGE HODGINS,
Recording Clerk, C. P. I.

EDUCATION OFFICE, Toronto,

Adopted the 3rd day of October, 1850.

* * * *

- 40 (Page 21)—Table B—Branches of Instruction (Not printed).
(Pages 24, 25)—Table C—Text Books used (Not printed).

EXHIBIT 61

(Suppliants')

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1854

Extracts from this Report.

(Page 166)

(2) There are in Upper Canada—1 Normal School; 2 Model Schools (Boys and Girls) in connection with the Normal School; 64 County Grammar Schools, and 3,244 Common Schools. Total, 3,311; besides our Provincial University and nine Colleges, three of which are endowed with University 10 powers.

* * * *

(Page 166)

III. ATTENDANCE OF PUPILS—The attendance of pupils between the ages of 5 and 21 years, at the Common and Grammar Schools in 1853 and 1854, was as follows:—

	1854.	1853.	
Boys at the Common Schools.....	112,885	107,392	
Girls at the Common Schools.....	91,283	87,344	
Pupils at the Grammar Schools.....	4,287	3,221	
	<hr/>	<hr/>	
Total at the Public Grammar and Common Schools.	208,455	187,957	20
	1854.	1853.	
Pupils at Academies (so far as could be ascertained).....	866	618	
Pupils at Private Schools (so far as could be ascertained).....	4,607	3,822	
Students in Colleges, etcetera (so far as could be ascertained).....	806	751	
	<hr/>	<hr/>	
	214,634	193,148	

* * * *

(Page 169)

VII. THE GRAMMAR SCHOOLS.—Table F. herewith appended, contains the best and fullest information which this Department has been enabled to collect in regard to the intermediate Institutions in our Public School System. As preliminary to the more complete, methodical and satisfactory Report, which I hope to be enabled to present next year, it is valuable as a basis of reference and comparison for future years. The following summary of the actual state of the Grammar Schools of Upper Canada in 1854, the year before the present Law and Regulations came into force, shows that there were Sixty-four Grammar Schools; of which Twenty-six were situated in the County Towns, and are, therefore, called Senior County Grammar Schools. Of the 64 there are reported:—

30

	17 Junior and 4 Senior, or 33	per cent., received Pupils unable to read.
	24 Junior and 12 Senior, or 56	per cent., received Pupils unable to write.
	31 Junior and 21 Senior, or 81	per cent., did not teach Canadian History.
	30 Junior and 16 Senior, or 72	per cent., did not teach Grecian History.
	30 Junior and 12 Senior, or $66\frac{2}{3}$	per cent., did not teach trigonometry.
	25 Junior and 12 Senior, or 58	per cent., did not teach Roman History.
	24 Junior and 11 Senior, or $54\frac{2}{3}$	per cent., did not teach Ancient Geography.
	18 Junior and 15 Senior, or $51\frac{1}{2}$	per cent., did not teach French.
	19 Junior and 6 Senior, or 39	per cent., did not teach Mensuration.
10	15 Junior and 8 Senior, or 36	per cent., did not teach Greek.
	16 Junior and 6 Senior, or 34	per cent., did not teach English History.
	9 Junior and 5 Senior, or 22	per cent., did not teach Greek, or French.
	12 Junior and 4 Senior, or 22	per cent., did not teach Book-keeping.
	7 Junior and 6 Senior, or 20	per cent., did not teach any of the Natural Sciences.
	7 Junior and 5 Senior, or 19	per cent., did not teach English Composition
	7 Junior and 1 Senior, or $12\frac{1}{2}$	per cent., did not teach Algebra.
	6 Junior and 1 Senior, or 11	per cent., did not teach Ancient or Modern History.
20	6 Junior and Senior, or $9\frac{1}{3}$	per cent., did not teach Euclid.
	2 Junior and 2 Senior, or 6	per cent., did not teach Writing.
	2 Junior and 1 Senior, or $4\frac{2}{3}$	per cent., did not teach Modern Geography.
	1 Junior and 1 Senior, or 3	per cent., did not teach Ancient or Modern Geography.
	1 Junior and Senior, or $1\frac{1}{2}$	per cent., did not teach either French, Greek, or Latin.
	1 Junior and Senior, or $1\frac{1}{2}$	per cent., did not teach History or Geography.
	1 Junior and Senior, or $1\frac{1}{2}$	per cent., did not teach Arithmetic.
30	18 Junior and 8 Senior, or $40\frac{2}{3}$	per cent., were not opened or closed with Prayer.
	12 Junior and 9 Senior, or 33	per cent., did not use either Bible or Testament.
	9 Junior and 5 Senior, or 22	per cent., had neither Prayer nor reading of the Bible.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 61
Annual report of the
Normal,
Model,
Grammar
and Common
Schools in
Upper
Canada for
the year
1854
(dated
March,
1855).

—continued.

(2) The Grammar Schools have hitherto had to contend against innumerable difficulties and drawbacks. The chief of which has been the utter absence of any recognized System in their management, or any Curriculum, or fixed standard of education. Each School was independent of every other Grammar School, and all were officially isolated from the Common School,—their natural source of supply—on the one hand, and from the University Colleges,—their natural limit of instruction,—on the other. In addition to this, their means of raising funds for their support were limited to the Legislative aid and the Fees received for Tuition. It is to be hoped that provision will shortly be made, as I have already recommended, to place the Grammar Schools on a footing of equality (as it regards their ability to assess and collect

In the
Supreme
Court of
Ontario.

Exhibits

No. 61
Annual re-
port of the
Normal,
Model,
Grammar
and Com-
mon Schools
in Upper
Canada for
the year
1854
(dated
March,
1855).
—continued.

money for the erection, repairing and maintenance of the Schools), with the Common Schools in Cities, Towns, and Villages. This would at once place them in a position to accomplish the object of their establishment, and would tend to raise the tone and standard of education in their respective Counties. But, although, until recently, the Grammar Schools had very little means, or opportunity, to promote this object, still a few of them did rise above these peculiar difficulties,—a proceeding which was highly creditable to the Masters who conducted them; yet, these Schools, being without any determinate position, the majority of them failed to exhibit either the characteristics, or legitimate fruits, of a good Common, or Grammar School. This anomalous state of things happily ceased in 1854; and the Programme of Classification and Studies, which has been adopted by the Council of Public Instruction approved by Your Excellency-in-Council will, when it comes into operation next August, no doubt, effect a most salutary and important change. 10

* * * *

EXHIBIT 32

(Suppliants')

Journal of Education for Upper Canada for the Year 1855

Extracts from issue of Journal for February, 1855.

(Page 17)

PROGRAMME OF PUBLIC INSTRUCTION IN UPPER CANADA. 20

The Programme of Public Instruction, as provided by law in Upper Canada, and extending from the Primary School up to the University, is published for the first time, in this number of the *Journal of Education*. The order and classification of subjects taught in the *Common Schools*, will be found in the Programme (pp. 26, 27) of the Upper Canada Model School in connexion with the Normal School, and in which all student teachers of the Normal School practice teaching a portion of each week. On page 23 will be found the Programme and Classification of Studies in the *Grammar Schools*; and on pages 18-22 is inserted the Programme of Studies which has been prepared by the Senate of the University of Toronto and approved by the Governor General in Council, for all the Colleges in Upper Canada affiliated with it. 10

In no other country or state in America does there exist a system of Public Instruction so matured, comprehensive and complete, as that which is now established and endowed by Legislative authority in Upper Canada. The Chief Superintendent of Schools in his first "Report on a System of Public Elementary Instruction for Upper Canada," in 1846, after having historically and practically sketched such a system, (pp. 149-155,) and stated the gradation and kinds of schools required to complete it, observed as follows:

No. 32
Journal of
Education
for the year
1855.

“Under this view the same principles and spirit would pervade the entire system, from the Primary School up to the University.”—“In the carrying out and completion of such a system, the courses of instruction in each class of schools would be prescribed, as also the qualifications for admission into them, above the Primary Schools; each school would occupy its appropriate place, and each teacher would have his appropriate work.”—“The full development of such a system of schools is not the work of a day; but I hope the day is not distant when its essential features will be seen in our own system of Public Instruction, and when its unnumbered advantages will begin to be enjoyed by the Canadian people.”

*In the
Supreme
Court of
Ontario.*
Exhibits
No. 32
*Journal of
Education
for the year
1855.*
—continued.

We rejoice to be permitted to witness the realization of views and anticipations thus expressed nine years since.

A careful examination of the *Collegiate course* of studies, with the options allowed and provided for, will satisfy any person who may take the pains to examine the subject, that it is not excelled in the collegiate system of any University, in either Europe or America, for comprehensiveness and practical adaptation to the various talents, circumstances and intended pursuits of students. In addition to this, the large sum of £3,000 or \$12,000 per annum is appropriated in scholarships and prizes to assist and encourage meritorious youth to secure the inestimable blessings of a liberal education. The manner in which these pecuniary helps and encouragements are to be distributed (as is clearly explained by the Vice-Chancellor, Rev. Dr. M'Caul, in the notes interspersed throughout the Programme) is happily adapted to call into exercise the various talents of young men in the different branches of useful learning; and the fact that each of these scholarships is made tenable for only one year at a time, is well calculated to stimulate and reward *persevering* exertion. We know of no country in which, in proportion to its population, so liberal pecuniary assistance is given to youth, to acquire the best collegiate education; and we shall be greatly disappointed if it does not contribute powerfully to promote the interests of higher education in Upper Canada, and ultimately to the intellectual elevation of the country.

But this Programme of Studies is not yet completed, as the Senate of the University have now under consideration Courses of Study in *Agriculture* and *Civil Engineering*, to each of which several scholarships are attached; also a Course of Study for Law Students—a Course of Study for Students in Medicine having already been prescribed.

The *Programme of Studies for the Grammar Schools*, and the Rules and Regulations of which it forms a part, appear no less appropriate to that class of intermediate institutions which form a connecting link between the Common Schools and University Colleges, and in which is imparted a higher English, and a preparatory classical education for the Colleges. The first communication made by the Government to the Chief Superintendent of Schools, under the administration of Sir Edmund Head, contains His Excellency's approval of these Regulations. Sir Edmund Head is known to be an accomplished scholar, as well as an able statesman.—having obtained a Fellowship at Oxford, and having held the office of College Tutor for some years, and having been chosen a Public Examiner of the University; holding that distinguished place,

as we have been told, when the Earl of Elgin took his degree of B.A. at Oxford. It was therefore very gratifying to find that His Excellency, in assenting to these Regulations, did not confine himself to the usual official form of approval, but directed Mr. Assistant Secretary Meredith to add the following paragraph:

“In communicating this, I am directed to add for the information of the Council of Public Instruction, that the Rules and Regulations in question appear to His Excellency to have been prepared with care, and to be well adapted for the good government of the Schools for which they are intended.”

The subjects and classification of studies provided to be taught in the *Common Schools*, as practically exhibited in the Programme of the Upper Canada Model School, require no remark, as the system has been successfully tested, and is making rapid progress in the country. On this point, and on the subject of educational progress generally in Upper Canada, we are happy to avail ourselves of the testimony of Chief Justice Robinson, whose high character and large experience in the country are only equalled by the cordiality and earnestness with which he has, on all possible occasions, given his support to the present Common School System in Upper Canada. In the course of his address to the Canadian Institute, delivered the 6th ult., after his re-election as President of that excellent Association, Chief Justice Robinson remarks as follows:

“No expense is grudged, and no labour spared, in cultivating the minds of the youth of the Province of all ranks, and such are the efforts which are being made to this end, that it does not appear extravagant to say that we may expect, in a few years, to find ourselves living among a people, who, to speak of them in the mass, will be as able as any other that can be named, either ancient or modern, to comprehend the nature and value of discoveries that may be made in the arts and sciences, and to adopt and improve upon such suggestions as may be thrown out by men of superior genius and attainments.

“If the system of Common School education which pervades all parts of Upper Canada, shall continue to be maintained in full efficiency, which there is no reason to doubt, the number of those who can enter with pleasure and profit into discussions upon subjects of science will be immensely increased; and those whose generous aim it may be to enlighten and improve others by communicating freely the results of their own researches and experiments, will find abundance of hearers and readers able to understand and reason upon their theories.

“There is good ground, too, for expectation that, with the advantage of the Public Libraries, selected as they are with care and judgment, which are being formed within the several counties, and even within each school section, a spirit of inquiry will be fostered, and an ambition excited to be distinguished in scientific pursuits, which we may hope will in time add largely to the number and variety of interesting contributions to the Institute.”

AMENDED COMMON SCHOOL REGULATIONS.

The attention of Trustees and Teachers of Common Schools, and of others concerned is directed to the amended Regulations on page 29 as to the Daily

Religious Exercises of Schools, and the additional regulations as to the duties of Teachers and Pupils. It should be borne in mind by all parties that Trustees of School Sections have no authority to levy a rate bill (that is a charge to parents for children attending the school, as distinguished from a rate on the property of the section) except by a vote of a School Section meeting—that they cannot levy a rate bill exceeding one shilling and three pence per month for each pupil—that they cannot levy a rate bill for a less period than one month—that every pupil entering a rate-bill school is liable to pay the rate bill for one month, or one-quarter, whether he attends every school day, or only three days, of the month or quarter. The schoolhouse is provided and the teacher is employed to teach every day, and if pupils do not attend the school, the loss of such absence should fall upon the parties causing it, and not upon the Teacher or the Trustees, or the School Section. But the Regulations referred to, as to the duty of pupils, will remedy most of the evils of irregular attendance at school.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 32
Journal of
Education
for the year
1855.

—continued.

PROGRAMME OF STUDIES PRESCRIBED BY THE SENATE OF THE UNIVERSITY OF TORONTO,
FOR COLLEGES IN AFFILIATION WITH THE UNIVERSITY.

FACULTY OF ARTS.

The degrees conferred in this Faculty are B.A. and M.A. There are two modes of proceeding to the degree of B.A. According to one, the requisites are—

(1) Having passed an examination in the subjects prescribed for Candidates for Matriculation. (2) Being of the standing of four years from Matriculation. (3) Having passed in each of these years an examination in the subjects prescribed for each such year of the course appointed for Undergraduates in the Faculty of Arts. According to the other mode of proceeding to the degree of B.A., the requisites are—

(1) Having passed an examination in the subjects prescribed for Students of the standing of two years from Matriculation. (2) Being of the standing of two years from Matriculation. (3) Having passed in each of these years an examination in the subjects prescribed for each such year of the course appointed for Undergraduates in the Faculty of Arts.

Candidates for Matriculation, according to the first mode, are required to produce satisfactory certificates of good conduct, and of having completed the 14th year of their age.

Candidates for Matriculation, according to the second mode, are required to produce similar certificates of good conduct, and of having completed the 16th year of their age.

N.B. Neither residence nor attendance on lectures is required as a qualification for the degree.

There are also two modes of proceeding to the degree of M.A.

According to one, the requisites are—

(1) Being of the standing of one year from admission to the degree of B.A. (2) Having passed the appointed examination in the subjects prescribed for Candidates for admission to the degree of M.A.

According to the other, the requisites are—

(1) Being of the standing of three years from admission to the degree of B.A. (2) Having performed the Exercises prescribed for Candidates for admission to the degree of M.A.

(Page 19)

NOTE:—Subjects prescribed for Matriculation and Courses of Study for colleges in affiliation with University of Toronto are here set out. (Not printed.)

* * * *

In the
Supreme
Court of
Ontario.

Exhibits

No. 32
Journal of
Education
for the year
1855.

—continued.

(Page 22)

PROGRAMME OF STUDIES, AND GENERAL RULES AND REGULATIONS FOR THE
GOVERNMENT OF GRAMMAR SCHOOLS IN UPPER CANADA.

*Prescribed by the Council of Public Instruction, under the authority of the Grammar
School Act, 16 Vict. cap. 186, and approved by the Governor General in
Council.*

PREFATORY EXPLANATION.

The fifth section of the Grammar School Act requires, "That in each
County Grammar School provision shall be made for giving instruction, by a
teacher or teachers of competent ability and good morals, in all the higher
branches of a practical English and commercial education, including the
Elements of Mechanics and Natural Philosophy, and also in the Greek and
Latin languages, and Mathematics, so far as to prepare students for University
College, or for any college affiliated to the University of Toronto, according
to a Programme of Studies, and General Rules and Regulations, to be pre-
scribed by the Council of Public Instruction for Upper Canada, and approved
of by the Governor General in Council: Provided always, that no Grammar
School shall be entitled to receive any part of the Grammar School Fund,
which shall not be conducted according to such Programme, Rules and
Regulations." In the fourth clause of the eleventh section of the Act (after
providing for the union of the Grammar and one or more Common Schools in
any Municipality) it is provided, "That no such union shall take place without
ample provision being made for giving instruction to the pupils in the element-
ary English branches, by a duly qualified teacher or teachers." 10 20

2. From these provisions of the law, it is clearly the object and function
of Grammar Schools, not to teach the elementary branches of English, but to
teach the higher branches, and especially to teach the subjects necessary for
matriculation into the University. With a view to the promotion of these
objects, and for the greater efficiency of the Grammar Schools, the Council of
Public Instruction for Upper Canada, after mature deliberation, have adopted
the following Regulations, which according to the fifth section, and the fifth
clause of the eleventh section of the Grammar School Act, 16 Victoria, chapter
186, are binding upon all Boards of Trustees and officers of Grammar Schools
throughout Upper Canada. 30

SECTION I.—QUALIFICATIONS FOR THE ADMISSION OF PUPILS INTO THE
GRAMMAR SCHOOLS.

1. The regular periods for the admission of pupils commencing classical
studies, shall be immediately after the Christmas and after the Summer
Vacations; but the admission of pupils in English studies alone, or of those
pupils who have already commenced the study of the Latin language, may
take place at the commencement of each Term. The examinations for the 40

admission of pupils shall be conducted by the Head Master; as also examinations for such Scholarships, Exhibitions and Prizes as may have been instituted by Municipal Councils as authorised by law, or by other corporate bodies, or by private individuals. But the Board of Trustees may, if they shall think proper, associate other persons with the Head Master in the examinations for such Scholarships, Exhibitions or Prizes.

2. Pupils in order to be admitted to the Grammar School, must be able, 1. to read intelligibly and correctly any passage from any common reading book. 2. To spell correctly the words of an ordinary sentence. 3. To write a fair hand. 4. To work readily questions in the simple and compound rules of arithmetic, and in reduction and simple proportion. 5. Must know the elements of English Grammar, and be able to parse any easy sentence in prose; and 6. Must be acquainted with the definitions and outlines of Geography.

*In the
Supreme
Court of
Ontario.*

Exhibits
No. 32
Journal of
Education
for the year
1855.

—continued.

SECTION II.—PROGRAMME OF STUDIES IN THE GRAMMAR SCHOOLS OF UPPER CANADA

CLASS.	I. LATIN.	II. GREEK.	III. FRENCH.	IV. ENGLISH.	V. MATHEMATICS	VI. GEOGRAPHY AND HISTORY	VII. PHYSICAL SCIENCE.	VIII. MISCELLANEOUS.
FIRST OR LOWEST.	Arnold's First and Second Latin Book. Latin Grammar. Cornelius Nepos.	None.	None.	English Grammar and Composition. Reading, and Sullivan's Spelling-book superseded.	Arithmetic. Algebra, (first four rules.)	Outlines of Geography and General History	None.	Writing. Drawing. Vocal Music.
SECOND.	Latin Grammar and Exercises. Caesar's Commentaries.	Arnold's First Greek Book.	None.	Grammar (continued.) Etymology of Words and Versification. Art of Reading, (National Series) and Sullivan's Dictionary of Derivations.	Practical Arithmetic. Algebra, (simple equations.)	Outlines of Ancient Geography. History of Rome. History of Great Britain and Ireland	Elements of Natural History as far as contained in the 3rd and 4th National Readers	Writing. Drawing. Vocal Music.
THIRD.	Ovid and Virgil. Latin Prosody and Exercises.	Greek Grammar and Exercises. Xenophon's Anabasis.	Elements of French Grammar, to end of Irregular Verbs, with Exercises. Oral and Written Translations.	Elementary Principles of Rhetoric and Logic. Art of Reading and Fifth Book. (National Series.)	Commercial Arithmetic. Algebra, (quadratics.) Euclid, Bb. I. II.	Ancient Geography. Roman Antiquities. History of Greece.	Elements of Natural Philosophy and Geology, as contained in the 5th National Reader.	Drawing. Vocal Music.
FOURTH.	Virgil and Cicero. Exercises and Composition in Prose and Verse.	Homer's Iliad. Greek Testament Lucian. Greek Prosody, and Exercises.	Rules on the use of the Pronouns and Participles, with Exercises. Oral and Written Translations.	Christian Morals and Evidences. Reading in Sullivan's Literary Class Book.	Algebra. Euclid, Bb. III. IV., definitions of B.V. and B. VI.	Ancient and Mediæval Geography. Grecian Antiquities. History of France and History of Canada	Physiology, as contained in the 5th National Reader. Elements of Chemistry.	Drawing. Book-Keeping. Vocal Music.
FIFTH.	Horace. Composition in Prose and Verse. Previous subjects reviewed.	Homer's Odyssey. Greek Prosody. Previous Subjects reviewed.	Syntax and Idioms. Composition. Oral and Written Translations. Fénelon, Dialogues des Morts. Molière, Les Fourberies de Scapin. Previous subjects reviewed.	Outlines of English Literature. Composition. Elements of Civil Polity, Political Economy (Fifth Reader.) Previous subjects reviewed.	Elements of Plane Trigonometry. Mensuration and Surveying. Previous subjects reviewed.	Outlines of Egyptian History to death of Cleopatra. History of Spain and Portugal in the reign of Ferdinand and Isabella. Previous subjects reviewed.	Previous subjects reviewed.	Drawing. Vocal Music.

*Explanatory Memoranda to the Programme**In the
Supreme
Court of
Ontario.*

Exhibits

No. 32
Journal of
Education
for the year
1855.
—continued.

1. Pupils preparing for the University are *required* to study those subjects only, which will qualify them for matriculation.

2. Any pupil studying the English branches alone, may have an option as to the particular subjects of his study; but he may not, without the special permission of the Head Master select any subject not included amongst those prescribed for the class, in which he has been placed on examination.

3. The Pupils shall be arranged in classes corresponding to their respective degrees of proficiency. There may be two or more divisions in each class; and each pupil shall be advanced from one class or division to another, according to attainments in scholarship, and no faster.

4. Drawing includes Linear, Map, Geometrical, and Ornamental Drawing.

5. Instruction shall be given to each pupil in penmanship as long as the Head Master shall think it necessary.

6. It is recommended, that the Elements of Vocal Music shall form part of the course of instruction for all pupils capable of learning to sing.

* * * *

(Page 25)

LIST OF TEXT-BOOKS FOR GRAMMAR SCHOOLS

IN UPPER CANADA, RECOMMENDED BY THE COUNCIL OF PUBLIC INSTRUCTION,
20 UNDER THE AUTHORITY OF THE 6TH SECTION OF THE GRAMMAR SCHOOL ACT,
16 VIC. CH. 186.

[NOTE.—The Grammar School Trustees can select such text books from the following list as they may approve; but in no case should more than one series of books be permitted to be used in each school.]

NOTE.—The authorized list of text-books is here set out (not printed).

* * * *

In the
Supreme
Court of
Ontario.

PROGRAMME OF STUDIES IN THE
In which Four Hundred and Twenty Pupils receive Instruction. It is divided into Two
and each Division into Seven

Exhibits

No. 32
Journal of
Education
for the year
1855.

—continued.

BOYS' DEPARTMENT
FIRST, OR LOWEST DIVISION

SECTIONS	READING.	5*	5	5	5	5	5	2	2	
No. 1.	Tablet Lesson or First Book.....	15*	Elementary Arithmetic.....	Calculator.....	Writing or Drawing on Slates.....	Object Lessons.....	Spelling.....	Geography.....	Singing.....	Gymnastics.....
" 2.	Tablet Lesson or First Book.....	15								
" 3.	Second Book.....	15								
" 4.	Second Book.....	15								
" 5.	Sequel to Second Book, No. 1.....	15								
" 6.	Sequel to Second Book, No. 1.....	15								
" 7.	Sequel to Second Book, No. 1.....	15								

SECOND DIVISION

SECTIONS	READING.	ARITHMETIC.	5*	5	5	5	3	5	2	5	3	5	5	2
No. 1.	Sequel to the Second Book, No. II	10* Simple Rules.	Practical Arithmetic.....	Theoretical Arithmetic.....	Mental Arithmetic.....	Writing.....	History, Introduction to.....	Geography.....	Singing.....	Spelling and Dictation.....	Natural History.....	Grammar.....	Gymnastics.....	
" 2.		10 Simple Rules.												
" 3.		10 Compound Rules.												
" 4.		10 Compound Rules.												
" 5.	10 Third Book.....	Reduction and Proportion.												
" 6.	10 Third Book.....	Reduction and Proportion.												
" 7.	10 Third Book.....	Reduction and Proportion.												

THIRD, OR HIGHEST DIVISION

SECTIONS	READING	ARITHMETIC	5*	5	5	4	4	5	4	4	2	2	2	2	3	2	2	2	
No. 1.	Third Book...8*	Proportion, &c.	Practical Arithmetic.....	Theoretical Arithmetic.....	Mental Arithmetic.....	Geography.....	History.....	Grammar and Composition.....	Writing.....	Spelling and Dictation.....	Natural History.....	Drawing.....	Singing.....	Gymnastics.....	Natural Philosophy.....	Book-keeping, 5th, 6th & 7th classes...2	Geometry, 5th, 6th & 7th classes...2	Algebra, 5th, 6th & 7th classes...2	Mensuration, 7th class...2
" 2.	Third Book...8	Proportion, &c.																	
" 3.	Fourth Book...8	Fractions, &c.																	
" 4.	Fourth Book...8	Fractions, &c.																	
" 5.	Fifth Book...6	Interest, &c.																	
" 6.	Fifth Book...6	Interest, &c.																	
" 7.	Fifth Book...4	Higher Branches Arith, Logarithms, &c.																	

*Number of Lessons per week.

PROVINCIAL MODEL SCHOOL:

Departments: the Male and Female; each Department is sub-divided into Three Divisions; Sections, consisting of Ten Pupils each.

GIRLS' DEPARTMENT
FIRST, OR LOWEST DIVISION

SECTIONS	READING.	Elementary Arithmetic..... 5*	Calculator..... 5	Writing or Drawing on Slates..... 5	Object Lessons..... 5	Spelling..... 5	Geography..... 5	Singing..... 2	Calisthenics..... 2	Plain Needle-work..... 1
No. 1.	Tablet Lesson or First Book..... 14*									
" 2.	Second Book..... 14									
" 3.	Second Book..... 14									
" 4.	Second Book..... 14									
" 5.	Sequel to Second Book, No. I..... 14									
" 6.	Sequel to Second Book, No. I..... 14									
" 7.	Sequel to Second Book, No. I..... 14									

SECOND DIVISION

SECTIONS	READING.	ARITHMETIC.	Practical Arithmetic..... 5*	Theoretical Arithmetic..... 5	Mental Arithmetic..... 5	Writing..... 5	History..... 3	Geography..... 5	Singing..... 2	Spelling and Dictation..... 5	Natural History..... 2	Grammar..... 5	Calisthenics..... 2	Plain Needle-work..... 1
No. 1.	Third Book..... 12*	Compound Rules.												
" 2.	Third Book..... 12	Compound Rules.												
" 3.	Third Book..... 12	Compound Rules.												
" 4.	Third Book..... 12	Reduction and Proportion.												
" 5.	Fourth Book..... 12	Reduction and Proportion.												
" 6.	Fourth Book..... 12	Reduction and Proportion.												
" 7.	Fourth Book..... 12	Reduction and Proportion.												

THIRD, OR HIGHEST DIVISION

SECTIONS	READING.	ARITHMETIC.	Practical Arithmetic..... 5*	Theoretical Arithmetic..... 5	Mental Arithmetic..... 4	Geography..... 4	History..... 3	Grammar and Composition..... 5	Writing..... 5	Spelling and Dictation..... 4	Natural History..... 2	Drawing..... 2	Singing..... 2	Calisthenics..... 2	Natural Philosophy..... 2	Domestic Economy..... 2	Plain Needle-work..... 1	Algebra, 4 classes..... 3	Geometry, 1 class..... 2
No. 1	Fourth Book.. 6*	Fractions and Proportion.																	
" 2.	Fourth Book.. 6	Fractions and Proportion.																	
" 3.	Fourth Book.. 6	Fractions and Proportion.																	
" 4.	Fifth Book... 6	Interest, &c.																	
" 5.	Fifth Book... 6	Interest, &c.																	
" 6.	Sixth Book... 6	Higher Branches																	
" 7.	Sixth Book... 6	Higher Branches.																	

In the
Supreme
Court of
Ontario.

Exhibits

No. 32
Journal of
Education
for the year
1855.
—continued.

In the
Supreme
Court of
Ontario.
Exhibits
No. 44
The laws
relating to
Grammar
and
Common
Schools
in Cities,
Towns and
Villages in
Upper
Canada,
1855.

EXHIBIT 44

(Respondent's)

The Laws Relating to Grammar and Common Schools in Cities, Towns and Villages in Upper Canada, 1855

(Page 59)

V. GRAMMAR SCHOOL PROGRAMME AND REGULATIONS.

PROGRAMME OF STUDIES, AND GENERAL RULES AND REGULATIONS FOR THE GOVERNMENT OF GRAMMAR SCHOOLS IN UPPER CANADA.

Prescribed by the Council of Public Instruction, under the authority of the Grammar School Act, 16 Vict. cap. 186, and approved by the Governor General in Council.

10

PREFATORY EXPLANATION.

The fifth Section of the Grammar School Act requires, "That in each County Grammar School provision shall be made for giving instruction, by a teacher or teachers of competent ability and good morals, in all the higher branches of a practical English and commercial education, including the elements of mechanics and Natural Philosophy, and also in the Greek and Latin languages, and mathematics, so far as to prepare students for University College, or for any College affiliated to the University of Toronto, according to a Programme of Studies, and General Rules and Regulations, to be prescribed by the Council of Public Instruction for Upper Canada, and approved of by the Governor General in Council: Provided always, that no Grammar School shall be entitled to receive any part of the Grammar School Fund, which shall not be conducted according to such Programme, Rules and Regulations." In the fourth clause of the eleventh section of the Act (after providing for the union of the Grammar and one or more common schools in any municipality) it is provided, "That no such union shall take place without ample provision being made for giving instruction to the pupils in the elementary English branches, by a duly qualified teacher or teachers."

20

2. From these provisions of the law, it is clearly the object and function of Grammar Schools, not to teach the elementary branches of English, and especially to teach the subjects necessary for matriculation into the University. With a view to the promotion of these objects, and for the greater efficiency of the Grammar Schools, the council of public instruction for Upper Canada, after mature deliberation, have adopted the following Regulations, which, according to the fifth section, and the fifth clause of the eleventh section of the Grammar School Act, 16 Victoria, chapter 186, are binding upon all Boards of Trustees and officers of grammar schools throughout Upper Canada.

30

SECTION I.—QUALIFICATIONS FOR THE ADMISSION OF PUPILS INTO THE GRAMMAR SCHOOLS.

40

1. The regular periods for the admission of pupils commencing classical studies, shall be immediately after the Christmas and after the Summer Vacations; but the admission of pupils in English studies alone, or of those

pupils who have already commenced the study of the Latin language, may take place at the commencement of each Term. The examinations for the admission of pupils shall be conducted by the Head Master; as also examinations for such scholarships, exhibitions and prizes as may have been instituted by municipal councils as authorized by law, or by other corporate bodies, or by private individuals. But the Board of Trustees may, if they shall think proper, associate other persons with the Head Master in the examinations for such scholarships, exhibitions or prizes.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 44
The laws
relating to
Grammar
and
Common
Schools
in Cities,
Towns and
Villages in
Upper
Canada,
1855

—continued.

2. Pupils in order to be admitted to the grammar school, must be able, 1. To read intelligibly and correctly any passage from any common reading book. 2. To spell correctly the words of an ordinary sentence. 3. To write a fair hand. 4. To work readily questions in the simple and compound rules of arithmetic and in reduction and simple proportion. 5. Must know the elements of English Grammar, and be able to parse any easy sentence in prose; and 6. Must be acquainted with the definitions and outlines of Geography.

* * * *

(Page 71)

VII. OFFICIAL CIRCULAR FROM THE CHIEF SUPERINTENDENT OF SCHOOLS TO THE BOARDS OF TRUSTEES OF GRAMMAR SCHOOLS THROUGHOUT UPPER CANADA, EXPLANATORY OF THE FOREGOING REGULATIONS.

GENTLEMEN,—

I have the honor to transmit you, herewith, the regulations which have been adopted by the Council of Public Instruction, and approved by the Governor General in Council, for the better organization and government of grammar schools in Upper Canada—including rules as to the qualifications for admission to each grammar school, the exercises and discipline to be observed, the course of studies to be pursued, and the text-books to be used. These regulations have been very carefully considered; and they will, I am persuaded, contribute much to the improvement of the grammar schools, and greatly facilitate their management on the part of boards of trustees and head masters.

* * * *

(Page 72)

2. COURSE OF STUDIES FOR GRAMMAR SCHOOLS.

3. In respect to the course of studies and the order of subjects prescribed by these regulations, it is important that the board of trustees and head master should exercise a philosophical as well as parental discretion in recommending or sanctioning the selection and pursuit of *optional* subjects by pupils. In preparing this programme of studies, it has been sought to keep the following educational axioms in view:—First, "That a course of studies should be adapted to exercise and improve the various intellectual powers of children, according to the natural order of their development." Secondly,

“That the subjects of study should be so arranged that the knowledge of the first prepares the mind of the pupil for the acquisition of the second, the second for attaining the third, and so on in regard to all the subjects of the course.”
In the exercise of options in regard to one or more subjects of study, (as is allowed in the accompanying programme) trustees and head masters cannot too sedulously exert their influence upon parents and pupils to direct their preferences in harmony with the foregoing axioms, and to that which is most practical and useful in ordinary life.

3. PRACTICAL REMARKS ON THE OBJECTS AND METHODS OF TEACHERS.

4. In giving practical effect to the accompanying regulations and programme of studies, I beg to offer for the consideration of the boards of trustees, and head masters, two or three remarks on the objects and methods of teaching, which I think should be insisted upon and pursued in every grammar school. As the office of the grammar school is that of a *preparatory* school to the University, for one class of pupils, and that of a *finishing* school to another and larger class of pupils, *thoroughness* should characterize the teaching of all the subjects of the course of studies. *Every* pupil should be taught the language of his country,—should be able to read it with accuracy, intelligence and grace—should know the orthography and the meaning of its more difficult, as well as of its more easy words—should understand its grammatical structure, and should learn to use it with skill, and to appreciate its excellencies, by the practice of speaking it accurately in ordinary conversation, by frequent composition in writing, and by the critical reading and analysis of portions of the English classic authors, in both prose and poetry.

* * * *

(Page 85)

XIII. GENERAL REGULATIONS FOR THE ORGANIZATION, GOVERNMENT AND DISCIPLINE OF COMMON SCHOOLS IN UPPER CANADA.

Adopted after mature consideration, by the Council of Public Instruction, as authorized by the Act 13th and 14th Victoria, Chapter 48,
Section 38.

* * * *

(Page 92)

6. DUTIES OF TRUSTEES—pp. 18, 26.

1. The full and explicit manner in which the duties of Trustees are enumerated and stated in the school acts, renders it unnecessary to do more, in this place, than make some expository remarks on the nature of the general duties of Trustees, and the relations subsisting between them and the teachers whom they employ. The law invests Trustees with most important functions; they are a corporation, and as such, the ownership and control of the school

site, school-house, and all the property attached thereto, is vested in them; they are to provide and furnish the school-house and premises, and apparatus and text-books for the school; and they alone have authority to employ the teacher. Their duties are, therefore, of the greatest importance, and they should be well understood.

10 2. While the Trustees employ the teacher—agree with him as to the period during which he shall teach, and the amount of his remuneration—the *mode of teaching* is at the option of the teacher; and the local Superintendent and visitors alone have a right to advise him on the subject. The teacher is not a mere machine, and no Trustee or parent should attempt to reduce him to that position. His character and his interest alike prompt him to make his instructions as efficient and popular as possible: and if he does not give satisfaction, he can be dismissed according to the terms of his agreement with his employers. To interfere with him, and deprive him of his discretion as a teacher, and then to dismiss him for inefficiency, which is the natural and usual result, is to inflict upon him a double wrong, and frequently injures the pupils themselves, and all parties concerned. It should then be distinctly understood, as essential to the teacher's character, position and success, that he judge for himself as to the mode of teaching in his school, including, of course, the classification of pupils, as well as the manner of instructing them. 20 It is, nevertheless, the duty of the Trustees to see that the school is conducted according to the regulations authorized by law.

* * * *

(Page 93)

30 5. In the selection of books to be used in the school, from the general list authorized according to law, p. 46, the Trustees should see that but *one* series of reading books, *one* arithmetic, or one for the beginners and another for the more advanced pupils, *one* geography, &c. should be used in any *one* school, in order that the scholars may be classified in the several branches which they are studying. Heterogeneous school books (however good each book may be in itself) render classification impossible, increase the labour and waste the time of the teacher, and retard the progress of the pupils. But the teacher and pupils labour at the greatest disadvantage, when they are compelled to use books which are as various as the scholars' names.

* * * *

(Page 95)

1. PROGRAMME FOR THE EXAMINATION AND CLASSIFICATION OF TEACHERS OF COMMON SCHOOLS, BY THE COUNTY BOARDS, AS PRESCRIBED BY THE COUNCIL OF PUBLIC INSTRUCTION FOR UPPER CANADA—Page 44.

To be in Full Force until Repealed or Revised by the Council.

40 N.B.—Candidates are not eligible to be admitted to examination until they shall have furnished the examiners with satisfactory evidence of their strictly temperate habits and good moral character.

In the Supreme Court of Ontario.

Exhibits

No. 44
The laws relating to Grammar and Common Schools in Cities, Towns and Villages in Upper Canada, 1855.

—continued

MINIMUM QUALIFICATIONS OF THIRD CLASS TEACHERS.

Candidates for certificates as third class teachers, are required:

1. To be able to read intelligibly and correctly any passage from any common reading book.
2. To be able to spell correctly the words of an ordinary sentence dictated by the Examiners.
3. To be able to write a plain hand.
4. To be able to work readily, questions in the simple and compound rules of arithmetic, and in reduction and proportion, and to be familiar with the principles on which these rules depend. 10
5. To know the elements of English grammar, and to be able to parse any easy sentence in prose.
6. To be acquainted with the elements of geography, and the general outlines of the globe.
7. To have some knowledge of school organization and the classification of pupils.
8. In regard to teachers of French or German, a knowledge of the French or German grammar may be substituted for a knowledge of the English grammar; and the certificates to the teachers expressly limited accordingly.

MINIMUM QUALIFICATIONS OF SECOND CLASS TEACHERS.

20

Candidates for certificates as second class teachers, in addition to what is required of candidates for third class certificates, are required:

1. To be able to read with ease, intelligence, and expression, and to be familiar with the principles of reading and pronunciation.
2. To write a bold free hand, and to be acquainted with the rules of teaching writing.
3. To know fractions, involution, evolution, and commercial and mental arithmetic.

[Female candidates for this class of certificates will only be examined in practice and mental arithmetic.] 30

4. To be acquainted with the elements of book-keeping.
5. To know the common rules of orthography, and to be able to parse any sentence in prose or poetry, which may be submitted; write grammatically, with correct spelling and punctuation, the substance of any passages which may be read, or any topics which may be suggested.
6. To be familiar with the elements of mathematical, physical, and civil or political geography, as contained in any school geography.

MINIMUM QUALIFICATIONS OF FIRST CLASS TEACHERS.

Candidates for certificates as first class teachers, in addition to what is required of candidates for third and second class certificates, are required: 40

1. To be acquainted with the rules for the mensuration of superficies and solids, and the elements of land surveying.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 44
The laws
relating to
Grammar
and
Common
Schools
in Cities,
Towns and
Villages in
Upper
Canada,
1855

—continued.

2. To be familiar with the simple rules of algebra, and to be able to solve problems in simple and quadratic equations.

3. To know the first four books of Euclid.

4. To be familiar with the elements and outlines of general history.

5. To have some acquaintance with the elements of vegetable and animal physiology, and natural philosophy, as far as taught in the fifth book of national readers.

10 6. To understand the proper organization and management of schools and the improved methods of teaching.

N.B.—Female candidates for first class certificates will not be examined in the subjects mentioned in the first three paragraphs under this head.

Adopted the 3rd day of October, 1850.

* * * *

EXHIBIT 12

(Suppliants')

No. 12
Annual re-
port of the
Normal,
Model,
Grammar
and Com-
mon Schools
in Upper
Canada for
the year
1855 (dated
July, 1856).

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1855

NOTE—Extracts from this Report appear at p. 100 line 20 of the Record.

20 (pp. 106, 107)—Table D—Subjects taught in Common Schools (not printed).

(pp. 158, 159)—Table G—Subjects taught in Separate Schools (not printed).

(pp. 278-282)—Report of Local Superintendent, Hamilton (not printed).

EXHIBIT 58

(Suppliants')

Journal of Education for the Year 1856

Extract from issue of Journal for June, 1856.

(Page 88)

CIRCULAR TO THE CLERK OF EACH COUNTY, CITY, TOWN AND
VILLAGE MUNICIPALITY IN UPPER CANADA

SIR,—I have the honor to transmit herewith, a certified copy of the apportionment for the current year of the Legislative School Grant to each City, Town, Village and Township in Upper Canada. This apportionment will be payable at this office to the agent of the Treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and together with the Auditors' and other reports have been transmitted to the Department. 10

I am happy to inform the Council of your Municipality, that I have been enabled this year, through the liberality of the Legislature, to add several thousand pounds to the apportionment over that of last year; I have, moreover, appropriated a few hundred pounds from the Poor School Fund, and divided it among those new and thinly settled Counties where the ordinary legislative and municipal grants have not been sufficient to enable Trustees to sustain the Schools during the school year. 20

The statistics of school population, upon which the present year's apportionment is based, have been carefully corrected and revised in this Department. Many inequalities in the apportionment have thus been removed, and all parts of the Province share in the grant upon equal terms, and in accordance with the demands made upon each locality for school accommodation and instruction.

I have not deducted the apportionment to the Roman Catholic Separate Schools from each individual city, town and township, as was done last year, but I have reserved a special sum from which to make an apportionment direct to each School having a claim upon the fund. This is a more equitable and satisfactory mode of apportioning the grant, and it is one which, while it provides the legal apportionments to Separate Schools, does not so directly and materially lessen the resources of those Municipalities in which these Separate Schools happen to exist, as has been done in past years. 30

I trust the exertions and liberality of your Council will be increased in proportion to the augmentation of the School Grant apportionment to your Municipality, and the growing necessity and importance of providing for the sound and thorough education of all the youth of the land.

I have the honor to be, Sir,

Your obedient Servant,

E. RYERSON. 40

EDUCATION OFFICE,
Toronto, 18th June, 1856.

EXHIBIT 59

(Suppliants')

Journal of Education for the Year 1857

Extract from issue of Journal for June, 1857.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 59
Journal of
Education
for the year
1857.

(Page 88)

**APPORTIONMENT OF THE LEGISLATIVE SCHOOL GRANT OF UPPER CANADA,
FOR THE YEAR 1857****CIRCULAR TO THE CLERK OF EACH COUNTY, CITY, TOWN AND VILLAGE
MUNICIPALITY IN UPPER CANADA**

10 SIR,—I have the honor to transmit herewith, a certified copy of the apportionment for the current year of the Legislative School Grant to each City, Town, Village and Township in Upper Canada. This apportionment will be payable at this office to the agent of the treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and together with the Auditors' and other reports, have been transmitted to the Department.

20 I am happy to inform the Council of your Municipality, that I have been enabled, through the liberality of the Legislature, to add a considerable sum to the apportionment of this year; I have, moreover, appropriated a few hundred pounds from the Poor School Fund, and divided it among those new and thinly settled Counties where the ordinary legislative and municipal grants have not been sufficient to enable Trustees to sustain the Schools during the school year.

The statistics of school population, upon which the present year's apportionment is based, have been carefully corrected and revised in this Department. Many inequalities in the apportionment have thus been removed, and all parts of the Province share in the grant upon equal terms, and in accordance with the demands made upon each locality for school accommodation and instruction.

30 I have not deducted the apportionment to the Roman Catholic Separate Schools from each individual City, Town, and Township, as was done in 1855, but I have reserved a special sum from which to make an apportionment direct to each School having a claim upon the fund. This is a more equitable and satisfactory mode of apportioning the grant, and it is one which, while it provides the legal apportionments to Separate Schools, does not so directly and materially lessen the resources of those Municipalities in which these Separate Schools happen to exist, as has been done in past years.

40 I trust the exertions and liberality of your Council will be increased in proportion to the augmentation of the School Grant to your Municipality, and the growing necessity and importance of providing for the sound and thorough education of all the youth of the land.

I have the honor to be, Sir,

Your obedient Servant,

EDUCATION OFFICE,

Toronto, 8th June, 1857.

E. RYERSON.

EXHIBIT 4

(Suppliants')

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1857

Note: Extracts from this exhibit appear at p. 77, l. 15 to p. 79, l. 3, and at p. 101, ll. 3 to 37 of the Record.

* * * *

APPENDIX F

(Page 328)

THE NORMAL AND MODEL SCHOOLS FOR UPPER CANADA

No. 1.—Revised Terms of Admission into the Normal School, Toronto. 10

(Adopted by the Council of Public Instruction for Upper Canada, on the 24th day of August, 1858.)

The Council of Public Instruction, anxious to adopt such measures as appear best calculated to render the training of the Normal School as thorough as possible, and to diffuse its advantages over every county in Upper Canada as equally and as widely as possible, adopts the following regulations in regard to the duration of the future Sessions of the Normal School, and the mode and terms of admitting and facilitating the attendance of students at that Institution.

Ordered,

20

* * * *

(Page 329)

2. That no male student shall be admitted under eighteen years of age, nor a female student under the age of sixteen years. (1) Those admitted must produce certificates of good moral character, dated within at least three months of their presentation, and signed by the clergyman or minister of the religious persuasion with which they are connected. (2) They must be able, for entrance into the Junior Division, to read with ease and fluency; parse any common prose sentence, according to any recognized authority; write legibly, readily and correctly; give the definitions of Geography; have a general knowledge of the relative positions of the principal countries, with their capitals; the ocean, seas, rivers, and islands of the world; be acquainted with the fundamental rules of arithmetic, common or vulgar fractions, and simple proportion. (3) They must sign a declaration of their intention to devote themselves to the profession of school-teaching, and state that their object in coming to the Normal School is to qualify themselves better for the important duties of that profession. 30

* * * *

(Page 361)

APPENDIX H.
THE COMMON SCHOOLS FOR UPPER CANADA.

*No. 1. General Regulations for the Organization, Government and Discipline of
Common Schools in Upper Canada.*

Adopted after mature consideration by the Council of Public Instruction as authorized by the fourth clause of the Thirty-eighth Section of the Upper Canada School Act of 1850 (13th & 14th Vict., ch. 48.)

* * * *

(Page 363)

10

SECTION 4. DUTIES OF TEACHERS.

The sixteenth section of the School Act prescribes, in explicit and comprehensive terms, the duties of teachers; and no teacher can legally claim his salary, who disregards the requirements of the law. Among other things, the act requires each teacher to "maintain proper order and discipline in his school, according to the forms and regulations which shall be provided according to law." The law makes it the duty of the *Chief Superintendent of Education* to provide the forms; and the *Council of Public Instruction* prescribes the following regulations for the guidance of the teachers in the conduct and discipline of their schools:

20 NOTE: Specific duties are there set out.

* * * *

(Page 364)

SECTION 6. DUTIES OF TRUSTEES.

1. The full and explicit manner in which the duties of trustees are enumerated and stated in the school Act, renders it unnecessary to do more, in this place, than to make some explanatory remarks on the nature of the general duties of trustees, and the relations subsisting between them and the teachers whom they employ. The law invests trustees with most important functions; they are a corporation, and as such, the ownership and control of the school site, school house, and all the property attached thereto, are vested in them; they are to provide and furnish the school-house and premises, and apparatus and text books for the school; and they alone have authority to employ the teacher. Their duties are, therefore, of the greatest importance, and they should be well understood.

30

* * * *

APPENDIX I.

(Page 366)

APPORTIONMENT OF THE UPPER CANADA COMMON SCHOOL
LEGISLATIVE GRANT FOR THE YEAR 1858.

*No. 1. Circular to the Clerk of each County, City, Town, and Village Municipality
in Upper Canada.*

40 SIR,—I have the honor to transmit herewith a certified copy of the apportionment for the current year of the Legislative School Grant to each City,

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 4
Annual re-
port of the
Normal,
Model,
Grammar
and Com-
mon Schools
in Upper
Canada for
the year
1857.
(dated July,
1858.)
—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 4

Annual report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1857. (dated July, 1858.)
—continued.

Town, Village, and Township in Upper Canada. This apportionment will be payable at this Office to the agent of the Treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and together with the Auditors' and other reports, have been transmitted to the Department.

Considering the number of applications during 1857, for aid from the Poor School Fund, I have thought it desirable to appropriate a few hundred pounds from that fund, and divide it among those new and thinly settled Counties where the ordinary legislative and municipal grants have not been sufficient to enable Trustees to sustain the Schools during the school year. 10

I have not deducted the apportionment to the Roman Catholic Separate Schools from each individual City, Town and Township, as was done in former years, but I have reserved a special sum from which to make an apportionment direct to each School having a claim upon the fund. This is a most equitable and satisfactory mode of apportioning the grant, and it is one which, while it provides the legal apportionments to Separate Schools, does not so directly and materially lessen the resources of those Municipalities in which these Separate Schools happen to exist.

I trust the exertions and liberality of your Council will be increased in proportion to the growing necessity and importance of providing for the sound and thorough education of all the youth of the land. 20

I have the honor to be,

Sir,

Your obedient Servant,

E. RYERSON.

EDUCATION OFFICE,

Toronto, 1st June, 1858.

* * * *

Note: (P. 53)—Table B—shows the different branches of education in the Common Schools and number of pupils in each—(not printed).

(P. 67)—Table E—shows the number of Common Schools using the text books shown in the table—(not printed). 30

(P. 71)—Table F—shows among other things the studies in the Separate Schools—(not printed).

EXHIBIT 60

(Suppliants')

Journal of Education for the Year 1858

Extract from issue of this Journal for June, 1858.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 60
Journal of
Education
for the year
1858.

(Page 89)

**APPORTIONMENT OF THE LEGISLATIVE SCHOOL GRANT OF
UPPER CANADA FOR THE YEAR 1858***Circular to the Clerk of each County, City, Town, and Village Municipality in
Upper Canada.*

10 SIR,—I have the honor to transmit herewith a certified copy of the apportionment for the current year of the Legislative School Grant to each City, Town, Village, and Township in Upper Canada. This apportionment will be payable at this office to the agent of the Treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and together with the Auditors' and other reports, have been transmitted to the Department.

20 Considering the number of applications during 1857, for aid from the Poor School Fund, I have thought it desirable to appropriate a few hundred pounds from that fund, and divide it among those new and thinly settled Counties where the ordinary legislative and municipal grants have not been sufficient to enable Trustees to sustain the Schools during the school year.

I have not deducted the apportionment to the Roman Catholic Separate Schools from each individual City, Town, and Township, as was done in former years, but I have reserved a special sum from which to make an apportionment direct to each School having a claim upon the fund. This is a most equitable and satisfactory mode of apportioning the grant, and it is one which, while it provides the legal apportionments to Separate Schools, does not so directly and materially lessen the resources of those Municipalities in which these Separate Schools happen to exist.

30 I trust the exertions and liberality of your Council will be increased in proportion to the growing necessity and importance of providing for the sound and thorough education of all the youth of the land.

I have the honor to be, Sir,

Your obedient Servant,

E. RYERSON.

EDUCATION OFFICE,
Toronto, 1st June, 1858.

EXHIBIT 5.

(Suppliants')

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1858

NOTE:—The parts of this report referred to in the Courts below, are set out at page 79, l. 10 to page 82, l. 15 of the Record.

* * * *

(Page 159)

APPENDIX F.**APPORTIONMENT OF THE LEGISLATIVE GRANT TO COMMON SCHOOL IN UPPER CANADA, FOR THE YEAR 1859.**

10

[Copy.]

No. 1. Circular to the Clerk of each County, City, Town, and Village Municipality in Upper Canada.

SIR,—I have the honor to transmit herewith, a certified copy of the apportionment, for the current year, of the Legislative School Grant to each City, Town, Village, and Township in Upper Canada. This apportionment will be payable at this Office, to the Agent of the Treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and, together with the Auditors' and Local Superintendents' Reports, have been transmitted to the Department.

10

I am happy to inform the Council of your Municipality, that I have been enabled to add a considerable sum to the apportionment of this year. The statistics of school population for 1858, upon which the present year's apportionment is based, have been carefully revised and corrected in this Department. Many inequalities in the apportionment have thus been removed, and all parts of the Province share in the grant upon equal terms, and in accordance with the demands made upon each locality for school accommodation and instruction. By this means a much larger sum than usual has been added to the apportionment of those new and thinly settled Counties where poor schools have heretofore existed, and where the ordinary Legislative and Municipal grants have not been sufficient to enable Trustees to sustain the schools during the school year.

20

A sum equal to what was paid last year to the Separate Schools in each City, Town, Incorporated Village, and Township, has been deducted from the general apportionment available for 1859, and the balance has been apportioned among all the Municipalities, according to the basis of school population for 1858. Where Separate Schools have existed, the sum thus apportioned to the Municipality has been divided among the Common and Separate Schools therein, according to the average attendance of pupils at these Schools during 1858, as reported by the Trustees. It had been found that to apportion to each Municipality, according to school population, and then to apportion an additional sum to the Separate Schools in such Municipality, out of the

30

General School Grant, was unduly deducting from Municipalities in which there are no Separate Schools, and unduly adding to the apportionment of those Municipalities in which Separate Schools do exist—such as Cities, Towns, and Villages. If the apportionments be increased to any Municipalities beyond the proportion of School population, it ought to be so increased to the poorer Counties and Townships, rather than to the wealthier Cities, Towns, and Villages; for it is in these latter that Separate Schools are chiefly established.

I trust that the liberality of your Council will be increased in proportion to the growing necessity and importance of providing for the sound and thorough
10 education of all the youth of the land.

I have the honor to be,

Sir

Your obedient servant,

(Signed) E. RYERSON.

EDUCATION OFFICE,
Toronto, 1st June, 1859.

* * * *

(Page 183)

No. 4.—DUTIES OF THE DEPARTMENT OF PUBLIC INSTRUCTION FOR UPPER
CANADA.

* * * *

20 (Page 184)

1. *Council of Public Instruction*.—This branch includes the general duties of the Council; its meetings; all matters connected with the Normal, Model and Model Grammar Schools, and the proposed School of Art, such as their supervision, the appointments of masters and teachers, and servants; the auditing and payment of salaries and accounts, the admission of students and pupils, supplying the several schools with text-books, stationery and apparatus, the care, furnishing, and repairs of the buildings, (which have been planned, erected, and completed since 1850), the care and culture of the grounds—a square of nearly eight acres. The books, stationery, &c., for the students in
30 the Normal School, (varying from 150 to 200,) for the 300 pupils in the Model Schools, and nearly 100 pupils in the Model Grammar School are supplied upon written requisitions from the masters, (see page 129,) and approved in writing by the Chief Superintendent of Education. The requisitions are numbered and fyled, as the authority for anything done or procured, under the general or special orders of the Council, by whom all the regulations respecting the establishment and government of the Common and Grammar Schools, and Public Libraries throughout Upper Canada are sanctioned, and the text-books used in the schools and the books for the Public Libraries are authorized. The law requires the Chief Superintendent of Education to
40 prepare these regulations and all other matters for the consideration of the Council, to conduct all its correspondence and execute its orders. The Chief

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 5
Annual re-
port of the
Normal,
Model,
Grammar
and Com-
mon Schools
in Upper
Canada for
the year
1858.
(Dated July,
1859.)
—continued.

*In the
Supreme
Court of
Ontario.*

Clerk in the Education Office is also the Recording Clerk of the Council, and keeps the minutes, and the accounts of all moneys received and expended by it.

* * * *

Exhibits
No. 5
Annual report of the
Normal, Model,
Grammar and Com-
mon Schools in Upper
Canada for the year
1858.
(Dated July,
1859.)
—continued.

(Page 186)

5. *Education Office*:—This is, of course, the chief branch of the whole department, not only embracing the management of each of the others, but including the general administration of the Common and Grammar School Laws; explanations to Councils, Superintendents, Trustees, Teachers and others, on doubtful points of law and modes of proceeding; decisions on appeals and complaints; auditing School Accounts; oversight of Normal and Model Schools, and Provincial Certificates for Teachers; paying and accounting for all Legislative Grants for Common and Grammar Schools; furnishing Teacher's Registers, blank Reports and Returns for Trustees, local Superintendents, Clerks and Treasurers of Municipalities, and the *Journal of Education*, (besides editing it,) to each local Superintendent and School Corporation in Upper Canada; examination of applications from poor School Sections in new Townships, the apportionment and payment of Special Grants to them; the same in regard to Superannuated Teachers; the preparation of the General Annual Report, the printing and sending out upwards of 4,000 copies of it to Municipal Councils, Superintendents, and School Corporations; general correspondence relating to the promotion of education; giving proper attention and explanations to many visitors from all parts of Canada and from other countries, who wish to ascertain and witness the arrangements which have been made for supplying the educational wants of the country by means of the Depositories, and Museum, as well as the methods of instruction in the Normal and Model Schools.

* * * *

No. 47
Journal of
Education
for the year
1860.

EXHIBIT 47

(Suppliants')

Journal of Education for the Year 1860.

Extracts from issue of this journal for March, 1860.

(Page 33)

30

THE RECENT COUNTY SCHOOL CONVENTIONS IN UPPER CANADA

* * * *

The chief object to these School Conventions, Dr. Ryerson said, was to consider the adaptation of the sytem of Public Instruction to the present more advanced state of education in Upper Canada, and to see how far that System might be improved. He also proceeded to explain the principles upon which our Common School system was based—each county, township, city, and

village having the management of its own schools, irrespective of Government interference. The principles and practice of free government were thus brought home to each man's door.

*In the
Supreme
Court of
Ontario.*

* * * *

(Page 34)

Exhibits

No. 47
Journal of
Education
for the year
1860.

—continued.

TWOFOLD NATURE OF OUR SYSTEM OF PUBLIC INSTRUCTION.

In the system of public instruction in this country there are two parts: that which pertains to the people and that which devolves upon the executive government. In every country where the people are educators of their own children, the erection and extension of schools depend entirely upon their co-operation; and the character of the instruction given in every educational establishment is an expression of the people themselves upon the question of education. The municipal institutions of Upper Canada were established by the late Hon. Robt. Baldwin. Those institutions embodied the principle of local self-government, and its tendency was to enlarge the public mind and will of the community. In 1850, Mr. Baldwin and himself devoted two or three days to the examination of every sentence, clause, and, he might almost say, every word of the School Act, which was the basis of our system. All that he requested of Mr. Baldwin was the application of the principle of self-government to the School Law; and with that consistency which ever characterized him, he gave his consent. In a despotic country, everything is done for the people; and the children and people are but partially educated, because they are not taught to rely upon themselves.

VOLUNTARY CHARACTER OF THE PUBLIC SCHOOL SYSTEM.

The Common School system of Upper Canada was entirely a voluntary one with respect to municipalities. They can tax as they please to support schools, and they can refuse to sustain them if they please. For example, the village of Richmond, in the County of Carleton, has never elected trustees nor organized its school system, and what it has done all other municipalities might also do. The system is thus the work of the people themselves. The Government does not levy a single penny of a school-rate. No country in Europe had such an efficient school establishment as Prussia; but there everything begins and ends with the Government—it was purely a Government institution; it was not founded by the people; it was not managed by them, and consequently it did not confer those advantages which would have followed had the system been managed by the people, as in Canada. Here the system begins and ends with the people. No school-house can be built, no teacher employed, no rate levied, except by the concurrence of the people. It was true that it was not voluntary as to the individual, but it was certainly voluntary in regard to the municipality. Any county, city, town, or village, if it did not approve of the school system, could abolish it to-morrow. The only thing to be done in such a case would be for the municipality to decline to receive the legislative grant and to cease to levy a local rate. As to the question, how far Government should interfere in the management of such a

system, he would say, that Government should do nothing that the people could more effectually do for themselves.

Exhibits

NECESSITY FOR A UNIFORM SERIES OF TEXT BOOKS.

No. 47
Journal of
Education
for the year
1860
—continued.

The selection of text books was, however, one of those things which could not be left to the municipalities themselves without much injury, as by this means we might soon find ourselves in the same position as in one of the United States, where the late Hon. Horace Mann stated they had three hundred text books; whereas no country needed more than twenty or thirty text books.

* * * *

Extracts from issue of this journal for May, 1860.

(Page 73)

10

APPORTIONMENT OF THE LEGISLATIVE SCHOOL GRANT OF UPPER CANADA,
FOR THE YEAR 1860

*Circular to the Clerk of each County, City, Town, and Village Municipality in
Upper Canada*

SIR,—I have the honour to transmit herewith, a certified copy of the apportionment, for the current year, of the Legislative School Grant to each City, Town, Village, and Township in Upper Canada. This apportionment will be payable at this Office, to the Agent of the Treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and, together with the Auditors and Local Superintendents' Reports, 20 have been transmitted to the Department.

The statistics of school population for 1859, upon which the present year's apportionment is based, have been carefully revised and corrected in this Department. Many inequalities in the apportionment have thus been removed, and all parts of the Province share in the grant upon equal terms, and in accordance with the demands made upon each locality, for school accommodation and instruction. By this means also a more just and equitable apportionment has been made to those new and thinly settled Counties where poor schools have heretofore existed, and where the ordinary Legislative and municipal grants have not been sufficient to enable Trustees to sustain the 30 schools during the school year.

Where Separate Schools existed in 1859, the sum apportioned to the Municipality has been divided among the Common and R. C. Separate Schools therein, according to the average attendance of pupils at these Schools during that year, as reported by the Trustees. In former years it was found that to apportion to each Municipality, according to school population, and then afterwards to apportion an additional sum to the Separate Schools in such Municipality, out of the General School Grant, was unduly deducting from Municipalities in which there are no Separate Schools, and unduly adding to the apportionment of those Municipalities in which Separate Schools do exist— 40 such as Cities, Towns, and Villages. If the apportionment be increased to any Municipalities beyond the proportion of school population, it ought to

be so increased to the poorer Counties and Townships, rather than to the wealthier Cities, Towns, and Villages; for it is in these latter that Separate Schools are chiefly established.

*In the
Supreme
Court of
Ontario.*

The gross sum apportioned this year is the same as that of last year.

Exhibits

I trust that the liberality of your Council will be increased in proportion to the growing necessity and importance of providing for the sound and thorough education of all the youth of the land.

No. 47
Journal of
Education
for the year
1860
—continued.

I am, Sir, your obedient Servant,

E. RYERSON.

10 Education Office,
Toronto, 31st May, 1860.

* * * *

NOTE:—At p. 91 the following note is inserted in reference to the Consolidated Common School Act for Upper Canada, 22 Vict. Cap. 64.

“NOTE:—Sections 104 and 106 inclusive apply only to the Departmental duties of the Chief Superintendent of Education.”

* * * *

EXHIBIT 26

(Respondent's)

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1860

No. 26
Annual report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1860.
(Dated May 1861.)

20 Extract from this report.

(Page 5)

THE COMMON SCHOOLS

I. TABLE A.—RECEIPTS AND EXPENDITURES OF COMMON SCHOOL MONEYS.

Receipts.

* * * *

6. The amount received by Trustees from the Clergy Reserve Fund and various other sources, was \$106,738; increase \$30,431. This large increase in connexion with the decrease in the Municipal assessment, appears to show that the Municipalities have aided the School Sections from the Clergy Reserve moneys in their hands, in preference to levying special rates.

EXHIBIT 25

(Respondent's)

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1861

Extract from this report.

(Page 5)

THE COMMON SCHOOLS**I. TABLE A.—RECEIPTS AND EXPENDITURES OF COMMON SCHOOL MONEYS***Receipts*

* * * *

(Page 6)

6. The amount received by Trustees from the Clergy Reserve Fund and other sources, was \$130,375; being an increase of \$23,636. The large amount which the municipalities have appropriated from the Clergy Reserve Fund for school purposes, may account for the small decrease of \$608 in the municipal assessment of \$278,085.

* * * *

10

EXHIBIT 45

(Respondent's)

Common School Manual, 1861

Extract from the Manual.

(Page 151)

PART VI.—PROVISIONS OF THE LAW IN REGARD TO TEXT BOOKS**1. SUMMARY OF THE LAW.**

A summary of the provisions of the Upper Canada Consolidated Common School Act, on this subject, is as follows:

The *one hundred and twenty-eighth* section [page 112] enacts that no person shall use any *foreign books in the English branches of education*, in any Model or Common School, without the *express permission* of the Council of Public Instruction.

The *fifteenth* clause of the *seventy-ninth* section [page 80], requires trustees in cities, towns, &c., to see that all the pupils in the schools are duly supplied with a uniform series of *authorized* text-books.

20

In the
Supreme
Court of
Ontario.

Exhibits

No. 25
Annual re-
port of the
Normal,
Model,
Grammar
and Com-
mon Schools
in Upper
Canada for
the year
1861.
(Dated June
1862.)

No. 45.
Common
School
Manual,
1861.

2. UNAUTHORIZED TEXT-BOOKS—PENALTY.

If teachers employ text-books not authorized to be used in the schools, such schools are not entitled to the school fund apportioned to them, as they are not conducted according to law; nor can any foreign book be used in a school, without such school forfeiting its right to share in the school fund. The great evil in the country schools in the State of New York, is the multiplication of text-books, according to the fancy of each teacher, or his agreement with some bookseller,—parents being called upon to buy new books as often as they get new teachers,—an evil which we have studiously guarded against in Upper Canada.

*In the
Supreme
Court of
Ontario.*
Exhibits
No. 45
Common
School
Manual,
1861
—continued.

3. AMERICAN GEOGRAPHIES

The Council of Public Instruction has permitted the use of Morse's American Geography until one expressly prepared for Canada, after the same plan, could be provided. Such a one will be published this year, when the sanction of the Council of Public Instruction for the use of Morse's Geography will be withdrawn.

4. LIST OF NATIONAL AND OTHER SCHOOL BOOKS, SANCTIONED BY THE COUNCIL OF PUBLIC INSTRUCTION FOR UPPER CANADA.

- 20 First Book of Lessons.
Second ditto.
Sequel to Second Book.
Third Book of Lessons.
Fourth ditto.
Fifth ditto Boys.
Sixth, or Reading Book for Girls' School.
Introduction to the Art of Reading.
Spelling Book Superseded, by Prof. Sullivan.
English Grammar.
Key to English Grammar.
- 30 Epitome of Geographical Knowledge.
Compendium of ditto.
Geography Generalized, by Professor Sullivan.
Introduction to Geography & History, by ditto.
Sangster's First National Arithmetic.
Key to ditto.
Arithmetic, in Theory and Practice.
Sangster's National Arithmetic in the Decimal Currency.
Book-Keeping.
Key to ditto.
- 40 Elements of Geometry.
Mensuration.
Appendix to ditto.
Scripture Lessons, Old and New Testament.
Sacred Poetry.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 45
Common
School
Manual,
1861.
—continued.

Lessons on the Truth of Christianity.
Hodgins' Geography and History of the British Colonies.
Lennie's English Grammar.
Kirkham's English Grammar.
Set, Tablet Lessons, Arithmetic.
Ditto. Spelling and Reading.
Ditto. Copy Lines.
Also the National Maps, etc.

EXHIBIT 48

(Suppliants')

10

Journal of Education for the Year 1862

Extract from issue of this journal for June, 1862.

No. 48
Journal of
Education
for the year
1862.

(Page 81)

**APPORTIONMENT OF THE LEGISLATIVE SCHOOL GRANT FOR UPPER CANADA,
FOR THE YEAR 1862**

*Circular to the Clerk of each County, City, Town, and Village Municipality in
Upper Canada*

SIR,—I have the honour to transmit herewith, a certified copy of the apportionment for the current year, of the Legislative School Grant to each City, Town, Village, and Township, in Upper Canada. This apportionment will be payable at this Office, to the Agent of the Treasurer of your Municipality, on the 1st of July, provided that the School Accounts have been duly audited, and, together with the Auditor's and Local Superintendents' Reports, have been transmitted to the Department. 20

The basis of apportionment to the several Counties, Cities, Towns, Villages, and Townships for this year, is the census returns of 1861, which have been procured for that purpose by this Department from the Bureau of Statistics at Quebec. This was not the case last year so far as the townships were concerned, as the township populations had not then been made up. For this reason it will be seen that some townships receive a less apportionment and some a greater than in 1861. But by this means a more just and equitable apportionment has been made to those new and thinly settled Counties where poor schools have heretofore existed, and where the ordinary Legislative and Municipal grants have not been sufficient to enable Trustees to sustain the schools during the whole year. 30

Where Separate Schools exist, the sum apportioned to the Municipality has been divided among the Common and Roman Catholic Separate Schools therein, according to the average attendance of pupils at both classes of Schools during that year, as reported by the Trustees.

The gross sum apportioned this year is about \$3,000 more than that of last year.

I trust that the liberality of your Council will be increased in proportion to the growing necessity and importance of providing for the sound and thorough education of all the youth of the land.

I am, Sir,

Your obedient Servant,

E. RYERSON.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 48
Journal of
Education
for the year
1862
—continued

10 Education Office,
Toronto, 4th June, 1862.

* * * *

(Page 84)

SUMMARY OF APPORTIONMENT TO COUNTIES, CITIES, TOWNS, AND VILLAGES, FOR 1862

	Common Schools.	R.C. Sep. Schools.	Total.		Common Schools.	Separate Schools.	Total.
1. Glengarry.....	2243 00	191 00	2434 00	31. Oxford.....	4562 00	.....	4562 00
2. Stormont.....	1862 00	.....	1862 00	32. Waterloo.....	3242 00	141 00	3383 00
3. Dundas.....	1988 00	.....	1988 00	33. Wellington.....	4579 00	241 00	4820 00
4. Prescott.....	1498 00	136 00	1634 00	34. Grey.....	3956 00	124 00	4080 00
5. Russell.....	783 00	.....	783 00	35. Perth.....	3570 00	23 00	3593 00
6. Carleton.....	3304 00	40 00	3344 00	36. Huron.....	5452 00	26 00	5478 00
7. Grenville.....	2200 00	50 00	2250 00	37. Bruce.....	2917 00	55 00	2972 00
8. Leeds.....	3629 00	.....	3629 00	38. Middlesex.....	5319 00	57 00	5376 00
9. Lanark.....	3207 00	8 00	3215 00	39. Elgin.....	3391 00	.....	3391 00
10. Renfrew.....	2159 00	12 00	2171 00	40. Kent.....	2999 00	69 00	3068 00
11. Frontenac.....	2735 00	144 00	2879 00	41. Lambton.....	2471 00	.....	2471 00
12. Addington.....	1895 00	49 00	1944 00	42. Essex.....	2150 00	69 00	2219 00
13. Lennox.....	876 00	.....	876 00	District of Algoma..	208 00	.....	208 00
14. Prince Edward..	2117 00	43 00	2160 00				
15. Hastings.....	4090 00	41 00	4131 00		\$127175 00	\$1898 00	129073 00
16. Northumberland	3838 00	24 00	3862 00	GRAND TOTALS			
17. Durham.....	3585 00	.....	3585 00	Total Counties and			
18. Peterborough...	2216 00	26 00	2242 00	Districts.....	127175 00	1898 00	129073 00
19. Victoria.....	2423 00	.....	2423 00	" Cities.....	8468 00	3473 00	11941 00
20. Ontario.....	4236 00	.....	4236 00	" Towns.....	.....	.....	11950 00
21. York.....	6317 00	115 00	6432 00	" Villages.....	5795 00	231 00	6026 00
22. Peel.....	2831 00	28 00	2859 00		\$.....	.....	158990 00
23. Simcoe.....	4556 00	42 00	4598 00	Additional sum reserved for any Roman			
24. Halton.....	2349 00	.....	2349 00	Catholic Separate Schools which may			\$510 00
25. Wentworth.....	3303 00	24 00	3327 00	be established in 1862.....			
26. Brant.....	2368 00	.....	2368 00				\$159500 00
27. Lincoln.....	2141 00	62 00	2203 00				
28. Welland.....	2244 00	.....	2244 00				
29. Haldimand.....	2315 00	39 00	2354 00				
30. Norfolk.....	3051 00	19 00	3070 00				

NOTE.—The School Moneys apportioned to the various Counties, Cities, Towns, and Villages, as per the foregoing statement, are payable to the Toronto agents of the local treasurers, on the first day of July next. Wherever the apportionment is withheld, it is owing to omission or neglect on the part of the local school authorities to comply with the school law, and to transmit to the Educational Department the necessary reports or audited returns—blank forms of which were furnished from the Department early in the year.

EXHIBIT 27

(Respondent's)

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1862

Extract from this report.

(Page 6)

THE COMMON SCHOOLS**I. TABLE A.—RECEIPTS AND EXPENDITURES OF COMMON SCHOOL MONEYS***Receipts*

* * * *

6. The amount received from the Clergy Reserve Fund and other sources was \$112,524; decrease, \$17,851. 10

* * * *

EXHIBIT 5A

(Suppliants')

Appendix H to Separate School Manual of 1863**APPENDIX H****ORDER AND CLASSIFICATION OF STUDIES PRESCRIBED FOR THE COMMON SCHOOLS IN UPPER CANADA, AS OBSERVED IN THE UPPER CANADA MODEL SCHOOL, TORONTO, AND APPLICABLE TO ROMAN****CATHOLIC SEPARATE SCHOOLS***(Adopted by the Council of Public Instruction.)***(1) Table defining the course to be completed in the First, or Lowest, Division 20**

Enunciation.—To be able to enunciate clearly and distinctly the element any sounds of the English language.

Spelling and Definition.—To be able to spell any word in the First and Second Book of Lessons, and to give the meaning in familiar terms.

Reading.—To be able to read fluently and well any passage contained in the First and Second Books of Lessons, and to know the substance of such lessons.

Writing.—To be able to form correctly and legibly all the letters of the alphabet, and combine them into simple words.

Arithmetic.—To be able to read and write any combination of not more 30 than FIVE Arabic numerals, and the Roman numerals to the sign for 500; to know the Multiplication Table, and the Tables of Money, Weights, Length,

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 27
Annual re-
port of the
Normal,
Model,
Grammar
and Com-
mon Schools
in Upper
Canada for
the year
1862.
(Dated July
1863.)

No. 5A
Appendix H
to separate
school man-
ual of 1863.

and Time; to be familiarly acquainted with Simple Addition, Subtraction, Multiplication, and Division by factors.

Grammar.—To be able to point out the Nouns, Pronouns, Adjectives, Verbs, and Adverbs in any common reading lesson; to know the number, gender, and person of the nouns and pronouns.

Geography—To know the map of the World, map of America, map of Canada, and other parts of British America.

Natural History, Object Lessons.—To have a familiar acquaintance with the habits, uses, instincts, &c., of the most important animals of each class.
10 Other Object Lessons may be used.

Needle-work (for girls.)—Under the direction of the female teacher.

(2) *Table defining the course of Study to be completed in the*Second Division*

Reading.—To be able to read fluently and well any passage contained in the Sequel to the Second Book, or in the Third Book of Lessons, and to know the substance of such Reading Lesson.

Spelling and Definition.—To be able to spell and define any word contained in the Sequel and Third Book of Lessons.

Writing.—To be able to write legibly and correctly.

Arithmetic.—To be able to read and write legibly any combination of not
20 more than TEN Arabic numerals to the *left*, and six to the *right*, of the decimal point, and the Roman numerals to the sign for 1,000; to be acquainted with the principles of Arabic and Roman Notation; to be thoroughly acquainted with the Arithmetical Tables, and to be familiar and practically acquainted with the Simple and Compound Rules, Reduction, Greatest Common Measure, Least Common Multiple, Vulgar Fractions, and Simple Proportion, including Addition, Subtraction, Multiplication, and Division of Decimals and Decimal Currency.

Grammar.—To be thoroughly acquainted with the grammatical forms, and be able to analyse and parse any easy sentence; and, as an exercise in
30 slate composition, to be able to write short descriptions of any natural objects.

Geography.—In addition to former limit table, to know the political and physical geography of Europe, Asia, Africa, and America, and Oceania, the different countries in each, with their capitals; and to know the position and chief cities in the states of the American Union bordering on British America, from the Pacific to the Atlantic Ocean.

History.—To have a general knowledge of the History of the World, as given in the Fifth Book.

Human Physiology.—As contained in the Fifth Book.

Needle work (for girls)—Under the direction of the female teacher.

40 (3) *Table defining the course of Study to be completed in the Third Division*

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 5A
Appendix H
to separate
school man-
ual of 1863
—continued.

In the
Supreme
Court of
Ontario.

Exhibits
No. 5A
Appendix H
to separate
school man-
ual of 1863
—continued.

Reading.—Fourth and Fifth Books, in same manner as other books are used in lower Divisions.

Derivation.—Reading Books and Spelling Book Superseded.

Writing.—Text, and bold running hand.

Arithmetic Second Book of Arithmetic (National Series.)

Grammar.—Analysis and parsing of Compound sentences in prose and verse; changes in construction, &c., composition.

Geography.—Mathematical, Physical, and Political, with map sketching on the blackboard.

Algebra.—(Colenso's) Part I.

10

Euclid.—First six books.

Mensuration.—Of Surfaces and Solids.

Drawing.—Linear and map.

English Literature.—Spalding.

Book-keeping.—Elements.

Human Physiology.—To possess a familiar acquaintance with the anatomy of the bones and skin, a general knowledge of the structure and uses of the muscles and organs of digestion, and to be familiar with the general principles upon which the healthy action and development of these various organs depend; circulation, respiration, nervous systems, senses, &c.

20

History.—General, English, and Canadian.

Singing.—Hullah's Vocal Music.

Natural Philosophy.—In the Fifth Book of Lessons.

Needle-work (for girls)—Under the direction of the female teacher.

BOYS:

*Trigonometry.

*Elements of Geology.

* Do Zoology.

* Do Botany.

* Do Natural Philosophy.

GIRLS:

*Science of things familiar.

*Elements of Geology.

* Do Zoology.

* Do Botany.

*Domestic Economy.

30

*Extra subjects, to be taken up at the discretion of the school authorities, no two, however, during the same school term.

No. 46
The law of
1863 relating
to Roman
Catholic
Separate
Schools in
Upper
Canada.

EXHIBIT 46

(Respondent's)

The Law of 1863 Relating to Roman Catholic Separate Schools in Upper Canada

(Not printed).

NOTE: This Exhibit contains Appendix H filed as exhibit 5A

EXHIBIT 13

(Suppliants')

Annual Report of the Normal, Model, Grammar and Common Schools in Upper Canada for the Year 1863*In the
Supreme
Court of
Ontario.*

Exhibits

No. 13
Annual report of the Normal, Model, Grammar and Common Schools in Upper Canada for the year 1863 (Dated July 1864.)

Extract from this Report.

(Page 5)

THE COMMON SCHOOLS**I. TABLE A.—RECEIPTS AND EXPENDITURES OF COMMON SCHOOL MONEYS***Receipts.*

* * * *

10 (Page 6)

6. The amount received from the Clergy Reserve Fund and other sources was \$108,467; decrease, \$4056.

NOTE:—A further extract from this Report appears at pages 102 and 103 of the Record.

* * * *

(Pages 34, 35)—Table B—Branches of Instructions. (Not printed.)

* * * *

(Pages 44, 45)—Table F—Branches of Instruction in Separate Schools. (Not printed).

EXHIBIT 28

(Respondent's)

Duplicate of Exhibit 13

(Not printed)

No. 28
Duplicate of Exhibit 13 (not printed)

20

EXHIBIT 34

(Respondent's)

Trustees' School Manual 1864

(Not printed).

No. 34
Trustees' School manual 1864**EXHIBIT 39**

(Suppliants')

Journal of Education for Upper Canada for the Year 1864

NOTE: An extract from this Journal appears at p. 165, 1.43 of the Record.

No. 39
Journal of Education for Upper Canada for the year 1864.

EXHIBIT 37

(Suppliants')

Journal of Education for Upper Canada for the Year 1865

Extracts from issue of this Journal for September, 1865.

(Page 132)

4. EXPLANATORY REMARKS ON THE NEW GRAMMAR

SCHOOL ACT.

1. The 1st *Section* of this Act is designed to harmonize the Grammar and Common School systems in cities. At present the County Council appoints all the trustees of Grammar Schools in the cities, and otherwise exercises exclusive municipal control over the school—although it is, to all intents and purposes, a city school, and is often aided from city funds. In regard to Common Schools, the city has the entire control of them. 10

* * * *

5. The union of Grammar and Common Schools referred to in the 5th *Section*, does not, as a general rule, work well, nor is it desirable to encourage such unions. Experience has proved that the tendency of these unions is to impair the efficiency and lower the standard of both kinds of schools to a uniform level. The old law, passed in 1855, provided for the union of Grammar and Common Schools in rather a loose way, but did not provide for the dissolution of the union, nor for a division of the property, although, in many cases, such a dissolution was desired by the trustees. The old law also provided for the reduction of the number of Common School trustees, *after election*, from 8 to 6 on the joint Board, while it left the full number of 8 Grammar School trustees appointed by the County Council. 20

6. The principle embodied in the 6th *Section*, is in harmony, though in a modified degree, with that of the Common School law which declares that each municipality receiving a share of the Legislative School Grant shall contribute an amount *equal* to the aid received. In this Act only *one half* of the amount granted is required as a condition of receiving aid. The Act does not declare that a municipal rate for this sum *shall* be levied. The amount may be contributed from the Clergy Reserve Fund, or from any other source, or from the general funds of the municipality. If a rate be imposed, however, it is not required that it shall be levied on the entire county, but it may be levied on the town, village, or township in which the Grammar School is situated. 30

7. The 7th *Section* is intended to remove a gross anomaly in the present system of apportioning the Grammar School fund—a relic of the old law of

1806-8—which gave to the Senior County Grammar School *more* than to the junior schools, unless the average daily attendance should fall below 10 pupils—although every one of these schools may be vastly superior to the senior school of the county. This section of the Act reduces the system of apportioning the Grammar School fund to a simple and equitable principle of aiding each school according to its work. The application of this principle to the Common Schools in the rural sections has given them a much greater impulse forward than the old mode of apportionment on the basis of school population, or length of time during which they might be kept open, whether the work was done or not. It has also induced the trustees to keep the school open one or two months longer in the year than formerly. Then, as to the basis of apportionment itself, the subjects of teaching in a Grammar School were designed to differ from those in a Common School. Grammar Schools are intended to be intermediate between Common Schools and universities. The Common School law amply provides for giving the best kind of a superior English education in *High Schools*, in the cities, towns, and villages, with primary ward schools as feeders (as in Hamilton); while to allow Grammar Schools to do Common School work, is a misapplication of Grammar School funds to Common School purposes; Common Schools are already adequately provided for. By the law of 1807, and subsequently, the number of classical pupils was fixed at 20, and afterwards at 10. In our regulations we take the latter number.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 37
Journal of
Education
for Upper
Canada for
the year
1865

—continued.

* * * *

NOTE: Extracts from this Exhibit appear at p. 162, l. 40 to p. 163, l. 17 of the Record.

EXHIBIT 56

(Respondent's)

Documentary History of Education in Upper Canada, 1865-67

No. 56
Documentary
History
of Educa-
tion in
Upper
Canada,
1865-67.

Extract from this volume.

30 (Page 9)

V. APPOINTMENT OF THE REVEREND G. P. YOUNG AS INSPECTOR OF SEPARATE SCHOOLS

I hereby appoint and authorize you to visit and inspect the Roman Catholic Separate Schools in Upper Canada, as authorized by the 26th Section of the Separate School Act of 1863, which provides that,—

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 56

Documen-
tary History
of Educa-
tion in
Upper
Canada,
1865-1866.
—continued.

The Roman Catholic Separate Schools (with their Registers), shall be subject to such inspection as may be directed, from time to time, by the Chief Superintendent of Education, and shall be subject also to such Regulations as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada.

The Regulations in regard to Separate Schools are the same as those in regard to Common Schools; and I desire you to visit the Separate Schools, (in the course of your half-yearly tours of inspection of the Grammar Schools,) and also, as far as you may think necessary, what the law requires local Superintendents to do in visiting Common Schools, namely, to examine the state and condition of each School, the progress of the Pupils in learning, the order and discipline observed, the system of instruction pursued, the mode of keeping the Registers, the average attendance of Pupils, and the character and condition of the Building and premises, and to report the result of your inspection to this Department. 10

TORONTO, April 28th, 1865.

EGERTON RYERSON.

NOTE: Further extracts from this Exhibit are read into the Record at p. 150, l. 4 to p. 152, l. 34; p. 154, l. 26, to p. 160, l. 10.

EXHIBIT 33

(Respondent's)

Grammar School Manual, 1866

(Page 32)

REVISED PROGRAMME OF STUDIES, AND GENERAL RULES AND REGULATIONS FOR THE GOVERNMENT OF GRAMMAR SCHOOLS IN UPPER CANADA

Prescribed by the Council of Public Instruction, under the authority of the Consolidated Grammar School Act, and of the Grammar School Improvement Act of 1865. Approved by His Excellency the Administrator of the Government in Council, November, 1865.

PREFATORY EXPLANATION

The twelfth section of the Upper Canada Consolidated Grammar School Act requires that, "In each County Grammar School provision shall be made for giving, by a teacher or teachers of competent ability and good morals, instruction in all the higher branches of a practical English and commercial education, including the Elements of Natural Philosophy and Mechanics, and

No. 33
Grammar
School
Manual,
1866.

20

30

also in the Greek and Latin languages, and Mathematics, so far as to prepare students for University College, or for any College affiliated to the University of Toronto,—according to a Programme of Studies, and General Rules and Regulations, to be prescribed by the Council of Public Instruction for Upper Canada, and approved by the Governor General in Council. And no Grammar School shall be entitled to receive any part of the Grammar School Fund, which is not conducted according to such Programme, Rules and Regulations.” In the seventh clause of the twenty-fifth section of the Act (after providing for the union of the Grammar and one or more Common Schools in any Municipality) it is provided that “no such union shall take place without ample provision being made for giving instruction to the pupils in the elementary English branches, by duly qualified English teachers.”

*In the
Supreme
Court of
Ontario.*
Exhibits
No. 33
Grammar
School
Manual,
1866
—continued.

2. From these provisions of the law, it is clearly the object and function of Grammar Schools, not to teach the elementary branches of English, but to teach the higher branches alone, and especially to teach the subjects necessary for matriculation into the University. With a view to the promotion of these objects, and for the greater efficiency of the Grammar Schools, the Council of Public Instruction for Upper Canada, after mature deliberation, have adopted the following Regulations, which, according to the twelfth section, and the eighth clause of the twenty-fifth section of the Consolidated Grammar School Act, 22 Victoria, chapter 63, are binding upon all Boards of Trustees and officers of Grammar Schools throughout Upper Canada, with the exception of the Regulation in Section VIII. [page 40], which is discretionary with the Head Master and Trustees.

SECTION I.—BASIS AND CONDITIONS OF APPORTIONMENT OF THE GRAMMAR SCHOOL FUND.

1. The Seventh Section of the Act for the further improvement of Grammar Schools provides as follows:—“The apportionment of the Grammar School Fund, payable half-yearly to the Grammar Schools, shall be made to each School conducted according to law, upon the basis of the daily average attendance at such Grammar School of pupils in the Programme of Studies prescribed according to law for Grammar Schools; such attendance shall be certified by the Head Master and Trustees, and verified by the Inspector of Grammar Schools.

2. After the first day of January, 1866, no Grammar School shall be entitled to receive any thing from the Grammar School Fund, unless suitable accommodations shall be provided for it, and unless it shall have a daily average attendance (times of epidemic excepted) of at least ten pupils learning Greek or Latin; nor shall any other than pupils who have passed the preliminary and final entrance examinations, and are pursuing the yearly subjects of one of the two courses of Studies prescribed in the Programme, be admitted or continued in any Grammar School.

SECTION II.—ADMISSION OF PUPILS STUDYING GREEK AND LATIN INTO
THE GRAMMAR SCHOOLS.

*In the
Supreme
Court of
Ontario.*

Exhibits
No. 33
Grammar
School
Manual,
1866
—continued.

1. The examinations and admission of pupils by the Head Master of any Grammar School, shall be regarded as preliminary and provisional until the visit of the Inspector, who shall finally examine and admit all pupils to the Grammar Schools.

2. The regular periods for the admission of pupils commencing classical studies, shall be immediately after the Christmas and after the Summer Vacations; but the admission of those pupils who have already commenced the study of the Latin language, may take place at the commencement of each Term. The preliminary examinations for the admission of pupils shall be conducted by the Head Master; as also examinations for such Scholarships, Exhibitions and Prizes as may have been instituted by Municipal Councils as authorized by law, or by other corporate bodies, or by private individuals. But the Board of Trustees may, if they shall think proper, associate other persons with the Head Master in the examinations for such Scholarships, Exhibitions or Prizes. 10

3. Pupils in order to be admitted to the Grammar School, must be able
1. To read intelligibly a passage from any common reading book. 2. To spell
correctly the words of an ordinary sentence. 3. To write a fair hand. 4. 20
To work questions in the four simple rules of arithmetic. 5. Must know
the rudiments of English Grammar, so as to be able to parse any easy sentence.

4. To afford every possible facility for learning French, girls may, at the option of the Trustees, be admitted to any Grammar School on passing the preliminary and final entrance examinations required for the admission of boys. Girls thus admitted will take French (and not Latin or Greek) and the English subjects of the classical course for boys; but they are not to be returned or recognized as pupils pursuing either of the prescribed Programmes of Studies for the Grammar Schools.

SECTION III.—PROGRAMME OF STUDIES FOR CLASSICAL PUPILS IN THE GRAMMAR SCHOOLS OF UPPER CANADA.

Class.	I. Latin.	II. Greek.	III. French.	IV. English.	V. Arithmetic and Mathematics.	VI. Geography and History.	VII. Physical Science.	VIII. Miscellaneous
FIRST, OR LOWEST.	Latin Grammar commenced. Arnold's 1st Latin Book.	None.	None.	Elements of English Grammar Reading	Arithmetic. Revise the four simple rules. Reduction and Decimal Currency. Begin simple Proportion.	Outlines of Geography.	None.	Writing. Drawing. Vocal Music.
SECOND.	Latin Grammar continued. Arnold's 2nd Latin Book. Caesar commenced	Greek Grammar commenced. Harkness' Arnold.	None.	and Spelling.	Arithmetic. Revise previous work. Simple Proportion. Vulgar and Decimal Fractions. *Algebra. First four rules.	English History. Modern and Ancient Geography	None.	Writing. Drawing. Vocal Music.
THIRD.	Caesar continued. Virgil. Aenid, B. II commenced. Latin Prose Composition. Prosody commenced.	Greek Grammar continued. Harkness continued. Lucian. Charon.	Grammar and Exercises (DeFivias').	Grammar. Elements of Composition.	Arithmetic continued. Algebra. Fractions. Greatest Common Measure & Least Common Multiple. Simple Equation. †Euclid, B. I.	English History continued. Ancient History. Modern and Ancient Geography	Elements of Natural History	Drawing. Vocal Music.
FOURTH.	Virgil. Aenid. B. II. completed. Livy. B. II., ch. 1 to 15 inclusive. Latin Prose Composition. Prosody continued.	Lucian. Life. Xenophon. Anabasis, B. I. ch. 7, 8. Homer. Iliad, B. I.	Grammar and Exercises contin'd. Voltaire. Charles XII, B. I., II., III.	Grammar. Composition. Christian Morals	*Algebra. Involutions and Evolutions. Theory of Indices and Surds. Equations, Simple, Quadratic, and Indeterminate. †Euclid. Bb. I. II.	English History continued. History of Canada Ancient Geography and History	Elements of Natural Philosophy and Geology.	Drawing. Vocal Music. Bookkeeping including a knowledge of commercial Transactions.
FIFTH.	Cicero (for the Manilian law.) Ovid. Heroides, I. and XIII. Horace. Odes, B. I. Composition in Prose and Verse	Xenophon. Anabasis, B. I, ch. 9, 10. Homer. Odyssey, B. IX. Previous subjects reviewed.	Corneille. Horace, Act IV. Review of previous subjects.	and Elements of Civil Government.	*Algebra, Progression and Proportion, with revival of previous work. †Euclid, Bb. III., IV.	Previous subjects Reviewed.	Elements of Physiology and Chemistry.	Drawing. Vocal Music. Telegraphy

Explanatory Memoranda to the foregoing Programme.

1. The above Programme is to be regarded as the model upon which each school is to be organized, as far as practicable, and no departure from it can be allowed, unless sanctioned by the Council of Public Instruction, on the recommendation of the Inspector.
2. Pupils shall be arranged in classes corresponding to their respective degrees of proficiency. There may be two or more divisions in each class; and each pupil shall be advanced from one class or division to another, according to attainments in scholarship, without reference to time.
3. Vocal Music and Telegraphy are optional.

*Todhunter's or Sangeter's.

†Potts' or Todhunter's.

SECTION IV.—ENTRANCE EXAMINATION AND PROGRAMME OF STUDIES FOR PUPILS NOT INTENDING TO STUDY GREEK OR LATIN.

1. Pupils desiring to become Surveyors, or to study for matriculation in the University of Toronto as students of Civil Engineering, or to study the higher English branches and French without taking Greek or Latin, must have obtained, before entering the Grammar School, such an acquaintance with the English branches as may be got in good Common Schools. Such pupils, before admission to the Grammar School, must pass an entrance examination in the following subjects:—

Arithmetic.—Proportion, with Vulgar and Decimal Fractions. (To be 10 thoroughly understood.)

Geography.—An accurate knowledge of General Geography.

English Grammar.—The analysis and parsing of ordinary sentences.

2. The preliminary entrance examination to be conducted in the same way as that prescribed for other Grammar School pupils, and to have only a temporary force until the candidates for entrance are examined and finally admitted by the Inspector.

3. The course of study for pupils of the above classes to be as follows:

First Year.

Arithmetic, from Fractions to end of the book. 20
Algebra, to the end of Simple Equations.
Euclid, Books I., II., III., IV., with definitions of Book V.
Elements of Natural History (including Botany) and Physiology.
French Grammar and Exercises.
Voltaire's *Histoire de Charles XII*, Books I., II.
Outlines of British History to the present time.
English Grammar and Composition.
Drawing from Copy.
Book-keeping, including a knowledge of Commercial Transactions.
Telegraphy (if desired). 30

Second Year.

Algebra continued.
Euclid, Book VI....
Elements of Chemistry and Natural Philosophy.
*Nature and use of Logarithms.
*Plane Trigonometry, as far as the solution of Plane Triangles.
French Grammar and Exercises, continued.
Voltaire's *Histoire de Charles XII.*, Book III.

Corneille's Horace, Act IV.
 Geography reviewed, and Map Drawing on the Black-board.
 History of Canada and of other British North American Provinces.
 English Composition.
 Christian Morals, and Elements of Civil Government.

In the
 Supreme
 Court of
 Ontario.
 Exhibits
 No. 33
 Grammar
 School
 Manual,
 1866
 —continued.

*These subjects to be optional in the case of boys not preparing for surveying or matriculation in the University in Civil Engineering.

* * * *

NOTE: Further extracts from this Exhibit are read into the Record at p. 150, l. 4, to p. 152, l. 34; p. 154, l. 26, to p. 160, l. 10.

10

EXHIBIT 38

(Suppliants')

Journal of Education for Upper Canada, for the year 1867

Extracts from issue of this Journal for May, 1867.

No. 38
 Journal of
 Education
 for Upper
 Canada for
 the year
 1867.

(Page 81)—1. Grammar School attendance and apportionment.

* * * *

20 And according to the best opinions any course of studies which would attempt to be equally excellent for the higher education of both boys and girls, would be simply worthless for either. This opinion is firmly held, and was recently strongly expressed by distinguished American educationists at a late re-opening of the excellent Rutgers' Female College in New York. It therefore becomes advisable to discourage the present unusual attendance of girls at the grammar schools.

30 But it is often urged that "if our girls do not go to the grammar school there is no other provision made for their receiving an advanced education in our public schools. This is a mistake. The Consolidated Common School Act, section 79, sub-section 8, authorizes the Common School Trustees of every city, town and incorporated village "to determine (a) the number, sites, kind and description of schools to be established and maintained in the city, town or village [whether they be high schools for boys or girls, or infant schools, etc.]; also (b) the teacher or teachers to be employed; the terms of employing them; the amount of their remuneration, and the duties which they are to perform." There is thus every legal facility for the establishment of high schools for girls throughout the country, and it is in such institutions that those pupils ought to find the means of prosecuting the advanced studies which they

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 38
Journal of
Education
for Upper
Canada for
the year
1867

—continued.

now seek in the grammar schools, and which if they find there, it is at the expense of not employing their time to the best advantage, and of studying some subjects which are of very little use to them.

* * * *

(Page 82)

2. CHIEF SUPERINTENDENT'S REMARKS ON THE GRAMMAR SCHOOLS.

In the Appendix will be found the report of the Rev. G. P. Young, A.M., the Inspector of Grammar Schools. Mr. Young's Report furnishes a practical illustration of the great benefit of his inspection of the Grammar Schools, and of the salutary change and improvement which the amended Act in connection with such inspection is calculated to effect in the character and operations of the schools. It is to be hoped that this report will be carefully read by every Grammar and Common School Trustee and Teacher throughout Upper Canada. I think every one who reads it must be impressed with the following facts. 10

1. That the union of Common and Grammar Schools is, as a general rule, an evil to both. The provisions of the law permitting the union of Grammar Schools, arose from the absence of any other means to provide for the support of Grammar Schools. That reason no longer exists, at least to the extent that it has done in past years, as the Grammar School Amendment Act requires that a sum equal, at least, to half the Grammar School apportionment shall be provided from local sources, (besides proper school-house accommodations), for the salaries of teachers. Sufficient time has not yet elapsed to develop the results of these provisions of the law. But it is easy to see from the Inspector's report, that the efficiency of both the Grammar and Common School is greatly impaired by the union of the two. I hope the facts and remarks of this document will impress local Boards of Trustees, and Municipal Councils with the great advantage of having the Grammar and Common Schools under different masterhips and otherwise separate—whether under the management of the same Board or not—each exclusively pursuing its respective and appropriate work. 20 30

* * * *

NOTE: Extracts from this Exhibit appear at p. 163, l. 33 to p. 164, l. 40 of the Record.

No. 14
Annual report of the Normal, Model, Grammar and Common Schools in Ontario for the year 1867. (Dated 16th September, 1868.)

EXHIBIT 14

(Suppliants')

Annual Report of the Normal, Model, Grammar and Common Schools in Ontario, for the Year 1867

(pp. 88, 89)—Table B—Branches of Instruction.—(Not printed).

NOTE: A summary of the statistics contained in Tables B and F of this Report is given at p. 105, l. 6 of the Record. 40

EXHIBIT 24

(Suppliants')

Journal of Education for Ontario, for the year 1868.

Extract from issue of this Journal for June, 1868.

(Page 84)

CIRCULAR TO THE CHAIRMAN OF EACH BOARD OF GRAMMAR SCHOOL TRUSTEES:

* * * *

I regret to observe that the evil of inducing girls to enter the Grammar Schools, with the apparant object of unduly swelling the number of pupils, has not diminished but has increased, although there are still several schools which are not open to this reproach. It therefore becomes the duty of the Department, in its administration of the law to take care that no encouragement is offered to a course of action which is contrary to the intention of the Grammar School Law and Regulations, and injurious to the best interests of the schools and pupils.

The law invests School Trustees with ample powers for the establishment and maintenance of schools or departments of schools in which girls, who have passed through the elementary Common School studies, may obtain that higher culture and instruction which they may require. But the organization and studies of the Grammar Schools are not adapted for mixed classes of grown up girls and boys, nor is it desirable that such mixed classes should exist.

The matter is of so serious an aspect, that I felt it my duty to consult the Principal Law Officer of the Crown in this Province as to the proper interpretation of the law, and the following is the opinion he has given:—"My interpretation of the Grammar School Act in relation to the question submitted by you is that boys alone should be admitted to those schools, and that consequently, the Grammar School Fund was intended for the classical, mathematical, and higher English education of boys."

It therefore became my duty, as thus instructed, to apportion the grant of 1868 on the basis of the boys' attendance. From this cause, as well as from the usual fluctuations in the attendance, the grants to some of the schools are necessarily diminished, while in other cases they are increased this year. But where large reductions were thus required in certain apportionments as compared with those of the preceding year, the operation of the law has been rendered as favourable as possible to the schools and individuals concerned.

* * * *

I have the honour to be, Sir,
Your obedient servant,
E. RYERSON,

EDUCATION OFFICE,
Toronto, May, 1868

NOTE: Extracts from this Exhibit are read into the Record at pages 134 and 135 of the Record.

In the
Supreme
Court of
Ontario.

Exhibits

No. 24
Journal of
Education
for Ontario,
for the year
1868.

PART EXHIBIT 31

(Respondent's)

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Extracts
from argu-
ment of Hon.
E. B. Wood
before the
arbitrators
undr the
B.N.A. Act.

Extracts from Argument of Hon. E. B. Wood before the Arbitrators under the B.N.A. Act

Common School Fund and Upper Canada Land Improvement Fund.

Mr. Wood then took up the question of the Common School Fund, and Upper Canada Improvement Fund, and said that in the Public Lands Act, passed in 1853, the fourteenth section made provision for the establishment of Upper Canada Land Improvement Fund. The substance of this section will be found in the Consolidated Statutes of Canada, chap. 26, sec. 7, p. 303, entitled "An Act respecting the Public School Lands and Fund for Education." By reference to the first section of this chapter, it will be observed that under the authority of 12 Vic. chap. 200, a million acres of the waste lands of the Crown were set apart for the establishment of a Common School Fund. These lands were situate chiefly in what now constitutes the counties of Huron, Bruce and Grey. At that time they were emphatically waste lands of the Crown, far removed from the settled portions of the Province, without roads, or any but the most difficult means of access. The settlement of the wild lands of the Crown proceeded slowly. The school lands were held at \$2.50 per acre, and the Crown lands at \$2 per acre. The county called loudly for such encouragement to be afforded by the Government of the day as to induce persons to take up and settle these lands—pointing out that the greatest obstacle to settlement, was the want of roads and bridges, and such other local improvements are were indispensable in an unbroken wilderness. Under these circumstances, the Government of the day adopted a vigorous policy with respect of the actual settlement of the wild lands of the country. And in pursuance of this policy, the then Commissioner of Crown Lands, Dr. Rolph, made the following report to the committee of the Executive Council:—

"MEMORANDUM"

"The Commissioner of Crown Lands respectfully submits that in order to facilitate the settlement of the counties of Bruce and Grey, the school lands be reduced from 12s. 6d. to 10s. currency per acre, payable by annual instalments in ten years with interest. That all future sales in the said counties, shall be on the following terms, viz:—That there shall be actual and immediate and continuous settlement during five years; that there shall be cleared annually within the first five years, five acres upon each and every lot of one hundred acres (or fifty acres free grant, as the case may be), with a dwelling house built eighteen feet by twenty-six feet upon each lot; that the occupant shall neither sell nor cut, nor permit any person whatsoever, to sell or cut, any of the growing wood upon the said parcel of land, excepting for the clearance of the land, for his fuel, and for the building and fences he may erect upon the same, until the same lot is paid for and patented; that until paid for and patented, all wood cut for other objects on the same parcel of land, shall

be deemed to have been cut by the occupant, and may be taken and carried away by any person duly authorized by the Government to that effect, without any formality whatever; that when the land has been paid for and patented, the timber, though owned by the patentee, shall be held liable without any claim for remuneration by the purchaser, or those claiming by or through him, to any dues the Legislature may please hereafter to impose on timber generally.

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Extracts
from argu-
ment of Hon.
E. B. Wood
before the
arbitrators
under the
B.N.A. Act
—continued.

10 "That on default of the occupant to fulfil and observe any of the conditions above specified, the Commissioner of Crown Lands, his successor in office, or any other officer duly authorized, may, on behalf of the Crown, re-enter and take back the said parcel of land without institution of legal proceedings therefor, or otherwise eject therefrom the occupant, his heirs and assigns, or other persons and possessions, and dispose of the same as to the competent authorities shall seem meet.

"That the regulations necessary to carry out and ensure the details of such actual and bona fide settlement, be established and enforced by the Commissioner of Crown Lands for the time being.

"That application be made to the Legislature to allow 2s. 6d. per acre of the purchase money to be expended on the local roads and harbours, and that no deed issue until the terms of settlement and payment are fulfilled.

20

(Signed), JOHN ROLPH,

3rd July, 1852."

"ORDER IN COUNCIL, 7TH JULY, 1870"

Upon which an order in Council was passed in these words:—

30 "Upon the memorandum submitted by the Commissioner of Crown Lands, relative to the School Lands in the Counties of Grey and Bruce, the Committee of Council recommend the reduction in price from 12s. 6d. to 10s. an acre, as suggested, be approved, and that the regulations laid down in the said Report be adopted; and further, that a measure be submitted to Parliament to authorize the expenditure of the sum equal to 2s. 6d. an acre of the purchase money on the improvement of the roads and harbours within the said Counties; and the Committee further recommend that not more than 200 acres be sold to any one individual except upon special recommendation of the Commissioner of Crown Lands, approved of by His Excellency in Council.

"(Signed)

"W. A. HIMSWORTH.

"To the Honorable the Commissioner of Crown Lands."

40 These documents show that the policy of the Government was intended to foster and promote actual settlement, by reducing the price of School Lands from \$2.50 to \$2 and those of the Crown from \$2 to \$1.75, and by authorizing "the expenditure of the sum equal to fifty cents an acre of the purchase money on the improvement of the roads and harbours within the said counties." In pursuance of the policy indicated by this report of the

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Extracts
from argu-
ment of Hon.
E. B. Wood
before the
arbitrators
under the
B.N.A. Act.
—continued.

Commissioner, and order in Council thereon made, in the month of July, 1852, at the following Session of the Legislature the Government introduced and asked through Parliament the Act entitled, "An Act to amend the law for the "sale and the settlement of the public lands," 16 Vic., c. 159, and in the fourteenth section of that is contained the provision for appropriating one-quarter and one-fifth respectively of the proceeds arising from the sales of School and Crown Lands respectively for local public improvements within the respective Counties in which the lands were situate. This is the origin and reason for the establishment of what is called in the public documents and public accounts of the country "The Upper Canada Land Improvement 10
"Fund." In further pursuance of the policy of the Government, inaugurated in the month of July, 1852, new regulations were adopted in respect of the sale of School and Crown Lands, the principal points of which were:—

1. Payment down of one-tenth of the purchase money at two dollars per acre.

2. Purchaser to enter immediately and occupy the land continuously, clear not less than five acres for every one hundred acres, build a dwelling house not less than 18 x 20 feet.

3. Purchaser not to cut timber except for clearing and necessary purposes of building, &c., until the lands were patented. 20

4. Purchaser not to transfer the contract for purchase or sale without the written consent of the Commissioner of Crown Lands.

Following out the same policy, the Government, in an Order in Council, dated 27th of February, 1855, referred to the "Upper Canada Land Improve-
"ment Fund," as being established under The Lands Act, 16 Vic., cap. 159, and ordered certain expenditure to be made at that time out of the Fund. And in another Order in Council, dated on the 27th March, further assumed the existence and availability of that Fund. All the agents of Crown Lands, and Government officials connected with the survey and sale of the School and Crown Lands, informed all persons of the existence of this Fund, and the 30
great advantage therefrom arising to actual settlers. From the discussions which had taken place in the House on the passing of The Public Lands Act, The official announcement made by the Government of their policy, distinctly mentioning and emphasizing the great inducement held out to immigrants and others seeking lands for actual settlement and occupation, by the reservation for their own benefit of one-fourth and one-fifth of the proceeds of the purchase money of School and Crown Lands, the comments made upon, and the notice taken of, these encouragements by the press from one end of the land to the other, and by the admitted existence of the Fund by Order in Council and the actual expenditure of money out of it as early as the forepart 40
of 1855, by the public books of the Department, prepared and printed with the heading "Road Improvement Fund"—"Statements of the amounts available for public improvements on the sale of Crown, Grammar School, and Crown Lands under 16 Vic., cap. 159, sec. 14,"—The good faith of the Government was pledged as positively, and emphatically, as it could be, to all who should brave the hardships of settling in these back regions, that of all the money they should pay for their lands, $\frac{1}{4}$ and $\frac{1}{5}$ respectively of School and Crown

Lands should be reserved and expended in their respective localities in making local public improvements.

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Extracts
from argu-
ment of Hon.
E. B. Wood
before the
arbitrators
under the
B.N.A. Act.
—continued.

10 What I contend for now is this, that the Government is bound to keep good faith with these men, who, whilst this state of things existed, went in there and purchased these lands on the terms and conditions I have mentioned—that is, all lands sold from the passing of the Act, on the fourteenth of June, 1853, to the Order in Council doing away with the Fund on the sixth of March, 1861. For all lands sold during that period, one-quarter of the proceeds of the School Lands and one-fifth of the proceeds of the Crown Lands must be given
20 to this Fund for the benefit of those settlers. Down to the sixth March, 1861, the Government have paid over, in accordance with the law, all the money the purchasers were entitled to under this Act; but the money paid in at Quebec and Ottawa from the sixth of March, 1861, to the first of July, 1867, on lands sold prior to the sixth of March, 1861, and after the passing of the Act on the fourteenth of June, 1853, has never been paid over to the Improvement Fund, as I contend it should have been. I do not claim any thing for lands sold after the sixth of March, 1861,—only for lands sold whilst the scheme existed. Now, from 1861 to 1867, there was received at Ottawa on account of School Lands, after deducting full compensation for collection,
30 \$124,685.18. I claim that that sum should be taken from the Common School Fund, being one-fourth of the receipts from Common School lands within the time I have mentioned, and placed to the credit of the Upper Canada Land Improvement Fund. I make the following references:—

Ontario Sessional papers, 1869, Vol. 2, No. 29, on page 45. The official statement made by the Crown Lands Office of the moneys received from 1861 to 1867 is found in the Ontario Journals, 1869, appendix No. 2, pages 28 and 29. Mr. Russell's evidence page 14. Orders in Council from page 15 to page 24.

30 Whilst I take this \$124,685.18 off the capital of the Common School Fund, I simply bring it in under, and add it to the Upper Canada Improvement Fund.

This process does not increase the debt of the late Province; for while the sum is added to the Upper Canada Land Improvement Fund, it is deducted from the Common School Fund.

MR. MACPHERSON,—What have you allowed for collection?

MR. WOOD,—Twenty per cent.

MR. GREY,—What is the authority for that? Does not the Act to which you have referred limit it to six per cent?

40 MR. WOOD,—The Act allows only six per cent., but by an Order in Council of the Government of the late Province, twenty per cent. was authorized to be retained by the Government which I believe was uniformly done down to Confederation.

MR. GREY,—The question is, if you have deducted more than six per cent., will not Quebec say, "you have taken advantage of my absence?"

MR. LANGTON,—Mr. Wood is not speaking of the proceeds of the common school fund collected since Confederation, and to be collected hereafter by Ontario. He is speaking of collections made by the late Province, one-fourth of which he argues should go to the Improvement Fund.

He has very properly deducted from the amount going to that fund, twenty per cent.—giving Quebec the benefit of the doubt; for it makes that fund which is coming to Upper Canada, less. When the arbitrators come to decide what Ontario shall have for its collections of the Common School Fund, outstanding, it will then be for them to determine whether they will adhere to, or depart from, the compensation given in the statute. But in 10 respect of the collections by the late Province, Quebec has the advantage by the allowance of the twenty per cent.

MR. WOOD,—I will just remark in passing, that I am informed by the Commissioner of Crown Lands, that the actual expense of the collection, is at least twenty per cent. The department paying the Crown Lands agent alone from 7 per cent. to 10 per cent. But I suppose that the arbitrators in settling the common school lands matter shall keep within the statute, as I have advised them to do in all other cases.

MR. GREY,—What is the value of the unsold lands?

MR. WOOD,—Very trifling. The lands unsold do not exceed twelve 20 hundred acres. But the outstanding purchase money on lands sold exceeds a million of dollars.

I should observe that the Attorney-General would be glad, if it could be done, to have the value of the outstanding moneys on these lands sold, as well as the value of the unsold lands made up, and pay a certain amount over to Quebec, in discharge of its claim in respect of the same. I am afraid, however, the arbitrators could only do this on consent of the parties to the reference. Entertaining this opinion, I will not press it upon their consideration. I will now speak of the division of the

COMMON SCHOOL FUND

30

In explanation of this fund, I refer to 12 Vic. c. 200; 4, 5, Vic. c. 18, sec. 3; 7 Vic. c. 9, sec. 1, Consol. Stats. of Canada, chap. 26. Section one of chap. 26 says:

“1. The Commissioner of Crown Lands, having, under the pro-
visions of the Act 12 Vic. c. 200, and under the direction of the Governor
“in Council, set apart and appropriated one million of acres of public
“lands, for common school purposes, and portions thereof having been
“disposed of under the said authority, the remainder shall be disposed of
“by the Commissioner on such terms and conditions as may, by the
“Governor in Council, be approved, and the money arising from the sale 40
“or disposal of any portion of the said lands shall remain, or be invested
“and applied towards creating a capital sum sufficient, at the rate of six
“per centum per annum interest, to produce a clear sum of four hundred
“thousand dollars per annum, and the capital sum and the income there-
“from shall form the Common School Fund; but before any appropriation

"of the moneys arising from the sale of such lands shall be made, all charges thereon for the management or sale thereof, and all Indian annuities charged upon such lands or moneys, shall be first paid."

"2. All moneys arising after the twenty-seventh day of May, one thousand eight hundred and fifty, from the sale of any public lands of the Province shall remain or be set apart as part of the capital of the said Common School Fund until the same is sufficient, at the rate aforesaid, to produce the said sum of four hundred thousand dollars per annum."

10 Section third provides for the investment of the capital of the Fund, and for its remaining with annual increases until, and in order to the producing and creating the stipulated annual income of \$400,000. And it provides that the Fund and income thereof should not be alienated for any other purpose whatsoever, but should remain a perpetual fund for the support of Common Schools in the whole Province of Canada, and the establishment of township and parish libraries.

Section four declares that for the establishment, support and maintenance of common schools in the Province of Canada, until the Common School Fund should produce a net yearly income of \$200,000 or upwards, there should be granted to Her Majesty yearly, the sum of \$200,000, and that such sum should be made up of the annual income and revenue, derived from the permanent fund mentioned, and of such further sum as should be required to complete the same, out of any unappropriated moneys raised and levied by authority of Parliament, for the public uses of the Province; and that grant was to constitute the Common School Fund.

By section five, it is provided, that this annual sum of \$200,000, should, from year to year, be apportioned by Order in Council, between Upper Canada and Lower Canada, in proportion to the relative numbers of the population of the same, respectively, as such numbers should, from time to time, be ascer-

30 tained by the census next before taken in Upper Canada and Lower Canada. It therefore appears that it was the intention of the Legislature to allow this fund to remain and accumulate until its capital, which was never to be decreased or alienated, should produce an annual income of \$400,000. The income of the capital was to be supplemented by annual grants to make it up to \$200,000 per annum, until the income from the capital would produce that sum, and this sum and the excess of it, when the income should exceed \$200,000, was to be divided between Upper Canada and Lower Canada, according to population as ascertained by the last preceding census.

40 This fund was not treated or dealt with exactly as the statute directed, although in accordance with its spirit and intent. Instead of the annual income from the capital being applied to the expenses of education, and supplemented by an annual grant, the whole sum given annually to common schools, consisted of the Legislative grant, and the annual income of the school fund, was added to the capital, and allowed to accumulate. It should be observed that these annual grants were apportioned to Upper Canada and Lower Canada, according to population as ascertained by the last preceding census, according to the provisions contained in the fifth section of the Act

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Extracts
from argu-
ment of Hon.
E. B. Wood
before the
arbitrators
under the
B.N.A. Act.
—continued.

mentioned. The departure from the strict letter of the statute, however, makes no difference in adjudicating upon the matters submitted to the arbitrators, inasmuch as, if the income had been spent, as the statute contemplated it would be, the net debt of the late Province would have been so much less, but the fund would have been diminished by the same amount, and just so much less would remain of the fund to be apportioned between Ontario and Quebec. No good could therefore flow from a revision of the manner in which the account was kept for twenty years preceding Confederation.

The fund, with accumulations on the first day of July, 1867, amounted to \$1,733,244.47 of which \$58,000 for principal, and \$29,580 for interest, consist of an investment in the Quebec Turnpike Trust bonds. Since Ontario has had the management of the school lands, I suppose between two and three hundred thousand dollars has been collected, and there is still outstanding on lands sold, upwards of a million of dollars. The lands unsold, as I have already stated, do not exceed two thousand acres. 10

The Quebec Turnpike Trust bonds are mentioned in the fourth schedule to the B.N.A. Act.

Now it is supposed that the arbitrators have jurisdiction over this fund and the lands belonging to it. Upon this, I am not prepared to pronounce a decided opinion one way or the other. It may be that as to the fund realized before Confederation, and in the hands of the Dominion, the Dominion are bound to hold it subject to the trusts created by the statute, and to the apportionment of the annual income thereof to Ontario and Quebec, according to population of the last preceding census. I am inclined to think this is the proper view to take of it. 20

As to the outstanding moneys on lands sold, and the unsold lands, I think Ontario took them, subject to the trust in respect of the same, and are therefore bound to collect the moneys, charging only the statutory allowance therefor, and when collected, to pay the money over to the Dominion, to be added to and held on the same trust as it holds the fund already in its hands. I think, to adopt the words of the statute, that the fund should be inalienable for any other purpose whatever, but should remain a perpetual fund for the support of common schools, and the establishment of township and parish libraries. 30

In every matter which I have brought under the consideration of the arbitrators, I have endeavoured to keep strictly within the statutes relating to the same. So in this case, I think it unsafe to depart from the statute. According to the statute, the capital of this fund must forever remain intact. The annual income must be apportioned between Ontario and Quebec, according to the population of these Provinces, as ascertained by the last preceding census. I would recommend the leaving of this fund just where the law has placed it, and the apportionment of the annual income to be made according to the provisions of the fifth section of the school lands Act. 40

It may be said that Quebec should have no part of this fund. In strict equity, perhaps, this is the case. I am inclined to think it is. The lands from which this fund is derived, are all situate in Upper Canada. No compensation or equivalent in any form was ever given Upper Canada, and none

will ever be given. It is, I admit, a clear gift on the part of Ontario. But we cannot act upon this clear principle of justice, without doing violence to the statute creating the fund. By that Act, the fund was created for the support of the common schools, as well in Lower Canada as in Upper Canada and although the relations of the two sections of the late Province of Canada are now changed, yet as in the Confederation Act, no alteration was made in the school lands Act, it remains as it was before Confederation, and must be carried out in all its provisions; and therefore, Lower Canada must, in my opinion, according to law, have the same portion of the annual income from the capital of this fund, as it would have had, had Confederation never taken place.

I therefore think the arbitrators should award that the fund in the hands of the Dominion, should remain there, and that Ontario should collect and get in the outstanding portion of the fund and pay it, less six per cent. for collection, and one-fourth part thereof for the improvement fund, over to the Dominion, to be added to that which it already has, and that the annual income from the whole capital fund realized, should be apportioned between Ontario and Quebec, as provided in the fifth section of the school lands Act—and that the Quebec Turnpike Trust debentures, should be held by the Dominion on the same trust as the capital of the fund.

This, it seems to me, is a most satisfactory mode of disposing of what otherwise might prove a difficult question.

It may not be inappropriate to notice some items which, as I think, in addition to those already mentioned, should be dealt with and passed upon by the arbitrators.

* * * *

PART EXHIBIT 31

(Respondent's)

Award of Arbitrators Between Upper Canada and Lower Canada as to Division of Debts, etc.

30 TO ALL TO WHOM THESE PRESENTS SHALL COME—

The Honorable John Hamilton Gray, of the City of St. John, in the Province of New Brunswick, and the Honorable David Lewis Macpherson, of the City of Toronto, in the Province of Ontario, send greeting:

Whereas by the British North America Act, 1867, it is enacted that the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, and one by the Government of Quebec, and one by the Government of Canada;

40 And whereas, the said John Hamilton Gray was duly chosen under and in accordance with the provisions of the said Act, as arbitrator, by the Government of Canada, the said David Lewis Macpherson by the Government of Ontario, and the Honorable Charles Dewe Day, of Glenbrooke, in the said Province of Quebec, by the Government of Quebec.

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Extracts
from argu-
ment of Hon.
E. B. Wood
before the
arbitrators
under the
B.N.A. Act.
—continued.

Part No. 31
Award of
arbitrators
between
Upper
Canada and
Lower Can-
ada as to
Division of
Debts, etc.
(dated Dec-
ember 16th,
1870).

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31
Award of
arbitrators
between
Upper
Canada and
Lower Can-
ada as to
Division of
Debts, etc.
(Dated Dec-
ember 16th,
1870.)
—continued.

Now, therefore, the said arbitrators having taken upon themselves the burden of the said arbitration, the said John Hamilton Gray and David Lewis Macpherson being a majority of the said arbitartors do award, order and adjudge of and upon the premises as follows, that is to say:

1. That the amount, by which the debt of the late Province of Canada exceeded, on the thirtieth day of June, one thousand eight hundred and sixty-seven, sixty-two millions five hundred thousand dollars, shall be and is hereby divided between and apportioned to, and shall be borne by the said Provinces of Ontario and Quebec respectively, in the following proportions, that is to say,—the said Province of Ontario shall assume and pay such a 10
proportion of the said amount, as the sum of nine millions eight hundred and eight thousand seven hundred and twenty-eight dollars and two cents bears to the sum of eighteen millions five hundred and eighty-seven thousand five hundred and twenty dollars and fifty-seven cents; and the said Province of Quebec shall assume and pay such a proportion of the said amount, as the sum of eight millions seven hundred and seventy-eight thousand seven hundred and ninety-two dollars and fifty-five cents bears to the sum of eighteen millions five hundred and eighty-seven thousand five hundred and twenty dollars and fifty-seven cents.

II. That the assets hereinafter in this clause enumerated shall be, and the 20
same are hereby declared to be the property of and belonging to the Province of Ontario, namely:

- | | |
|---|---------------|
| 1. Debt from the Upper Canada Building Fund to the late Province of Canada (enumerated in the fourth schedule to the said British North America Act, 1867, as "Upper Canada Building Fund, Lunatic Asylums, Normal Schools.")—Lunatic Asylums, \$38,800; Normal Schools, \$6,000..... | \$36,800 00 |
| 2. Debt from the Law Society Upper Canada to the late Province of Canada..... | 156,015 61 30 |
| 3. Debts to the late Province of Canada under the Consolidated Municipal Loan Fund of Upper Canada..... | 6,792,136 39 |
| 4. Debt from the Agricultural Society Upper Canada to the late Province of Canada..... | 4,000 00 |
| 5. Debt from the University Permanent Fund to the late Province of Canada..... | 1,220 63 |

III. That the assets hereinafter in this clause enumerated shall be, and the same are hereby declared to be the property of, and to belong to the Province of Quebec, namely:

- | | | |
|---|----------|----------|
| 1. The debt from the Aylmer Court House to the late Province of Canada for six per cent. Provincial debentures issued on account of the said Court House and assumed by the Dominion of Canada, and charged in the debt of the late Province of Canada..... | 2,000 00 | 40 |
| And for certain charges paid by the said late Province of Canada in respect of the said Court House..... | 1,239 70 | 3,239 70 |

	2.	Debt from the Montreal Court House to the late Province of Canada for six per cent. Provincial debentures issued on account of the said Court House and assumed by the Dominion of Canada, and charged in the debt of the late Province of Canada.....	\$95,600 00					<i>In the Supreme Court of Ontario.</i>
		For advances made to the said Court House by the said late Province of Canada.	18,996 21					Exhibits
						\$114,596 21		Part No. 31
10	3.	Debt from the Kamouraska Court House to the late Province of Canada for balance of certain charges in respect of the said Court House paid by the late Province of Canada.....					201 27	Award of arbitrators between Upper Canada and Lower Canada as to Division of Debts, etc. (Dated December 16th, 1870.)
	4.	Debt from the Royal Institution, otherwise the McGill College, to the late Province of Canada, of the balance of a loan made by the said late Province to that institution.....				7,790 00		—continued.
	5.	Debt under the Consolidated Municipal Loan Fund of Lower Canada to the late Province of Canada.....				2,939,429 97		
20	6.	Advances made in excess of the Legislative School Grant (described in the fourth schedule to the said British North America Act, 1867, as "Lower Canada Legislative Grant.").....				28,494 73		
	7.	Debt to the late Province of Canada under the Quebec Fire Loan.....				264,254 65		
	8.	Debt to the late Province of Canada for advances made to or on account of certain municipalities in the county of Temiscouta (described in the said fourth schedule as "Temiscouta Advance Account.").....				3,000 00		
30	9.	Debt from the Education Office in Lower Canada, to the late Province of Canada for the balance unpaid of a defalcation in the said office to the said late Province (described in the said fourth schedule as "Education east.").....				290 10		
	10.	Debt from the Building and Jury Fund, Lower Canada, to the late Province of Canada, for loans and advances made to it by the said late Province of Canada.....				116,475 51		
40	11.	Debt from the Municipalities Fund of Lower Canada to the late Province of Canada, for advances made to or on the credit of that fund (described in the said fourth schedule as "Municipalities Fund.").....				484,244 33		
	12.	Debt from the Lower Canada Superior Education Income Fund to the late Province of Canada, for advances made from time to time by the said late Province.....				234,281 46		
	13.	Montreal Turnpike Trust.....				188,000 00		

*In the
Supreme
Court of
Ontario.*

Exhibits
Part No. 31
Award of
arbitrators
between
Upper
Canada and
Lower Can-
ada as to
Division of
Debts, etc.
(Dated Dec-
ember 16th,
1870.)
—continued.

IV. And as to the said Montreal Turnpike Trust, the said arbitrators, further find award and adjudge as follows:

Whereas, the said sum of one hundred and eighty-eight thousand dollars is secured by debentures issued upon the credit of the said Trust, and guaranteed by the late Province of Canada, and the said Trust has hitherto met the payments upon such debentures, and the payment thereof has therefore not been assumed by the Dominion of Canada, nor has the said sum of one hundred and eighty-eight thousand dollars been charged by the said Dominion in the debt of the late Province of Canada, which charge, if made, would increase by one hundred and eighty-eight thousand dollars the excess of the said 10 debt on the thirtieth day of June, one thousand eight hundred and sixty-seven, above sixty-two millions five hundred thousand dollars; Now therefore, the said arbitrators, having assigned the said Trust as an asset of the said Province of Quebec, do hereby adjudge and award that the said Province of Quebec shall hereafter indemnify, protect, and save harmless the said Dominion and the said Province of Ontario, against any charge upon, or payment by the said Dominion in respect of the said debentures, or the said guarantee, or in respect in any way of the said Trust.

V. That the following Special, or Trust Funds, and the moneys thereby payable, including the several investments in respect of the same or any of 20 them are, shall be, and the same are hereby declared to be the property of and to belong to the Province of Ontario, for the purpose for which they were established, namely:—

1. Upper Canada Grammar School Fund.
2. Upper Canada Building Fund.
3. Upper Canada Municipalities Fund.
4. Widows' pensions and uncommuted stipends, Upper Canada, subject to the payment of all legal charges thereon.
5. Upper Canada Grammar School Income Fund.
6. Upper Canada Improvement Fund. 30
7. Balance of special appropriations in Upper Canada.
8. Surveys ordered in Upper Canada, before 30th June, 1867.
9. Amount paid and payable by Upper Canada to the Canada Land and Emigration Company.

VI. That the following Special, or Trust Funds and the moneys thereby payable, including the several investments in respect of the same or any of them are, shall be, and the same are hereby declared to be the property of and to belong to the Province of Quebec for the purposes for which they were established, namely:

1. Lower Canada Superior Education Fund. 40
2. Lower Canada Superannuated Teachers' Fund.
3. Lower Canada Normal School Building Fund.
4. Widows' pensions and uncommuted stipends, Lower Canada, subject to all legal charges thereon.
5. Balance of special appropriations in Lower Canada.
6. Surveys ordered in Lower Canada before 30th June, 1867.

VII. That from the Common School Fund, as held on the thirtieth day of June, one thousand eight hundred and sixty-seven, by the Dominion of Canada, amounting to one million seven hundred and thirty-three thousand two hundred and twenty-four dollars and forty-seven cents (of which fifty-eight thousand dollars is invested in the bonds or debentures of the Quebec Turnpike Trust, the said sum of fifty-eight thousand dollars being an asset mentioned in the fourth schedule to the British North America Act, 1867, as the Quebec Turnpike Trust) the sum of one hundred and twenty-four thousand six hundred and eighty-five dollars and eighteen cents shall be, and the same
 10 is hereby taken and deducted and placed to the credit of the Upper Canada Improvement Fund, the said sum of one hundred and twenty-four thousand six hundred and eighty-five dollars and eighteen cents being one-fourth part of moneys received by the late Province of Canada between the sixth day of March, one thousand eight hundred and sixty-one and the first day of July, one thousand eight hundred and sixty-seven, on account of Common School lands sold between the fourteenth day of June, one thousand eight hundred and fifty-three, and the said sixth day of March, one thousand eight hundred and sixty-one.

VIII. That the residue of the said Common School Fund, with the invest-
 20 ments belonging thereto as aforesaid, shall continue to be held by the Dominion of Canada, and the income realized therefrom, from the thirtieth day of June, one thousand eight hundred and sixty-seven, and which shall be hereafter realized therefrom shall be apportioned between and paid over to the respective provinces of Ontario and Quebec as directed by the fifth section chapter twenty-six of the consolidated statutes of Canada, with regard to the sum of two hundred thousand dollars in the said section mentioned.

IX. That the moneys received by the said Province of Ontario since the thirtieth day of June, one thousand eight hundred and sixty-seven, or which shall hereafter be received by the said Province from, or on account of the
 30 Common School lands set apart in aid of the Common Schools of the late Province of Canada shall be paid to the Dominion of Canada to be invested as provided by section three of said chapter twenty-six of the consolidated statutes of Canada, and the income derived therefrom shall be divided, apportioned, and paid between and to the said provinces of Ontario and Quebec respectively as provided in the said fifth section, chapter twenty-six, of the consolidated statutes of Canada with regard to the sum of two hundred thousand dollars in the said section mentioned.

X. That the Province of Ontario shall be entitled to retain out of such moneys six per cent. for the sale and management of the said lands, and that
 40 one-fourth of the proceeds of the said lands, sold between the fourteenth day of June, one thousand eight hundred and fifty-three, and the said sixth day of March, one thousand eight hundred and sixty-one, received since the thirtieth day of June, one thousand eight hundred and sixty-seven, or which may hereafter be received after deducting the expenses of such management as aforesaid shall be taken and retained by the said Province of Ontario for the Upper Canada Improvement Fund.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits

Part No. 31
 Award of
 arbitrators
 between
 Upper
 Canada and
 Lower Can-
 ada as to
 Division of
 Debts, etc.
 (Dated Dec-
 ember 16th,
 1870.)
 —continued.

*In the
Supreme
Court of
Ontario.*

Exhibits

Part No. 31

Award of
arbitrators
between
Upper
Canada and
Lower Can-
ada as to
Division of
Debts, etc.
(Dated Dec-
ember 16th,
1870.)

—continued.

XI. The "Crown Lands Suspense Account," amounting to one hundred and twelve thousand seven hundred and forty-eight dollars and sixty-three cents, and the Crown Lands Department, amounting to two hundred and fifty-three thousand and eighty-nine dollars and seventy-six cents, being the items so described in the Public Accounts of the late Province of Canada, having been omitted respectively from the statement of the debt of the said Province in such accounts, and from the assets in the fourth schedule to the British North America Act, 1867, the said arbitrators award and adjudge that the said Province of Ontario shall satisfy all claims, and receive all moneys in respect to the said Crown Lands Suspense Account, and the said Crown Lands Department connected with or arising from lands situate in the said Province of Ontario, and that the said Province of Quebec shall satisfy all claims and receive all moneys in respect of the said Crown Lands Suspense Account and the said Crown Lands Department connected with or arising from lands situate in the said Province of Quebec. 10

XII. As to the Montreal harbour the said arbitrators find that the debt due on account of four hundred and eighty-one thousand four hundred and twenty-five dollars and twenty-seven cents secured by debentures issued by the Montreal Harbour Commissioners has not been charged in the statement of the debt of the late Province of Canada. And they award, direct and adjudge that should the Dominion of Canada hereafter pay anything by reason of the liability of the said Dominion on account of the said debentures, the said two Provinces shall repay to the said Dominion any sum so paid in the same proportions respectively, as the said Provinces are hereinbefore directed to bear and pay the excess on the thirtieth day of June, one thousand eight hundred and sixty-seven, above sixty-two millions five hundred thousand dollars of the debt of the late Province of Canada. 20

XIII. That all the lands in either of the said Provinces of Ontario and Quebec respectively, surrendered by the Indians in consideration of annuities to them granted, which said annuities are included in the debt of the late Province of Canada, shall be the absolute property of the Province in which the said lands are respectively situate, free from any further claim upon, or charge to the said Province in which they are so situate, by the other of the said Provinces. 30

XIV. As to all the personal property being the joint property of the said Provinces of Ontario and Quebec, not hereinbefore specially mentioned, or dealt with and not appropriated by the said British North America Act, 1867 including the library of Parliament at Ottawa, the arbitrators find that it is not expedient to divide the said properties or to divert them from the public purposes for which they are used and required by the Dominion of Canada. They, therefore, find and award that the value of the said properties is and shall be taken to be two hundred thousand dollars, and that the Dominion of Canada may retain and acquire the same properties on payment to the said Provinces of the said sum of two hundred thousand dollars in the same proportion as is mentioned in the first paragraph hereof in respect to the excess of debt of the late Province of Canada on the thirtieth day of June, one thousand 40

eight hundred and sixty-seven above sixty-two millions five hundred thousand dollars, that is to say, to Ontario the sum of one hundred and five thousand five hundred and forty-one dollars, and to Quebec the sum of ninety-four thousand four hundred and fifty-nine dollars, and upon such payment the Dominion of Canada shall become the absolute owner of the said properties. But should the Dominion of Canada not so acquire the said properties within two years from the date of this award the Province of Quebec may acquire the said properties by the payment to the Province of Ontario within three months from the expiration of the said two years of the sum of one hundred and five thousand five hundred and forty-one dollars, and should the Province of Quebec not so acquire the said properties within the time aforesaid, the Province of Ontario shall within three months next thereafter pay to the Province of Quebec the sum of ninety-four thousand four hundred and fifty-nine dollars, and shall thereupon become the absolute owner of such properties.

*In the
Supreme
Court of
Ontario.*
Exhibits
Part No. 31
Award of
arbitrators
between
Upper
Canada and
Lower Can-
ada as to
Division of
Debts, etc.
(Dated Dec-
ember 16th,
1870.)
—continued.

XV. That the said several sums awarded to be paid, and the several matters and things awarded and directed to be done by or with regard to the parties to this reference respectively as aforesaid, shall respectively be paid, received, done, accepted and taken as, and for full satisfaction and discharge, and as a final end and determination of the several matters aforesaid.

20 In witness whereof, the said John Hamilton Gray and David Lewis Macpherson, two of the said arbitrators, have hereunto set their hands this third day of September, in the year of our Lord one thousand eight hundred and seventy.

(Signed) J. H. GRAY,

(Signed) D. L. MACPHERSON.

Signed and Published the third day of September, 1870, in the presence of:

(Signed) CHRISTOPHER ROBINSON,
of the City of Toronto, Barrister-at-Law;

30 (Signed) FREDK. FINCH,
of the City of Toronto, Law Stationer.

EXHIBIT 52

(Suppliants')

Journal of Education for the Year 1872

Extract from issue of this Journal for April, 1872.

Exhibits
No. 52
Journal of
Education
for the year
1872.

(Page 64)

THE ACT OF 1871 AND SEPARATE SCHOOLS

In reply to a question frequently asked, we desire to say that the new School Act and Regulations do *not* in any way affect the Separate Schools. It was not intended to affect them when the Act was passed; and it would be unjust to the supporters of these Schools thus to legislate for them indirectly, and without their knowledge. The Inspectors will, therefore, be particular not to apply the Act, or any of the new Regulations to Separate Schools. 10

No. 23
Journal of
Education
for the year
1873.

EXHIBIT 23

(Suppliants')

Journal of Education for the Year 1873

Extract from issue of this Journal for May, 1873.

(Page 80)

THE ACT OF 1871 AND SEPARATE SCHOOLS

In reply to a question frequently asked, we desire to say that the new School Act and Regulations do *not* in any way affect the Separate Schools. It was not intended to affect them when the Act was passed; and it would be unjust to the supporters of these Schools thus to legislate for them indirectly, and without their knowledge. The Inspectors will, therefore, be particular not to apply the Act, or any of the new Regulations to Separate Schools. 20

Extract from issue of this Journal for July, 1873.

Programme of Course of Study for the High Schools and Collegiate Institutes.

(Pages 108 and 109)

SUBJECT.	FIRST FORM.	SECOND FORM.	THIRD FORM.	FOURTH FORM.
ENGLISH GRAMMAR AND LITERATURE . . .	English Grammar, including Etymology. Advanced of Sixth Reader and Collier's History of English Literature.	Collier's History of English Literature. English Grammar, including Etymology.	English Classics (critically and analytically read). Selection No. 1.	English Classics (critically and analytically read). Selection No. 2.
COMPOSITION	Practice in writing familiar and business letters.	Practice in composition.	Practice in composition.	Practice in composition.
READING, DICTATION AND ELOCUTION . . .	Practice in reading and writing to dictation from first four reading books.	Practice in writing to dictation.	Same as Form II. with elocution.	Elocution.
PENMANSHIP	Practice in Penmanship.	Practice in Penmanship.		
LINEAR DRAWING . . .	Free hand and map drawing. Outlines of plain and solid figures.	For boys, mathematical drawing; and for girls, shading and landscape.	Drawing of animals, human form, mathematical projection, shading and colouring.	
BOOK-KEEPING, &c. . .	Single and double entry.	Single and double entry, commercial forms and usages.	Banking, Custom House, General Business Transactions.	Subject of Form III., with Telegraphy.
ARITHMETIC	Practice, Proportion, Interest, simple and compound.	Discount, Stocks, Exchange, Involvement and Evolution, Scales of Notation.	General	Review.
ALGEBRA	Definitions and first 17 exercises of authorized text-book.	To end of quadratic equations.	Authorized text-book, to end of Section XIV.	To end of authorized text-book.
GEOMETRY	Euclid, Book I.*	Books II. and III.†	Book IV., with principles - Book V.	Book VI., with review of whole subject.
LOGIC			Easy lessons in Reasoning, Part I. to p. 71.	Easy lessons in Reasoning, completed.
TRIGONOMETRY			Plane Trigonometry, to solution of triangles (inclusive).	Application of Plane Trigonometry.
MENSURATION	Definitions, Mensuration of surfaces.	Definitions, Mensuration of surfaces and Solids.		
HISTORY	Outlines of English and Canadian History.	Elements of Ancient and Modern History. English and Canadian History continued.	Outlines of History of Greece and Rome.	Outlines of Modern History.
GEOGRAPHY AND ASTRONOMY	Political geography, products, &c., of principal countries of the world. Modern (Mathematical, Physical and Political).	Physical Geography of the continents generally. Ancient Geography.	General Review of subject. Use of Terrestrial Globes.	Outlines of Astronomy—Celestial Globe.
NATURAL PHILOSOPHY	Nature and use of the mechanical powers.	Composition and Resolution of Forces; Centre of Gravity; Moments of Force; Principle of Virtual Velocities and Hydrostatics (Tomlinson).	Pneumatics and Dynamics.	Elements of Electricity and Magnetism.‡
CHEMISTRY AND AGRICULTURE	Ryerson's Agriculture, Part I.	Text-book (Ryerson) completed.	Elements of Chemistry.	Elements of Chemistry.
NATURAL HISTORY	"How plants grow" (Gray).	Animal kingdom.	General review.	
PHYSIOLOGY		Human Physiology (Cutter's).		
CHRISTIAN MORALS	Christian Morals.			
ELEMENTS OF CIVIL GOVERNMENT				"Elements of Civil Government."

* Girls not in Geometry will take in Form I., Easy Lessons in Reasoning, Part I.

† Girls not in Geometry will take in Form II., Easy Lessons in Reasoning, Part II.

‡ The subjects of Electricity and Magnetism may be taken up earlier in the course, at the discretion of the Head Master.

(Page 109)

II.—CLASSICAL COURSE WITH FRENCH AND GERMAN

PRESCRIBED BY THE COUNCIL OF PUBLIC INSTRUCTION FOR ONTARIO, AND APPROVED BY HIS EXCELLENCY THE LIEUTENANT-GOVERNOR IN COUNCIL

SUBJECT.	FIRST FORM.	SECOND FORM.	THIRD FORM.	FOURTH FORM.
ENGLISH GRAMMAR & LITERATURE.....	English Grammar, including Etymology. Advanced or Sixth Reader.	Collier's History of English Literature.	English Classics (critically and analytically read). Selection No. 1.	English Classics (critically and analytically read). Selection No. 2.
COMPOSITION.....	Practice in writing familiar and business letters.	Practice in composition.	Practice in composition.	Practice in composition.
PENMANSHIP.....	Practice in penmanship.	Practice in penmanship.		
LINEAR DRAWING....	Map and free hand drawing. Outlines of plain and solid figures.	For boys, mathematical drawing; and for girls, shading and landscape.	Drawing of animals, human form, mathematical projection, shading and colouring.	
ARITHMETIC.....	Practice, Proportion, Interest, simple and compound.	Discount, Stocks, Exchange, Involvement and Evolution, Scales of Notation.		
ALGEBRA.....	Definitions and first 17 exercises of authorized text-book.	To end of quadratic equations.	Authorized text-book, to end of Section XIV.	To end of authorized text-book
GEOMETRY.....	Euclid, Book I.*	Books II. and III.†	Book IV., with principles of Book V.	Book VI., with review of the whole subject.
TRIGONOMETRY.....			Plane Trigonometry, to solution of triangles (inclusive).	Application of Plane Trigonometry.
HISTORY.....	Outlines of English and Canadian History.	Elements of Ancient and Modern History.	Outlines of History of Greece and Rome.	Outlines of History of Greece and Rome, continued.
GEOGRAPHY AND ASTRONOMY.....	Political geography, products, &c., of principal countries of the world. Modern (Mathematical Physical and Political).	Outlines of Ancient Geography (Pillans).	Ancient Geography continued.	
NATURAL HISTORY...	"How plants grow," (Gray).	Animal kingdom.	General Review.	
CHRISTIAN MORALS..	Christian Morals.			
ELEMENTS OF CIVIL GOVERNMENT.....				"Elements of Civil Government."
FRENCH.....		‡Pujol, Part I.; or De Fivas' Grammar, with exercises.	Pujol, Part II., with selections from Part IV., or De Fivas' Grammar and Exercises, with Collot's Conversations, and De Fivas' Elementary Reader	Pujol, Part III., with selections from Part IV., or De Fivas' Grammar and Exercises, with conversations. Voltaire, Hist. de Charles XII. Chaps. VI., VII., VIII. Corneille, Horace, Acts I., II.
GERMAN§.....		Grammar (Ahn).	Grammar (Ahn), Adler's Reader	Goethe, Hermann and Dorothea, Canto II.
LATIN.....	Latin Grammar commenced. Harkness' Introductory Book, or Smith's Principia Latina, Part I.	Latin grammar continued. Arnold's 2nd Latin Book, or Smith's Principia Latina. Harkness Latin Reader.	Cæsar, Virgil, Æneid Book II. commenced. Latin Prose composition. Prosody commenced.	Cicero (for the Manilian Law). Horace, Odes, Book I. Latin Prose composition. Prosody continued.
GREEK.....		Greek Grammar commenced. Harkness 1st Greek Book, or Smith's Initia Græca.	Greek Grammar continued. Harkness or Smith continued. Lucian, Charon.	Lucian, Life. Homer, Iliad, B. I.

* Girls not in Geometry will take in Form I., Easy Lessons in Reasoning, Part I.

† Girls not in Geometry will take in Form II., Easy Lessons, in Reasoning, Part II.

‡ It is proposed that before its being introduced into the schools, the Pujol shall be published in separate parts.

§ The German and French languages are optional.

Provision is not made in the programme for the Honour work in the Universities, as pupils intended for honours will require special arrangements.

EXHIBIT 49

(Suppliants')

Journal of Education for the Year 1876

Extract from issue of this Journal for June, 1876.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 49
Journal of
Education
for the year
1876.

(Page 82)

**4. APPORTIONMENT OF THE LEGISLATIVE SCHOOL GRANT TO PUBLIC SCHOOLS
IN ONTARIO FOR 1876.**

The following is the apportionment for the current year of the Legislative School Grant to each City, Town, Village, and Township in Ontario.

- 10 The basis of apportionment to the several Municipalities for this year is the population as enumerated in the census of 1871. The total amount available for apportionment is the same as that of last year, and those Townships in which there are feeble Schools and a sparse population have been specially considered in an additional apportionment from the Poor School Grant. Such additional Grants appear in a separate list, and under the Regulations of the Department a municipal equivalent is required for them.

- 20 Where Roman Catholic Separate Schools exist, the sum apportioned to the Municipality has been divided between the Public and Separate Schools therein, according to the average attendance of pupils of both classes of Schools during last year as, reported and certified by the Trustees.

The Grants are, by law, payable on the 1st of July, by the Treasury Department, on the certificate of the Hon. Minister of Education. These certificates will be issued on or before 30th June, in favour of those Municipalities which have sent in duly audited school accounts and Inspectors' reports to the Education Department.

* * * *

(Page 86)

SUMMARY OF APPORTIONMENT TO COUNTIES FOR 1876.,

In the
Supreme
Court of
Ontario.

Exhibits
No. 49
Journal of
Education
for the year
1876
—continued.

COUNTIES.	Public Schools.	R.C. Sep. Schools.	Total.	COUNTIES.	Public Schools.	Separate Schools.	Total.
	\$ cts.	\$ cts.	\$ cts.		\$ cts.	\$ cts.	\$ cts.
1 Glengarry.....	2809 00	218 00	3027 00	31 Norfolk.....	4231 00	31 00	4262 00
2 Stormont.....	2479 00	22 00	2501 00	32 Oxford.....	5627 00	—	5627 00
3 Dundas.....	2484 00	—	2484 00	33 Waterloo.....	4082 00	177 00	4259 00
4 Prescott.....	2074 00	282 00	2356 00	34 Wellington....	6741 00	160 00	6901 00
5 Russell.....	1282 00	—	1282 00	35 Grey.....	—	—	7865 00
6 Carleton.....	—	—	4469 00	36 Perth.....	5155 00	—	5321 00
7 Grenville.....	—	—	2685 00	37 Huron.....	7915 00	134 00	8049 00
8 Leeds.....	—	—	4157 00	38 Bruce.....	6044 00	40 00	6084 00
9 Lanark.....	3756 00	—	3756 00	39 Middlesex....	8459 00	139 00	8598 00
10 Renfrew.....	3351 00	152 00	3503 00	40 Elgin.....	4423 00	—	4423 00
11 Frontenac....	3581 00	86 00	3667 00	41 Kent.....	4417 00	114 00	4531 00
12 Addington....	2150 00	48 00	2198 00	42 Lambton.....	4338 00	84 00	4422 00
13 Lennox.....	1072 00	22 00	1094 00	43 Essex.....	—	—	3716 00
14 P. Edward....	2576 00	—	2576 00	Districts of—	—	—	—
15 Hastings.....	5549 00	—	5549 00	Nipissing.....	264 00	—	264 00
16 Northumber- land.....	4812 00	120 00	4932 00	Muskoka.....	278 00	—	278 00
17 Durham.....	4149 00	—	4149 00	Parry Sound..	224 00	—	224 00
18 Peterboro'...	2888 00	70 00	2958 00	Algoma.....	1036 00	—	1036 00
19 Haliburton....	504 00	—	504 00	Total.....	—	—	\$179855 00
20 Victoria.....	3762 00	—	3762 00	GRAND TOTALS.			
21 Ontario.....	5417 00	—	5417 00	Counties and Districts....	—	—	\$179855 00
22 York.....	—	—	7743 00	Cities.....	—	—	20717 00
23 Peel.....	3303 00	16 00	3319 00	Towns.....	—	—	23408 00
24 Simcoe.....	8036 00	75 00	8111 00	Villages.....	—	—	14848 00
25 Halton.....	2520 00	—	2520 00	Grand Total.	—	—	\$238828 00
26 Wentworth....	4070 00	21 00	4091 00				
27 Brant.....	2789 00	—	2789 00				
28 Lincoln.....	—	—	2585 00				
29 Welland.....	2729 00	23 00	2752 00				
30 Haldimand....	3127 00	22 00	3149 00				

* * * *

Extract from issue of this Journal for September, 1876.

(Page 130)

7. SEPARATE SCHOOL INSPECTION

COPY of an Order in Council approved by his Honour the Lieutenant-Governor, the 8th day of September, A.D. 1876.

Upon the recommendation of the Honourable the Minister of Education, 40 dated the 29th of August, 1876, the Committee of Council advise that the annexed Regulations for the inspection of Roman Catholic Separate Schools be approved of by your Honour, under the authority of the Act 26 Victoria, chapter 5, section 26.

(Certified.)

(Signed)

J. G. SCOTT.

Clerk Executive Council.

8th September, 1876.

DIRECTIONS FOR THE INSPECTION OF ROMAN CATHOLIC SEPARATE SCHOOLS, FOR
THE GUIDANCE OF HIGH AND PUBLIC SCHOOL INSPECTORS.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 49

Journal of
Education
for the year
1876

—continued.

Under the authority of the 26th section of the Act of 1863 (26 Vic., cap. 5), and the General Regulations of the Education Department respecting Roman Catholic Separate Schools, approved by His Honour the Lieutenant-Governor in Council, 8th September, 1876, the Minister directs as follows:—

1. In cities and towns the Roman Catholic separate schools shall be inspected by one of the High School Inspectors, or by the County Inspector, as the Minister may from time to time appoint.
- 10 2. In Townships and Incorporated Villages the inspection shall be made by the County Inspector.
3. (1.) In his inspection the Inspector shall make enquiry and examination so as properly to report upon the condition and operations of the school, and shall report the results to the Department.
- (2.) He shall also state the dimensions and plan of the school building, its condition and accommodation, and the means of instruction therein.
- (3.) He shall state the number of teachers employed, and the certificates or other qualification held by them, and the arrangement of the classes.
- (4.) He will ascertain how many pupils have been admitted to the school
20 during the year, and require a register to be kept so as to ascertain the attendance of the pupils and number of classes in the school, and will observe the mode of teaching and general management of the school.
- (5.) He will check the half-yearly returns of the pupils' names and number of days in which they attended during each month by examining the School Registers, and make his report to the Minister of such attendance.
4. This Inspection shall be at some time during the month of April or May each year.
5. In ascertaining the average yearly attendance at the Separate Schools
30 the Inspector will report to the Department for its consideration such days on which under the discipline of the Roman Catholic Church, the school is closed, and mention what, if any, equivalents in time have been made upon other days in which the public schools are closed.

(Signed)

ADAM CROOKS,
Minister.

EDUCATION DEPARTMENT,
Toronto, August 29th, 1876.

MEMORANDUM of the Minister of Education respecting Separate Schools and their relation to Public School Boards in Cities, Towns and Incorporated Villages.

- 40 1. The Act of 1863 constitutes the Roman Catholic Separate School Trustees in Cities, Towns and Incorporated Villages a body corporate, with all the powers of imposing, levying and collecting school rates or subscriptions upon and from their supporters which the Public School Trustees in School

Sections possess with respect to the Public Schools (see Sections 6 and 7); and by Section 8 the Roman Catholic Separate School Trustees can obtain from the City Clerk a copy of the Assessment Roll of the City, so far as it relates to Separate School supporters.

2. The Separate School supporters who are exempted from Public-School rates comprise such only as on or before the first day of March in any year give to the City Clerk notice that they are such; and on or before the first day of June in each year the Trustees of the Separate Schools are to transmit to the City Clerk a correct list of all such supporters. The names of all such supporters shall then be excluded from liability under the Collector's roll for Public School rates. 10

3. Under Section 20 each Separate School is entitled to a proportionate share in the Parliamentary grant for the support of Public Schools, and in any grants for Public School purposes, provincial or municipal, according to the average attendance of pupils at such schools during the year next preceding as compared with the average attendance at the Public Schools. But this right does not apply to moneys raised for Public School purposes by local assessment.

4. To enable the Education Department, under Section 22, to adjust the apportionment of the Parliamentary grant, a half-yearly return, to show the average attendance at the Separate Schools, is to be transmitted by the Separate School Trustees to the Education Department. 20

5. By Section 26, the Separate Schools are subject to such inspection as may be directed by the Minister of Education, and also to the Regulations of the Department.

6. By Section 27, any disagreements between the Trustees of the Roman Catholic Separate Schools and the Inspectors of the Public Schools or other municipal authorities are to be referred to the suitable arbitrament of the Chief Superintendent (now the Minister of Education), subject to appeal to the Lieutenant-Governor in Council. 30

7. These provisions are in full force, and are in no way affected by the Public School Act of 1874. See Sections 191 and 193, 37 Vic., cap. 28.

8. It follows that the Public School Board of a City has no jurisdiction over the Roman Catholic Separate School Trustees. They are each independent corporations with their own respective functions and jurisdiction.

9. While the Public School Inspector appointed by the Public School Board of a City (see Section 105) is subject to its control, he may nevertheless be directed by the Education Department, in the exercise of its statutory authority, to inspect Roman Catholic Separate Schools, and his report being for the information of the Department, is not in any sense within the control of the Public Board. It is a proceeding quite independent of the authority, and they have no duty to discharge in the matter. The inspection of the Schools and the apportionment of the Parliamentary grant and other matters respecting Roman Catholic Separate Schools, are entirely without any jurisdiction conferred by statute upon the Public School Board of the City, Town or Village, and any control or regulation which is to affect them resides solely in the Education Department. 40

10. The Public School Board can rightfully require the Municipal officer to observe the requirements of the law in collecting School rates or other moneys for Public School purposes, and see that no persons liable to assessment are exempt except such as have complied with the provisions of the Separate School Act of 1863. This is not only a power possessed by the School Board of the City, Town or Village, but it is their duty to see to it.

11. While the Trustees of the Roman Catholic Separate Schools may appoint a collector of their own in respect of assessment for School purposes from their supporters, according to the Municipal assessment roll, there can be no objection to the City's permitting the Municipal collectors to collect for the Roman Catholic Trustees such School rates as are properly payable to them from their legal supporters.

ADAM CROOKS,
Minister of Education.

EDUCATION DEPARTMENT,
Toronto, March 21st, 1876.

*In the
Supreme
Court of
Ontario.*
Exhibits
No. 49.
Journal of
Education
for the year
1876.
—continued.

EXHIBIT 50

(Suppliants')

Report of the Minister of Education (Ontario) for the Year 1886

20 Extracts from Appendices to Report.

No. 50
Report of the
Minister of
Education
(Ontario)
for the year
1886.
(Dated Dec-
ember 31st,
1886.)

(Page 8)

APPORTIONMENT OF LEGISLATIVE PUBLIC SCHOOL GRANT FOR 1886

The apportionment of the Grant to the several Municipalities is based upon the latest Returns of Population for the year 1885, and the division between the Public and Separate Schools on the average attendance of that year, as reported by the Inspectors, Public School Boards, and Separate School Trustees respectively.

30 While the Separate Schools will receive their portion of the Grant direct from the Department, that of the Public Schools will be paid, according to this Schedule, through the respective County, City, Town and Village Treasurers.

The County Councils—whose duty it is to raise from the several townships in their counties a sum at least equal to the amounts respectively apportioned to each county—are reminded that *all the supporters of Roman Catholic Separate Schools are exempt* from any rate to be levied for this purpose.

TORONTO, May, 1886.

* * * *

SUMMARY OF APPORTIONMENT FOR 1885.

In the
Supreme
Court of
Ontario.

Exhibits

No. 50

Report of the
Minister of
Education
(Ontario)
for the year
1886.
(Dated Dec.
ember 31st,
1886.)
—continued.

		Public Schools	Separate Schools.	Total
COUNTIES.		\$ c.	\$ c.	\$ c.
Brant		2150 00		2150 00
Bruce		5357 00	128 00	5485 00
Carleton		3766 00	367 00	4133 00
Dufferin		2697 00		2697 00
Elgin		3451 00		3451 00
Essex		3651 00	214 00	3865 00
Frontenac		2693 00	106 00	2799 00
Grey		7051 00	205 00	7256 00
Haldimand		2210 00		2210 00
Haliburton		676 00		676 00
Halton		1875 00		1875 00
Hastings		4371 00		4371 00
Huron		6288 00	111 00	6399 00
Kent		3987 00	184 00	4171 00
Lambton		3792 00	53 00	3845 00
Lanark		2718 00	9 00	2727 00
Leeds		3200 00	37 00	3237 00
Grenville		1913 00	19 00	1932 00
Lennox and Addington		2542 00	37 00	2579 00
Lincoln		1887 00		1887 00
Middlesex		6794 00	97 00	6891 00
Norfolk		3167 00	21 00	3188 00
Northumberland		3383 00	62 00	3445 00
Durham		2909 00		2909 00
Ontario		4261 00	68 00	4329 00
Oxford		3889 00		3889 00
Peel		2389 00	15 00	2404 00
Perth		4081 00	72 00	4153 00
Peterborough		2388 00	44 00	2432 00
Prescott		1983 00	350 00	2333 00
Russell		1648 00	48 00	1696 00
Prince Edward		2015 00		2015 00
Renfrew		3647 00	115 00	3762 00
Simcoe		7150 00	60 00	7210 00
Stormont		1928 00	197 00	2125 00
Dundas		1996 00		1996 00
Glengarry		2281 00	74 00	2355 00
Victoria		3443 00		3443 00
Waterloo		3012 00	245 00	3257 00
Welland		2337 00		2337 00
Wellington		4579 00	112 00	4691 00
Wentworth		3179 00	20 00	3199 00
York		5742 00	53 00	5795 00
Districts—				
(a) Algoma	} Total, \$3,000.	1500 00		1500 00
(b) Nipissing		500 00		500 00
(c) Parry Sound		1000 00		1000 00
GRAND TOTALS.		147476 00	3123 00	150599 00
Counties and Districts		147476 00	3123 00	150599 00
Cities		30467 00	7784 00	38251 00
Towns		26957 00	4211 00	31168 00
Villages		17745 00	696 00	18441 00
Grand Total		222645 00	15814 00	238459 00

10

20

30

40

50

EXHIBIT 16

(Suppliants')

Report of the Minister of Education (Ontario) for the Year 1896

Note: An extract from this Report appears at page 107, line 36 of the Record.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 16
Report of
the Minister
of Educa-
tion
(Ontario)
for the year
1896.
(Dated
January,
1897.)

EXHIBIT 51

(Suppliants')

Report of the Minister of Education for the Year 1903

Extracts from this Report.

No. 51
Report of
the Minister
of Education
for the year
1903.
(Dated
January,
1904.)

10 (Page 85)

**APPORTIONMENT OF THE LEGISLATIVE PUBLIC
SCHOOL GRANT FOR 1903.**

The apportionment of the Grant to the several municipalities is based upon the latest Returns of Population for the year 1902, and the division between the Public and Separate Schools on the average attendance of that year, as reported by the Inspectors, Public School Boards and Separate School Trustees respectively.

While the Separate Schools will receive their portion of the Grant direct from the Department, that of the Public Schools will be paid, according to this Schedule, through the respective County, City, Town, and Village Treasurers.

* * * *

SUMMARY OF APPORTIONMENT FOR 1903.

In the
Supreme
Court of
Ontario.

Exhibits
No. 51
Report of
the Minister
of Education
for the year
1903.
(Dated
January,
1904.)
—continued.

COUNTIES.		Public Schools	Separate Schools	Total
		\$ c.	\$ c.	\$ c.
1. Brant.....		1,658 00		1,658 00
2. Bruce.....		4,126 00	433 00	4,559 00
3. Carleton.....		2,973 00	458 00	3,431 00
4. Dufferin.....		1,969 00		1,969 00
5. Elgin.....		3,016 00		3,016 00
6. Essex.....		3,196 00	952 00	4,148 00
7. Frontenac.....		2,296 00	180 00	2,476 00
8. Grey.....		5,720 00	119 00	5,839 00
9. Haldimand.....		1,824 00		1,824 00
10. Haliburton.....		734 00		734 00
11. Halton.....		1,423 00		1,423 00
12. Hastings.....		4,000 00	80 00	4,080 00
13. Huron.....		4,908 00	218 00	5,126 00
14. Kent.....		3,859 00	221 00	4,080 00
15. Lambton.....		3,990 00	32 00	4,022 00
16. Lanark.....		2,241 00	47 00	2,288 00
17. Leeds and Grenville.....		3,926 00	104 00	4,030 00
18. Lennox and Addington.....		2,230 00	47 00	2,277 00
19. Lincoln.....		1,639 00		1,639 00
20. Middlesex.....		5,126 00	129 00	5,255 00
21. Norfolk.....		2,509 00	48 00	2,557 00
22. Northumberland and Durham.....		4,745 00	75 00	4,820 00
23. Ontario.....		3,282 00	65 00	3,347 00
24. Oxford.....		3,518 00		3,518 00
25. Peel.....		1,880 00	13 00	1,893 00
26. Perth.....		3,342 00	131 00	3,473 00
27. Peterborough.....		2,272 00	20 00	2,292 00
28. Prescott and Russell.....		2,127 00	1,877 00	4,004 00
29. Prince Edward.....		1,557 00		1,557 00
30. Renfrew.....		3,918 00	349 00	4,267 00
31. Simcoe.....		6,004 00	127 00	6,131 00
32. Stormont, Dundas and Glengarry.....		5,447 00	469 00	5,916 00
33. Victoria.....		2,352 00		2,352 00
34. Waterloo.....		2,543 00	286 00	2,829 00
35. Welland.....		1,996 00		1,996 00
36. Wellington.....		3,708 00	109 00	3,817 00
37. Wentworth.....		2,647 00	11 00	2,658 00
38. York.....		4,986 00	28 00	5,014 00
Total.....		119,687 00	6,628 00	126,315 00
39. Districts—				
(a) Algoma.....	} Exclusive of the towns and villages which appear in the general list.....	38,800 00	1,200 00	40,000 00
(b) Muskoka.....				
(c) Nipissing.....				
(d) Parry Sound.....				
(e) Rainy River.....				
(f) Thunder Bay.....				
Total.....		38,800 00	1,200 00	40,000 00
GRAND TOTALS				
COUNTIES.....		119,687 00	6,628 00	126,315 00
CITIES.....		47,445 00	11,851 00	59,296 00
TOWNS.....		35,669 00	6,206 00	41,875 00
VILLAGES.....		14,051 00	993 00	15,044 00
DISTRICTS.....		38,800 00	1,200 00	40,000 00
TOTALS.....		255,652 00	26,878 00	282,530 00

10

20

30

40

50

EXHIBIT 17

(Suppliants')

Report of the Minister of Education for the Year 1908

Note: Extracts from this Report appear at page 111, line 32 to page 112, line 15 of the Record.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 17
Report of
the Minister
of Education
for the year
1908.

EXHIBIT 55

(Suppliants')

**Inspector's Report of Continuation School at Eganville
Separate School**

No. 55
Inspector's
Report of
Continua-
tion School
at Eganville
Separate
School.
(Dated
November
26th, 1908.)

10

PART EXHIBIT 55

REPORT OF INSPECTOR OF CONTINUATION SCHOOLS

Continuation School at..... (S.S. No.....)

I. GRADING OF ACCOMMODATIONS.				II. VALUE OF EQUIPMENT.				
					At last Inspection	Addi- tions	Deduc- tions	Present Value
Class Rooms.....	1	Heating.....	1	Library.....		\$23 13	\$6 65	\$150 00
Desks.....	1	Lighting.....	2	Apparatus.....	\$109 64	14 18	1 65	122 17
Laboratory.....	1	Water Supply.....	2	Maps, Globes, etc..	13 50	10 00		23 50
Laboratory Tables..	1	Blackboards.....	1	Art Models, etc...	25 00			25 00
Ventilation.....	2	Cap Rooms.....	2					

Value of library is estimated pending revision of list, the titles of which, should be compared with those on official catalogue.

III. CHARACTER OF THE WORK.

TEACHER'S WORK.

English..... 1
Mathematics..... 2
Science..... 2
Latin..... 1
French and German..... 2
Physical Culture.....

PUPILS' WORK.

Writing of last admitted pupils—above the average.
Book-keeping Sets—Satisfactory.
Work in Art—Good as far as taken.
Note-books in Science—some improvement.
Supplementary Reading.....
Other Lower-School Subjects.....

30

Oral Reading:

(1) Last admitted pupils:—Of 4 examined 2 are good; 2 Fair; 0 Poor; and 0 Bad.
(2) Other pupils:— 17 examined 7 are good; 9 Fair; 1 Poor; and 0 Bad.

IV. MISCELLANEOUS

Organization: One teacher to 23 pupils.
Staff: Qualified under Regulations.
Attendance: All regularly admitted.
Text-books: As authorized.
Additions to Class-room decorations: A few pictures.
Fire-Drill: None as yet, should receive attention as safeguard.
School Flag: Yes
School Garden: Yes, will be serviceable for practical biology.

V. GENERAL REMARKS

10

There is a very good Second Form in attendance at this School and it is to be hoped that those members of this Class that are ready to go on with higher work next year will be given the opportunity to do so. In such case the Principal would need additional assistance as the work she has in hand at present is sufficiently heavy. The progress in the past year has been good and the standard of the Principal's work is high, considering the conditions.

Date of Inspection, November 26th, 1908.

R. H. COWLEY,

Inspector. 20

PART EXHIBIT 55

EXPLANATORY NOTES

GRADING OF ACCOMMODATIONS. The grading of each feature of the accommodation is estimated on the basis of the general requirements for public schools. Cleanliness as well as state of repair is taken into account. To secure the highest grading for water supply the water must be delivered in pipes within the building at points convenient for personal use of pupils and for laboratory-work.

CHARACTER OF THE WORK. The grading of the character of the work is based on (1) the efficiency of the staff, (2) the work of the pupils, and (3) the general provisions for teaching the courses. Stress is laid on the accuracy, 30 method and neatness of pupils' work in note-books, and on blackboard, as also on their proficiency in the oral and written expression of the regular class work.

GRANTS. Any improvements in the accommodations and any additions to the equipment of the Continuation School, if reported to the Department before the thirty-first day of May, will be taken into account in the ensuing annual distribution of the Continuation School grant.

SCALE OF GRADING. The grading under each head ranges from I to IV, the former being highest.

PART EXHIBIT 55

DEPARTMENT OF EDUCATION, ONTARIO.

Toronto, Dec. 14th, 1908

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 55
Inspector's
Report of
Continua-
tion School
at Eganville
Separate
School.
(Dated
November
26th, 1908.)
—continued.

Extract from the Report of Inspector R. H. Cowley on his visit to the Continuation Class of the School at Eganville Separate School on Nov. 26th 1908. Transmitted for the information of the Board and Principal. If the Board or Principal has any remarks to make on this report to the Department, it is requested that they may be sent as soon as possible.

Extracts certified.

10

A. H. U. COLQUHOUN,
Deputy Minister.

EXHIBIT 18

(Suppliants')

Report of the Minister of Education for the Year 1909

NOTE—Extracts from this Report appear at page 113, 1.41 to p. 115, 1.17 of the Record.

No. 18
Report of
the Minister
of Education
for the year
1909.
(Dated
1st Feb.,
1910.)

EXHIBIT 19

(Suppliants')

Regulations and Courses of Study of the Continuation Schools, 1914

NOTE—Extracts from this exhibit appear at p. 118, 1.6 to p. 119, 1.6 of the Record.

A copy of this exhibit will be found in the Book of Pamphlets—Document 3.

20

No. 19
Regulations
and Courses
of Study of
the Con-
tinuation
Schools,
1914.

EXHIBIT 53

(Suppliants')

Correspondence re Dublin School

No. 53
Correspon-
dence re
Dublin
School.

PART EXHIBIT 53

ONTARIO
DEPARTMENT OF EDUCATION

Toronto, June 7th, 1915.

30 Dear Sir,—

I am directed by the Minister of Education to state that from the lists of candidates for the Middle School Normal Entrance examination, it would appear that work beyond that of the Lower School has been taken up in your school. Under the present Regulations, the courses of the Public and Separate Schools end with that for Form V and no School Board, either Public or Separate, can legally establish or maintain courses beyond this limit, either during or after school hours. For the present school year, however, the

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 53

Correspon-
dence re
Dublin
School
—continued.

Minister will not interfere with the situation where the aforesaid provision of the Regulations is not being observed; but he now notifies you that after the present school year, the Regulations must be strictly complied with. Secondary Education beyond the Fifth Form of the Public and Separate Schools is amply provided for in the Continuation Schools Act, the High Schools Act, and the Board of Education Act.

I have the honour to be,

Your obedient servant,

A. H. U. COLQUHOUN

Deputy Minister of Education. 10

BERNARD O'CONNELL, ESQ.,
Secretary, R.C. Separate School Board,
Dublin, Ont.

PART EXHIBIT 53

ONTARIO

DEPARTMENT OF EDUCATION

Toronto, February 22nd, 1915

Dear Sir,—

I am directed by the Minister of Education to state that after due consideration of the various matters presented at the conference of Thursday, February 4th, re the application of the Trustees of the Roman Catholic Separate School Board at Dublin, for his approval of the establishment of a Continuation School under the control of the said Board, he has reached the following conclusions: 20

1. That there is a sufficient number of pupils of the Fifth Form now in attendance at the Dublin Roman Catholic Separate School to occupy the time of the two teachers who have been appointed.

2. That it is not, at present, in the interests of either educational efficiency or economy, to extend the work of the Dublin Public and Separate Schools beyond Form V. especially when it is taken into account that within easy reach there are two High Schools and one Collegiate Institute, fully staffed and equipped for the carrying on of the work of the Middle and Upper School. 30

3. That no evidence has been presented or appears to be available to show that the establishment of a Continuation School in a convent with a staff of religious teachers would be acceptable to the present, not to speak of the future, supporters of the Public Schools in Dublin and its vicinity.

I have the honour to be,

Your obedient servant,

A. H. U. COLQUHOUN,

Deputy Minister of Education

BERNARD O'CONNELL, ESQ.,
Secretary-Treasurer,
Roman Catholic Separate School Board,
Dublin, Ontario.

40

PART EXHIBIT 53

ONTARIO

DEPARTMENT OF EDUCATION

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 53

Correspon-
dence re
Dublin
School.
—continued.

Toronto, June 25th, 1915

Dear Sir,—

I am directed by the Minister of Education to acknowledge the communication from the Dublin Separate School Board, signed by the Chairman and Secretary, and to state that your representations will be carefully considered in due course. The Minister, however, directs me to inform you that
10 he cannot hold out any prospect that his decision previously conveyed to you may be altered.

I have the honour to be,

Your obedient servant,

A. H. U. COLUQHOUN

Deputy Minister of Education.

BERNARD O'CONNELL, ESQ.,
Sec'y., Treas., Separate School Board,
Dublin, Ontario.

EXHIBIT 54

(Suppliants')

No. 54
Correspon-
dence re
Glen Nevis
School.

20 Correspondence re Glen Nevis School

PART EXHIBIT 54

Toronto, June 9th, 1915

Dear Sir,—

I am directed by the Minister of Education to state that from the lists of candidates for the Middle School Normal Entrance examination, it would appear that work beyond that of the lower School has been taken up in S.S. No. 10 Lancaster. Under the present Regulations, the courses of the Public and Separate Schools and with that for Form V and no School Board, either Public or Separate, can legally establish or maintain courses beyond this
30 limit, either during or after school hours. For the present school year, however, the Minister will not interfere with the situation where the aforesaid provision of the Regulations is not being observed; but he now notifies you that after the present school year, the Regulations must be strictly complied with. Secondary Education beyond the Fifth Form of the Public and Separate Schools is amply

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 54

Correspon-
dence re
Glen Nevis
School.
—continued.

provided for in the Continuation Schools Act, the High Schools Act, and the Board of Education Act.

I have the honour to be,

Your obedient servant,

A. H. U. COLQUHOUN,
Deputy Minister of Education.

D. J. McDONALD, ESQ.,
Secretary, R.C. Separate School Board,
S.S. No. 10, Lancaster,
Dalhousie Station, P.Q.

PART EXHIBIT 54

10

Toronto, October 6th, 1915

Dear Father Macdonald,—

I have your communication of the 4th instant, and beg to return you, with thanks. The letter from Inspector Jones, which you were good enough to leave with me. Until I am instructed by the Acting Minister of what the Government has decided in relation to the Fifth Form matter, I do not wish to discuss it. As you are aware, the subject affects other places in the Province, and I understand a decision is pending.

Yours sincerely,

A. H. U. COLQUHOUN,

20

REV. D. R. MACDONALD,
Glen Nevis, Ontario.

PART EXHIBIT 54

Toronto, May 10th, 1916.

Dear Sir,—

To avoid the possibility of any misunderstanding with regard to the School Regulations and the enforcement of them, the Separate School Inspector under my instructions, notified to the following effect the Boards concerned:

School Boards that ignore the Regulations in question: that is those dealing with the limitations of the Public and Separate School Courses of Study, cannot lay claim to the payment of any part of the Legislative Grant: candidates under such Boards will not be admitted to any examination higher than those based on the Lower School subject; and the Separate and Public Schools Acts do not permit Public and Separate School Boards to levy taxes for the maintenance of courses beyond those of the Fifth Form, 30

Notwithstanding this notice I regret to learn that through misapprehension or otherwise, the Regulations in question have not been universally observed, and a number of schools have been carrying on work which is

entirely unauthorized. As a result, a number of pupils have been prepared for the Middle and Upper School Departmental examinations. As pointed out above, the Department cannot, however, under any circumstances permit the violation of its Regulations; but in view of the fact that some of these pupils have been led to believe that the work they are taking would entitle them to go up for the Middle and Upper School examinations, and that it is they who would suffer by the strict enforcement of the Regulations, it has been decided that if the requirements of Regulation 37 (2) and (3) (b), (High School Regulations, page 122), are complied with those who prepared for this year's examination may be permitted to take the examinations in question, upon condition that your Board forthwith pass and transmit to this Department, a resolution agreeing that hereafter the Regulations of the Department, in this, as well as in all other respects, will be strictly complied with. It is necessary that the resolution of the Board should declare that, on its being adopted, the courses outside the regular Separate School Course shall at once become private classes. If this condition is complied with, the Department will regard such classes as coming within the provisions of Regulation 37.

As the lists of candidates for the examinations should be in the hands of the Public School Inspectors by the 15th instant, it is imperative that your Board should act immediately, if it desires to secure the aforesaid concession for the pupils concerned. Otherwise, they will not be permitted to take the examinations. Although special consideration is being extended in the aforesaid cases for this year, it must be clearly understood that in future no exceptions can be made to the requirement that all schools, both Public and Separate shall strictly observe the Departmental Regulations. Accordingly, this concession must not be looked upon as a precedent, and it must be understood that all the Departmental Regulations affecting the Separate Schools shall be hereafter strictly complied with.

Yours very truly,

30 The Secretary,
Separate School Board,
Glen Nevis, Ontario.
S.S. No. 10 Lancaster.

R. A. PYNE,
Minister of Education.

PART EXHIBIT 54

COPY

TELEGRAM

Toronto, 2 June, 1916

40 Rev. D. R. Macdonald,
Glen Nevis, Ont.

Are there in your school pupils in preparation for Middle School Normal Entrance examination this year? Send pupils' names.

A. H. U. COLQUHOUN.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 54

Correspon-
dence re
Glen Nevis
School.

—continue 1.

PART EXHIBIT 54

REPLY

TELEGRAM

Glen Nevis, Ont., 3 June, 1916.

Dr. A. H. U. Colquhoun,
Deputy Minister of Education,
Toronto.

We have six pupils for Middle School Normal Entrance examinations this year, namely: Margaret Dunnigan, Donalda O'Shea, Annie Lenahan, Ruth Gaslin, Johanna Powell, Roderick V. McDonell.

10

Will you establish examination centre here? We will pay expenses.

D. R. MACDONALD.

PART EXHIBIT 54

COPY

ONTARIO

DEPARTMENT OF EDUCATION

Toronto, June 7th, 1916

Dear Sir,—

I am directed by the Minister of Education to write you in connection with the classes beyond the Fifth Class conducted in contravention of the Regulations by the Glen Nevis Roman Catholic Separate School Board and to state that in order to relieve the pupils in said classes from the hardships entailed by the strict enforcement of the Regulations, the Minister is prepared to regard Margaret Dunnigan, Annie Lenahan, Ruth Gaslin, Donalda O'Shea, Roderick V. McDonald and Johanna Powell as duly qualified to write upon the Middle School Normal Entrance Examination for the present year. This letter, together with their applications and fees, should be forwarded at once to the Public School Inspector who will recommend to the Minister a suitable person to act as Presiding Office at this centre.

20

I have the honour to be,

30

Your obedient servant,

A. H. U. COLQUHOUN,
Deputy Minister of Education.

Rev. Father D. R. Macdonald,
Chairman, R.C. Separate School Board,
Glen Nevis, Ont.

PART EXHIBIT 54

Glen Nevis, Ont.,
Aug 16th, 1915.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 54

Correspon-
dence re
Glen Nevis
School.

—continued.

Dr. A. U. Colquhoun,
Deputy Minister of Education,
Toronto, Ont.

Dear Sir:—

10 With the approval of the Education Department, given us in a letter of yours, dated 12th August, 1912, we established a Fifth Form in our Separate School No. 10, Lancaster Township Glengarry.

You based your approval on Circular No. 37—Special Regulations, 1, Minimum Requirements.

(1) The Fifth Form shall not be situated in a municipality or school section in which there is a High School or a Continuation School.

There is neither a High School nor a Continuation School in our municipality of the Township of Lancaster. It was declared by you to be legal to establish a Fifth Form in such municipality. You quote the above sub. sec., and say "but that would not prevent its being established in a High School District."

20 Now we find in the Public and Separate School Regulations of 1914 the above sub. sec., amended to read as follows:

"(1) The Fifth Form shall not be situated in a High or Continuation School District."

The Township of Lancaster, in which our Separate School is situated is a municipality in which there is not a High or Continuation School, but is a part of the Williamstown High School District.

30 I respectfully submit that the new Regulation enlarging, as it does, the prohibited territory inflicts an injury on our School Section and, if applied to our school will be unjust as we have incurred very heavy expenses in building and equipment for carrying on the work in accordance with the Regulations of the Department of Education.

As a relief, I respectfully submit that the new regulation should not be considered as retroactive in our case, as the school course was established and a special building was erected and equipped before the prohibiting regulation was made, or, as an alternative, hold the Regulation in abeyance until we establish a Continuation School.

Yours truly,

D. R. MACDONALD,
(Chairman, Sep. Sch. Board)

Glen Nevis, Ont.,
August 17th, 1915

Dr. A. H. U. Colquhoun,
Deputy Minister of Education.

Toronto, Ont.

Dear Sir,—

Permit me to make the following reply to your communication of June 9th last in which you notified our R.C.S.S. Board No. 10 Lancaster, that the work of the Middle School Normal Entrance Examination as done in our 10 school is illegal and will not be permitted in future.

The Middle School work in this school was begun in 1912, and continued till June 1915, with the approval of the Department of Education as set forth in Circular 37, (2), (b).

From the other subjects of the Fifth Form and the subjects of the High School Middle School the Principal may select with the approval of the Public or Separate School Inspector, as the case may be, communicated in writing to the said Principal such subjects or such parts of the Course therein as may suit the requirements of the locality and be within the competency of the teacher. 20

Inspector Jones in a letter dated August 27th, 1912, acknowledged that the requirements of the locality warranted the doing of Middle School work, the children attending this school residing at a distance of fourteen to eighteen miles from the District High School at Williamstown. The work is undoubtedly within the competency of the teacher, as she holds a Permanent First Class Certificate and University degree from Queen's, Kingston, and also a High School Principal's Certificate.

The work of Forms I to IV was not sacrificed, as two other qualified teachers do this work, in a building separate from the V Form classes.

For the year 1915-1916 two teachers, holding Permanent First Class 30 Certificates have been engaged for V Form work, and we are prepared to supply the balance of the Science Equipment according to Regulations.

I may add in conclusion, that at the recent examinations, seven of our pupils passed the lower School, and four passed the Middle School examinations.

Our prayer is therefore that as we began this work in good faith, and carefully observed the Regulations you may sanction our continuance of the Middle School work at least until we succeed in having the Counties' Council separate our territory from the Williamstown High School District, and permit us to establish a Continuation School. 40

Yours truly,

D. R. MACDONALD,
Chairman, Sep. School Board No. 10 Lancaster.

PART EXHIBIT 54

Glen Nevis, Ont.
14 May, 1917

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 54
Correspon-
dence re
Glen Nevis
School.
—continued.

The Hon. R. A. Pyne,
Minister of Education,
Toronto, Ont.

Hon. and Dear Sir:—

You were kind enough to comply with our request last year to establish an Examination Centre here for the convenience of our candidates at the Departmental Examinations. On behalf of our School Board I am writing to ask you to repeat the favour this year. We expect to send up at the approaching examinations candidates for the following examinations:

for Model Entrance.....	5 or 6
for Lower School.....	16
for Normal Entrance and Matriculation.....	6

I am, dear sir,

Yours very truly,

D. E. MACDONALD.

 PART EXHIBIT 54

20

REPLY

Ontario,
Department of Education,
Toronto, 23 May, 1917.

Dear Sir:—

I am directed by the Minister of Education to state in reply to your letter that he approves of the establishment of an Examination Centre for the Lower and Middle School Examination at Glen Nevis.

Inspector Crewson has already nominated a presiding officer.

I have the honour to be,

30

Your obedient servant,

A. H. U. COLQUHOUN,
Deputy Minister of Education.

PART EXHIBIT 54

ONTARIO
DEPARTMENT OF EDUCATION

Toronto, April 24th, 1919

Dear Sir:—

I am directed by the Minister of Education to acknowledge receipt of your letter of the 9th inst., and in reply to state that the candidates from the Glen Nevis School should submit their applications to the inspector in due course. The Separate School Inspector will be able to certify as to the work in Science and Literature for the Lower School candidates. The applications of the Middle School candidates will be accepted under the terms of the Order-in-Council which provides for the acceptance of such candidates pending the settlement of the status of such schools. 10

I have the honour to be,

Your obedient servant,

A. H. U. COLQUHOUN,
Deputy Minister of Education.

EXHIBIT 15

(Suppliants')

Regulations, Courses of Study and Examinations of the Public and Separate Schools, Revised 1915 20

NOTE—Extracts from this Exhibit appear at p. 105, 1.34 to p. 106, 1.51 of the Record.

A copy of this exhibit will be found in the Book of Pamphlets,—Document 2.

EXHIBIT 20

(Suppliants')

Report of the Minister of Education for the Year 1915

NOTE—An extract from this Report appears at p. 122, 1.38 to p. 123, 1.12 of the Record.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 54

Correspon-
dence re
Glen Nevis
School.
—continued.

No. 15

Regulations,
Courses of
Study and
Examina-
tions of the
Public and
Separate
Schools,
1915.

No. 20

Report of the
Minister of
Education
for the year
1915 (dated
March, 1916.

EXHIBIT 29

(Respondent's)

Public Accounts of the Province of Ontario for the Twelve Months Ending 31st October, 1921

Extracts from this volume.

In the Supreme Court of Ontario.

Exhibits

No. 29

Public Accounts of Ontario for the Twelve months ending 31st October, 1921.

Trust Fund of the Province Held by the Dominion

(Page 19)

* * * *

10	Common School Fund (See Consolidated Statutes, c. 26), 1,000,000 acres set apart (proceeds realized to 31st December, 1920), after deducting Land Improvement Fund, \$2,654,250 63, portion belonging to Ontario as per population of 1911.....	1,479,766 31	
	NOTE.—See Awards, Sessional Papers, 1900 and 1901.....		
	Common School Fund, Montmorency Bridge Debentures paid over to the Dominion re Quebec Turnpike Trust, \$6,000.00, portion belonging to Ontario as per population of 1911.....	3,345 05	1,483,111 36

(Page 55)

INTEREST ACCOUNT

Statement of Interest received during fiscal year ended October 31st, 1921.

From Whom Received	Nature of Investments	Amount	Total
20 Honourable Minister of Finance, Canada...	Interest, 5% for one year to July 1st, 1921, on Ontario's proportion of Common School collections paid over to the Dominion Government.....	\$ c. 73,895 20	\$ c. 73,895 20

EXHIBIT 3

(Suppliants')

Sixth Census of Canada

No. 3
Sixth Census of Canada.

30 NOTE—This Exhibit (p. 1) shows that the population of the Province of Ontario for 1921 was 2,933,662; and that (p. 34) the population of the Township of Tiny for the year 1921 was 4,026.

EXHIBIT 22

(Suppliants')

Regulations, High Schools and Collegiate Institutes, 1922

NOTE—Extracts from this Exhibit appear at p. 127 1.17 to p. 128, 1.30 of the Record.

A copy of this exhibit will be found in the Book of Pamphlets,—Document 5.

No. 22
Regulations, High Schools and Collegiate Institutes, 1922.

EXHIBIT 41

(Respondent's)

Estimates, Supplementary Estimates and Further Supplementary Estimates of the Province of Ontario for the Fiscal Year Ending October 31st, 1922

EXTRACT FROM ESTIMATES

IV. EDUCATION

AMOUNT TO BE VOTED, \$6,035,221.00.

(Page 30)

In the Supreme Court of Ontario.
Exhibits
No. 41
Estimates, Supp. Estimates, Further Supp. Estimates of the Province of Ontario for the fiscal year ending October 31st, 1922.

No. of Vote	No. of Item	SERVICE	Salaries and Expenses		
			12 months ending October 31, 1921	12 months ending October 31, 1922	
SUMMARY					
20		Public and Separate School, Education.....	3,401,138 75	3,129,365 00	10
21		Normal and Model Schools, Toronto.....	125,208 87	123,867 00	
22		Normal and Model Schools, Ottawa.....	85,499 00	84,760 00	
23		Normal School, London.....	42,490 00	42,490 00	
24		Normal School, Hamilton.....	37,845 00	37,620 00	20
25		Normal School, Peterborough.....	38,750 00	38,750 00	
26		Normal School, Stratford.....	39,840 00	37,000 00	
27		Normal School, North Bay.....	57,950 00	57,950 00	
28		English-French Professional Training Schools.....	60,755 00	60,755 00	
29		High Schools and Collegiate Institutes.....	226,308 27	222,500 00	
30		Departmental Library and Museum.....	23,600 00	17,600 00	
31		Public Libraries, Art Schools, Historical Literary and Scientific Societies.....	119,700 00	119,700 00	
32		Technical Education.....	896,150 00	891,150 00	
33		Superannuated Public and High School Teachers.....	70,150 00	70,150 00	30
34		Provincial and other Universities.....	1,711,294 00	781,720 00	
35		The Ontario School for the Deaf, Belleville.....	149,405 67	141,030 00	
36		The Ontario School for the Blind, Brantford.....	96,334 00	95,634 00	
37		Northern Academy, Monteith.....	58,980 00	44,980 00	
38		Miscellaneous.....	220,462 00	38,200 00	
20		PUBLIC AND SEPARATE SCHOOL EDUCATION (Details).	7,461,860 36	6,035,221 00	
	1	Rural Public and Separate Schools (Counties), General Grants and contingencies.....	1,100,000 00	1,100,000 00	40
	2	Urban Public and Separate Schools, General Grants and contingencies.....	120,000 00	120,000 00	
	3	Urban Public and Separate Schools, special Grants and contingencies.....	77,000 00	77,000 00	
	4	Urban Public and Separate Schools in Districts to supplement general grants and contingencies.....	15,000 00	15,000 00	
	5	Rural Public and Separate Schools, Districts, General grants and contingencies.....	460,000 00	460,000 00	
	6	Assisted Public and Separate Schools, Grants and contingencies.....	68,000 00	68,000 00	
	7	Special grants to Schools at James Bay.....	500 00	500 00	50
	8	Special grant to Ragged Rapids School, County of Simcoe, to pay proportion of teacher's salary.....	200 00	200 00	
	9	Special grant to Swift Rapids School, County of Simcoe, to pay proportion of teacher's salary.....	150 00	150 00	
	10	Special grant to school at Cameron Falls, Nipigon River....	1,000 00	1,000 00	
	11	Special grant to school at Kapuskasing Camp.....	100 00	100 00	
	12	Special grant to Public School Section No. 4, East Hawkesbury.....	200 00	200 00	

IV. EDUCATION.—Continued.

No. of Vote	No. of Item	SERVICE.	Salaries and Expenses.		In the Supreme Court of Ontario. Exhibits No. 41 Estimates, Supp. Estimates, Further Supp. Estimates of the Province of Ontario for the fiscal year ending October 31st, 1922 —continued.
			12 months ending October 31, 1921.	12 months ending October 31, 1922.	
		PUBLIC AND SEPARATE SCHOOL EDUCATION.— <i>Continued.</i>			
10	13	Special grant to Public School Section No. 5, Chaffee.	200 00	200 00	
	14	Special grant to Consolidated School Board, Tarentorus, in aid of education of children at Children's Shelter.	850 00	850 00	
	15	Grants to Rural and Urban Schools affected by unassessed ground property, to be paid as may be directed by the Lieutenant-Governor in Council.	2,500 00	2,500 00	
	16	Public, Separate and Continuation Schools Cadet Corps, grants and contingencies.	8,500 00	8,500 00	
	17	Kindergarten Schools, grants and contingencies.	8,500 00	8,500 00	
	18	Night Schools, grants and contingencies.	2,000 00	2,000 00	
20	19	Consolidated Schools, including grants, organization, services, travelling expenses and contingencies.	150,000 00	50,000 00	
	20	Macdonald Consolidated School, Guelph (Special Grant).	800 00	800 00	
	21	Agricultural and Horticultural grants to school boards, teacher and inspectors for Public and Separate Schools and contingencies.	102,000 00	102,000 00	
	22	Industrial arts, manual training and household science; grants to boards and teachers, and contingencies.	10,000 00	10,000 00	
	23	Continuation Schools, grants and contingencies.	142,500 00	142,500 00	
	24	Fifth Classes, grants and contingencies.	19,500 00	19,500 00	
30	25	Model Schools, grants, services, board and travelling expenses of students and instructors, and contingencies.	40,000 00	40,000 00	
	26	Teachers' Association, including grants, services, travelling expenses and contingencies.	10,000 00	10,000 00	
	27	Grant to Ontario Educational Association.	2,000 00	2,000 00	
	28	Special grant to Ontario Educational Association in aid of of teachers' trip to New Ontario.	8,000 00	8,000 00	
	29	Grant to Canada Educational Association.	200 00	200 00	
	30	Grant to Urban Trustees' Association.	500 00	500 00	
	31	Grant to Home and School Association.	2,000 00	2,000 00	
40	32	Secretarial Work National Council of Education.	1,200 00	2,400 00	
	33	Spring and Summer Schools, including services, board and travelling expenses of instructors and students and transportation expenses of children and contingencies.	85,000 00	85,000 00	
		Inspection of Public and District Schools.	134,750 00	134,750 00	
	35	Chief Inspector of Public and Separate Schools.	4,800 00	4,800 00	
	36	Assistant Chief Inspector of Public and Separate Schools.	3,600 00	3,600 00	
	37	General Inspector of District Public Schools.	3,600 00	3,600 00	
	38	Inspectors of Continuation Schools—2 at \$3,800.	7,600 00	7,600 00	
	39	Inspectors of District Public Schools—12 at \$3,000.	36,000 00	36,000 00	
50	40	Inspectors of Separate Schools—7 at \$3,000.	21,000 00	21,000 00	
	41	Inspectors of English-French Schools—4 at \$3,000.	12,000 00	12,000 00	
	42	Inspector of Elementary Agricultural Classes.	3,600 00	3,600 00	
	43	Inspector of Manual Training and Household Science.	3,600 00	3,600 00	
	44	Senior Clerk Stenographer.	1,100 00	1,100 00	
	45	Clerk Stenographers—2 at \$975; 1 at \$900.	2,850 00	2,850 00	
	46	Clerk Typist.	900 00	900 00	
	47	Provincial Attendance Officer.	3,500 00	3,500 00	
	48	Director of Rural School organization.	4,600 00	4,600 00	
	49	Auxiliary Classes, grants, services, travelling expenses and contingencies.	13,000 00	13,000 00	
60	50	Special Lecturer.	3,000 00	3,000 00	
	51	Travelling and moving expenses of inspectors, Provincial School attendance officer and director of professional training schools and other officials and for clerical assistants, typewriters, office equipment, office rent, stationery, postage printing, binding and contingencies.	32,000 00	32,000 00	

IV. EDUCATION.—Continued.

In the
Supreme
Court of
Ontario.
Exhibits
No. 41
Estimates,
Supp. Esti-
mates, Fur-
ther Supp.
Estimates of
the Province
of Ontario
for the fiscal
year ending
October 31st,
1922
—continued.

No. of Vote.	No. of Item.	SERVICE.	Salaries and Expenses.		
			12 months ending October 31, 1921.	12 months ending October 31, 1922.	
20		PUBLIC AND SEPARATE SCHOOL EDUCATION. —Continued.			
	52	Departmental Examinations, including services and travelling expenses.....	130,000 00	130,000 00	10
	53	Allowance to Inspectors in lieu of Examination Fees as may be directed by the Lieutenant-Governor in Council.....	700 00	700 00	
	54	Paper, postage, printing, typewriters, adding machines, multi-graphs, and other office equipment and contingencies for Departmental Examinations.....	14,000 00	14,000 00	
	55	Assistants in connection with Departmental Examinations...	29,200 00	29,200 00	
	56	Registrar.....	3,800 00	3,800 00	
	57	Associate Registrar.....	3,600 00	3,600 00	
	58	Principal Clerks—2 at \$2,200; 1 at \$2,000.....	6,400 00	6,400 00	
	59	Confidential Clerk, examination papers.....	1,800 00	1,800 00	20
	60	Confidential Printer.....	1,900 00	1,900 00	
	61	Assistant Confidential Printer.....	1,200 00	1,200 00	
	62	Clerks—1 at \$1,600; 1 at \$1,500; 4 at \$1,200.....	7,900 00	7,900 00	
	63	Junior Clerk.....	1,000 00	1,000 00	
	64	Senior Clerk Stenographer.....	1,200 00	1,200 00	
	65	Clerk Stenographers—3 at \$975; 2 at \$900.....	4,725 00	4,725 00	
	66	Junior Clerk Stenographer.....	850 00	850 00	
	67	Senior Clerk Typist.....	1,100 00	1,100 00	
	68	Clerk Typists—2 at \$975; 3 at \$900.....	4,650 00	4,650 00	
	69	Junior Clerk Typists—2 at \$850.....	1,700 00	1,700 00	20
	70	To pay scholarships known as Carter Scholarships.....	5,000 00	5,000 00	
	71	To pay for extra services in connection with Departmental Examinations as may be directed by order of the Lieutenant Governor in Council.....	1,000 00	1,000 00	
	72	To pay for extra services of professional and supervising Boards of Examiners as may be directed by the Lieutenant-Governor in Council, Departmental Examinations.....	5,750 00	5,750 00	
	73	General Editor of Text Books.....	4,000 00	4,000 00	
	74	Senior Clerk.....	1,600 00	1,600 00	
	75	Preparation of text books, including plates, etc., services, travelling expenses and contingencies.....	20,000 00	20,000 00	40
	76	Subventions to publishers as supplementing retail prices of text-books.....	90,000 00	90,000 00	
	77	Director of Professional Training Schools.....	4,600 00	4,600 00	
	78	Grants to teachers engaged in Model School training at Hamilton, London, Stratford, North Bay, Peterborough, Ottawa and Toronto.....	43,000 00	43,000 00	
	79	Grants to caretakers for services in Model Schools used for training of teachers at Hamilton, London, Stratford, Peterborough, Ottawa and Toronto.....	800 00	800 00	50
	80	To provide for services and expenses for lectures in connection with the course for training first-class teachers.....	800 00	800 00	
	81	To provide temporary teachers, Normal and Model Schools, in case of illness or on leave.....	2,000 00	2,000 00	
	82	To provide for travelling and moving expenses of Normal and Model School teachers transferred.....	1,000 00	1,000 00	
	83	Grant to the Frontier College.....	5,000 00	5,000 00	
	84	To provide for payment of expenses in connection with the League of the Empire.....	500 00	500 00	
	85	Grant for organization expenses for Imperial exchange of teachers (to be paid as may be directed by the Lieutenant Governor in Council).....	1,000 00	1,000 00	60
	86	Grant to teachers' magazine, <i>The Torch</i>	240 00	240 00	
	87	Special Grants to Art Department and Teachers in Art in Public, Separate and Continuation Schools, and contingencies.....	2,000 00	2,000 00	

IV. EDUCATION—Continued

No. of Vote	No. of Item	SERVICE	Salaries and Expenses		In the Supreme Court of Ontario. Exhibits No. 41 Estimates, Supp. Estimates, Further Supp. Estimates of the Province of Ontario for the fiscal year ending October 31st, 1922 —continued.
			12 months ending October 31, 1921	12 months ending October 31, 1922	
		PUBLIC AND SEPARATE SCHOOL EDUCATION—Continued			
10	88	Grants to School Boards, Supervisors, and Teachers to encourage courses of music in Public, Separate and Continuation Schools, and to provide for inspection, travelling expenses and contingencies.	2,800 00	2,800 00	
	89	Grants to Rural Public School Boards for use of schools for observation purposes, and contingencies.	3,250 00	3,250 00	
	90	Grants to Teachers in Rural Public Schools used for observation purposes.	9,000 00	9,000 00	
	91	Travelling expenses of Normal School students to Rural Public Schools and for Nature Study.	3,000 00	3,000 00	
20	92	Grants to Public School Inspectors for services in connection with visits to Public Schools of Normal School students and masters.	600 00	600 00	
	93	Travelling expenses of Normal School masters and inspectors in visiting Rural Schools with Public School Inspectors. . . .	500 00	500 00	
	94	To provide for teaching of Manual Training and Household Science to Rural School Teachers.	200 00	200 00	
	95	Lecturer.	1,700 00	1,700 00	
	96	Special lectures in Rural and Urban Schools, including travelling expenses and contingencies.	2,200 00	2,200 00	
30	97	Special lectures at Normal Schools, including travelling and other expenses.	500 00	500 00	
	98	School Gardens for Normal Schools.	1,000 00	1,000 00	
	99	Books for Normal School Libraries, and contingencies.	3,500 00	3,500 00	
	100	Preparation of books, pamphlets, bulletins, etc., distribution and contingencies, to be paid as may be directed by the Lieutenant Governor in Council.	1,500 00	1,500 00	
	101	Medical and dental inspection, including grants, services, travelling expenses, and contingencies.	54,000 00	30,000 00	
	102	Chief School Medical Officer.	4,000 00	4,000 00	
	103	Medical Inspection Officers—4 at \$2,000.	8,000 00	8,000 00	
40	104	Chief School Nurse.	1,800 00	1,800 00	
	105	School Nurses—6 at \$1,200.	7,200 00	7,200 00	
	106	To provide for attendance of county and other inspectors at Training Schools, and for visits to Schools in Canada and United States, including board and travelling expenses and contingencies.	3,000 00	3,000 00	
	107	To provide for payment of per diem allowances to and travelling expenses incurred by returned soldiers attending academic and professional courses to qualify as teachers. .	30,000 00	10,000 00	
50	108	Re-filing Official Departmental Correspondence, services and contingencies.	500 00	500 00	
		Appropriations not required for 1922.	128,973 75		
			3,401,138 75	3,129,365 00	

* * * *

(Page 10) EXTRACT FROM SUPPLEMENTARY ESTIMATES

In the
Supreme
Court of
Ontario.

Exhibits

No. 41

Estimates,
Supp. Esti-
mates, Fur-
ther Supp.
Estimates of
the Province
of Ontario
for the fiscal
year ending
October 31st,
1922

—continued.

No. of Vote.	No. of Item.	EDUCATION.		
		PUBLIC AND SEPARATE SCHOOL EDUCATION.		
	1	Rural Public and Separate Schools (Counties) general grants and contingencies (additional).....	\$550,000 00	
	2	Special grants to schools at James Bay.....	500 00	
	3	Special grant to Ragged Rapids School, County of Simcoe, to pay proportion of teacher's salary.....	200 00	10
	4	Consolidated Schools, including grants, organization, services, travelling expenses and contingencies (additional).....	140,000 00	
	5	Industrial Arts, Manual Training and Household Science grants to boards and teachers and contingencies (additional).....	30,000 00	
	6	Continuation Schools grants and contingencies (additional)...	15,000 00	
	7	Model Schools, grants, services, board and travelling expenses of students and instructors and contingencies (additional).....	25,000 00	
	8	Grant to Trustees Section, Ontario Educational Association (revote).....	3,000 00	20
	9	Grant to Trustees Section, Ontario Educational Association..	10,000 00	
	10	Spring and Summer Schools, including services, board and travelling expenses of instructors and students and transportation expenses of children and contingencies (additional).....	40,000 00	
	11	Spring and Summer Schools including services, board and travelling expenses of instructors and students and transportation expenses of children and contingencies. Allowance to G. A. Miller for board and travelling expenses in connection with summer course held in Agriculture.....	41 60	
	12	Inspection of Public and District Schools.....	12,000 00	30
	13	Inspectors of District Public Schools (additional).....	3,000 00	
	14	Inspectors of Separate Schools (additional).....	3,000 00	
	15	Travelling and moving expenses of inspectors, Provincial School Attendance Officer and Director of Professional Training Schools and other officials and for clerical assistants, typewriters, office equipment, office rent, stationery, postage, printing, binding and contingencies (additional).....	18,000 00	
	16	Allowance to D. M. Eagle \$150 and A. Beneteau \$300. for expenses in connection with inspection of English-French Schools in Counties of Essex and Kent.....	450 00	40
	17	Departmental Examinations, including services, and travelling expenses (additional).....	15,000 00	
	18	Departmental Examinations, including services and travelling expenses. Allowance to C. Franklin Price for travelling expenses.....	6 00	
	19	Allowance to inspectors in lieu of Examination Fees as may be directed by the Lieutenant Governor-in-Council (additional).....	100 00	
	20	Paper, postage, printing, typewriters, adding machines, multi-graphs and other office equipment and contingencies for Departmental examinations (additional).....	2,000 00	50
	21	Subventions to publishers as supplementing retail prices of text-books (additional).....	173,600 00	
	22	Assistant in office of General Editor of Text-books (This wording to be used in lieu of wording of Item 74, Vote 20, Main Estimates 1921-22).		
	23	Grants to Rural Public School Boards for use of schools for observation purposes and contingencies (additional).....	250 00	
	24	Travelling expenses of Normal School students to Rural Public schools and for Nature Study (additional).....	500 00	60
	25	Grant to the League of the Empire in aid of Imperial union of teachers.....	2,000 00	
	26	To provide for teaching of Manual Training and Household Science to Rural School Teachers, including services, per diem allowances to assist in paying travelling and other expenses of students and contingencies (This wording to be used in lieu of the wording of Item 94, Vote 20, Main Estimates 1921-22).		

EXTRACT FROM SUPPLEMENTARY ESTIMATES—*continued*

In the
Supreme
Court of
Ontario..

No. of Vote.	No. of Item.	EDUCATION.	
		PUBLIC AND SEPARATE SCHOOL EDUCATION— <i>Continued</i>	
10	27	To provide for teaching of Manual Training and Household Science to Rural school teachers, including services per diem allowances to assist in paying travelling and other expenses of students and contingencies (additional).....	5,800 00
	28	Medical Inspection officers—2 at \$2,000.....	4,000 00
	29	School Nurse.....	1,200 00
	30	To provide for payment of fees of returned soldiers attending academic and professional courses to qualify as teachers....	1,500 00
	31	To provide for payment of per diem allowance to and travelling expenses incurred by returned soldiers attending academic and professional courses to qualify as teachers (additional).....	6,000 00
			\$1,062,147 60
		NORMAL AND MODEL SCHOOLS, TORONTO.	
20	1	Teacher of Kindergarten Primary.....	1,400 00
	2	Engineer—(This wording to be used in lieu of wording of Item 24, Vote 21, Main Estimates 1921-22).	
	3	To pay for extra services and additional teachers (additional)	3,000 00
	4	Text and blank books, etc., for Model School pupils (additional)	300 00
	5	Supplies for Kindergarten (additional).....	500 00
	6	Fuel, light and power (additional).....	3,600 00
	7	Water (additional).....	200 00
	8	Furniture and furnishings (additional).....	500 00
	9	Scrubbing, cleaning and supplies (additional).....	1,500 00
			11,000 00

Exhibits
No. 41
Estimates,
Supp. Esti-
mates, Fur-
ther Supp.
Estimates of
the Province
of Ontario
for the fiscal
year ending
October 31st,
1922
—*continued.*

* * * *

(Page 4) EXTRACT FROM FURTHER SUPPLEMENTARY ESTIMATES

No. of Vote.	No. of Item.	EDUCATION	
		PUBLIC AND SEPARATE SCHOOL EDUCATION.	
30	1	Rural Public and Separate Schools (Counties, General grants and contingencies (additional).....	\$100,000 00
	2	Assisted Public and Separate Schools, Grants and contingencies (additional).....	32,000 00
	3	Grants to Rural and Urban Schools affected by unassessed ground property, to be paid as may be directed by the Lieutenant-Governor in Council (additional).....	1,500 00
40	4	Public, Separate and Continuation Schools, Cadet Corps, grants and contingencies (additional).....	1,500 00
	5	Travelling expenses of Normal School Students to Rural Public Schools, and for Nature Study (additional).....	500 00
	6	To provide for payment of grants for Household Science for 1921, to S.S. No. 8, St. Vincent, \$26; and to Martha McFadden; Teacher, \$10.....	36 00
	7	School Nurse (additional).....	240 00
	8	Grant to Soldiers' Aid Hostel, Bon Air.....	1,200 00
	9	To provide for visual instruction in the schools, including grants, services, expenses and contingencies.....	3,500 00
50	10	To provide for the purchase of and distribution to school libraries, sets of the publication "Makers of Canada".....	8,000 00
	11	Grants in aid of Education of Foreign Adults (to be paid as may be directed by the Lieutenant-Governor-in-Council)....	3,000 00
	12	Medical and Dental Inspection, including grants, services, travelling expenses and contingencies (additional).....	7,000 00
			\$158,476 00

EXHIBIT 30

(Respondent's)

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 30

Public
Accounts of
the Province
of Ontario
for the twelve
months end-
ing 31st Oct-
ober, 1922.

**Public Accounts of the Province of Ontario for the Twelve Months
Ending 31st October, 1922**

Extract from this volume.

ASSETS AND LIABILITIES OF THE PROVINCE, OCTOBER 31ST, 1922

(Page 13)

Trust Fund of the Province held by the Dominion

Common School Fund (See Consolidated Statutes, c. 26), 1,000,000 acres set apart (proceeds realized to 31st-December, 1921), after deducting Land Improvement Fund, \$2,656,088.57, portion belonging to Ontario as per population of 1921.....	1,471,628 08	10
NOTE.—See Awards, Sessional Papers, 1900 and 1901.....		

Common School Fund, Montmorency Bridge Debentures paid over to the Dominion re Quebec Turnpike Trust, \$6,000.00, portion belonging to Ontario as per population of 1921.....	3,324 35	\$1,474,952 43
---	----------	----------------

* * * *

(Page 54)

No. 18.

INTEREST ACCOUNT.

20

STATEMENT OF INTEREST RECEIVED DURING FISCAL YEAR ENDED OCTOBER 31ST, 1922.

From whom received.	Nature of Investments.	Amount. \$ c.	Total. \$ c.
Honourable Minister of Finance, Canada	Interest, 5% for one year to July 1st, 1922, on Ontario's proportion of Common School collections paid over to the Dominion Government.....	73,737 49	73,737 49

EXHIBIT 1

(Suppliants')

Report of the Minister of Education for 1923

Extracts from this Report.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 1

Report of the Minister
of Education
for 1923
(Dated
March 15th,
1924.)

(Page 87)

I. PUBLIC AND SEPARATE SCHOOLS.**5. RECEIPTS AND EXPENDITURES.****RECEIPTS.**

Year	Legislative grants
1867.....	\$187,153
1872.....	225,318
1877.....	251,962
1882.....	265,738
1887.....	268,722
1892.....	283,791
1897.....	366,538
1902.....	383,666
1907.....	655,239
1912.....	842,278
1917.....	907,846
1921.....	2,454,018
1922.....	2,976,712

(Page 90)

IV. CONTINUATION SCHOOLS.**RECEIPTS.**

Year	Legislative grant
1897.....	\$2,700
1902.....	8,350
1907.....	25,610
1912.....	64,081
1917.....	65,733
1921.....	127,770
1922.....	148,217

(Page 91)

COLLEGIATE INSTITUTES AND HIGH SCHOOLS.**RECEIPTS.**

Year	Legislative grant
1867.....	\$54,562
1872.....	79,543
1877.....	78,762
1882.....	84,304
1887.....	91,977
1892.....	100,000
1897.....	101,250
1902.....	112,650
1907.....	158,549
1912.....	209,956
1917.....	184,088
1921.....	223,165
1922.....	276,889

EXHIBIT 62

(Respondent's)

In the
Supreme
Court of
Ontario.

Exhibits

No. 62

Memoran-
dum as to
appropria-
tions for and
payments to
school boards
in 1922.

**Memorandum as to Appropriations for and Payments to School
Boards in 1922**

TINY VS. THE KING

**MEMORANDUM RE APPROPRIATIONS FOR AND PAYMENTS TO SCHOOL BOARDS
IN THE YEAR 1922**

The report of the Minister of Education for the year 1923 shows the following amounts paid out as legislative grants to Public and Separate Schools, Continuation Schools, and Collegiate Institutes and High Schools during the calendar year 1922:—

Public and Separate.....	\$2,976,712.00
Continuation Schools.....	148,217.00
Collegiate Institutes and High Schools.....	276,889.00

The report of the Minister gives no analysis of these figures and no exact analysis is possible for the reason that the returns sent into the Department of Education by Rural Schools show only the total amount received by way of Government grants and do not show the amount received by them from any particular grant voted by the legislature. Urban Schools on the other hand do in their reports give details, but Urban Schools form only a small portion of the total.

In order to arrive at as near an analysis as possible of the figures used by the Minister in his report, a statement of the different appropriations and of the payments made under those appropriations has been prepared from the estimates and from the Public Accounts of the Province for the fiscal year 1921-22 and only those appropriations have been included in this statement which have been paid in whole or in part to *School Boards* because the figures used by the Minister in his report consist only of payments reported as received by *School Boards*.

This statement shows opposite these appropriations the item and vote in the estimates of the Province for 1921-22, the number of the vote in the *main* estimates being given in all cases. The amounts shown under "Total Appropriation" are made up from four sources:

- (a) The amount voted in the main estimates.
- (b) The amount voted in the supplementary estimates.
- (c) The amount voted in the further supplementary estimates.
- (d) Such additional amounts as were appropriated by Treasury Board Minute.

The amounts shown under "Payments made to School Boards" are taken from the Public Accounts of the Province for 1921-22 as being those payments made to School Boards and which presumably should have been reported by the School Boards to the Department of Education having been received. Payments made direct to Teachers, Inspectors, etc., and amounts expended

in purchasing office supplies, stamps and other sundries are not included in the payments shown on the statement as they were not paid to School Boards.

The grants made by the Legislature for the purposes of *Technical* education and shown under that heading in a separate section of the Public Accounts have not been included.

10 The difference, therefore, between the total payments made to School Boards as reported by the Minister of Education and the amounts shown in the statement is due to the fact that the Minister makes his report from returns made by the School Boards for the calendar year, whereas the statement is prepared from payments made in the fiscal year of the Province which ends 31st October. Moreover, there is no check on the amounts reported as received by the School Boards to the Department of Education and in view of the number of schools and the differences that must occur in the making up of so many returns it is unlikely that any exact check could be made but the amounts shown in the statement as payments made to School Boards are the same or corresponding amounts, which the Minister in the aggregate refers to in his report.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 62
Memorandum as to
appropriations for and
payments to
school boards
in 1922
—continued.

TINY vs. THE KING

APPROPRIATIONS 1921-1922 AND PAYMENTS MADE TO SCHOOL BOARDS.

20	Reference		Total	Payments made
No.	Estimates, 1921-22	Appropriation	Appropriation	to School Boards
PUBLIC AND SEPARATE SCHOOLS.				
1	Vote 20 Item 1	Rural Schools, Counties, General Grant.....	\$2,100,000 00	\$1,991,805 74
2	2	Urban Schools, General Grants.....	120,000 00	113,900 38
3	3	Urban Schools, Special Grants.....	77,000 00	75,783 68
4	4	Urban Schools, Districts, Supplementary Grant.....	15,000 00	.....
5	5	Rural Schools, Districts, General Grants.....	573,000 00	564,645 90
6	6	Assisted Schools.....	100,000 00	77,584 33
30	7-14	Special Grants to particular Schools (8).....	3,900 00	2,758 78
8	15	Grants to Schools affected by unassessed ground property	4,000 00	1,910 00
9	16	Cadet Corps.....	10,000 00	9,350 00
10	17	Kindergarten Schools.....	8,500 00	8,245 91
11	18	Night Schools.....	2,000 00	1,985 75
12	19	Consolidated Schools.....	260,000 00	114,813 40
13	20	Macdonald Consolidated School, Guelph.....	800 00	800 00
14	21	Agricultural and Horticultural Grants.....	102,000 00	15,669 60
15	22	Industrial Arts, Manual Training, etc.....	40,000 00	14,280 84
16	Vote 202 Item 6	Household Science, St. Vincent S.S. No. 8.....	36 00	26 00
40	17	Fifth Classes.....	19,500 00	19,111 21
18	25	Model Schools, Grants, etc.....	65,000 00	6,000 00
19	49	Auxiliary Classes, Grants, etc.....	13,000 00	9,029 25
20	87	Special Grants to Art Department.....	2,000 00	500 00
21	88	Special Grants to encourage Music.....	2,800 00	670 00
22	89	Grants to Rural Schools used for Observation.....	3,500 00	3,300 00
23	101	Medical and Dental Inspection.....	48,500 00	5,500 00
24	Vote 31 Item 15	Rural School Libraries.....	8,500 00	8,320 06
Total—Public and Separate Schools.....			\$3,579,036 00	\$3,045,990 83

CONTINUATION SCHOOLS.

25	Vote 20	Item 23	Continuation School Grant.....	\$157,000 00	\$152,580 54
Total—Continuation Schools.....				\$157,000 00	\$152,580 54

HIGH SCHOOLS AND COLLEGIATE INSTITUTES.

26	Vote 29	Item 1	High Schools and Collegiate Institute, Grants.....	\$262,500 00	\$253,992 51
27		2	Night High Schools, Grants.....	6,500 00	2,957 58
28		3	High School Cadet Corps, Grants.....	3,500 00	2,250 00
29		4	Grants re Music Courses.....	1,000 00	30 00
30		5	Grants re Unassessed Property.....	1,000 00	.....
Total—High Schools and Collegiate Institutes.....				\$274,500 00	\$259,230 09

10

In the
Supreme
Court of
Ontario.

Exhibits

No. 62

Memoran-
dum as to
appropria-
tions for and
payments to
school
boards in
1922

—continued.

EXHIBIT 63

(Respondent's)

Departmental Memorandum Regarding Grants Referred to in Exhibit 62

1. CADET CORPS

The grants to these are paid under special regulations for establishing, in connection with public, separate, continuation and high schools, companies of school cadets who receive military instruction as part of the course of physical training. Their establishment is optional with Boards. The course is based upon the syllabus of physical training for schools approved by the Strathcona Trust, which gives prizes in certain branches of military instruction. This syllabus corresponds to the syllabus used for physical training in the schools of Great Britain.

20

2. KINDERGARTEN SCHOOLS

The kindergarten and kindergarten-primary classes are also optional courses. The grants are given on the same terms to public and separate schools to encourage Boards to give this class of instruction where a sufficient number of pupils wish to attend and where a teacher with the special certificate required can be secured. The classes are half-day classes for the youngest children over five years of age.

30

3. NIGHT SCHOOLS

These Schools are set up, at the option of School Boards, to give instruction in any academic or vocational subject for either juvenile or adult persons who are prevented from attending day schools. Those held in connection with the vocational schools are also attended by part-time students under the Adolescent School Attendance Act, which raises the compulsory school age from 14 to 16 years, and who may thereby receive educational instruction while engaged in their employment.

4. CONSOLIDATED SCHOOLS

The consolidated schools, which are set up under certain clauses of The Public Schools Act to provide more efficient schools over a wider area than a single school section, receive special grants to enable this to be done.

5. AGRICULTURAL AND HORTICULTURAL GRANTS

These grants provide special financial aid for Boards which maintain courses of instruction in nature study and elementary agriculture and horticulture. These courses are not confined to rural schools, for which they are specially adaptable, but also exist in the small urban centres. In connection with these schools are school gardens and other practical work which is combined with the class instruction. The grants may be paid out by the Boards for a considerable number of purposes, including rental of land, providing of implements, etc., etc.

6. INDUSTRIAL ARTS, MANUAL TRAINING, ETC.

These courses, while regarded in some quarters as an introduction to purely vocational or industrial training, are an integral part of the elementary school programme and contribute to the general culture of the pupils. They are, therefore, aided by cash grants, enabling Boards to provide machinery, specially qualified teachers, etc.

7. FIFTH CLASSES

The Fifth Form is part of the public school course of study but as many Boards are disposed to let the Fifth Class lapse—resulting in the pupils going some distance to a high school centre, the Department pays special grants to carry on the work locally. The course of study is practically identical with the lower school of the high school. The pupils take either Fifth Form work or the lower school of the high school, passing the same examinations and receiving the same certificates.

8. AUXILIARY CLASSES

The auxiliary classes are the most recently organized part of the elementary school system, and are provided for crippled or retarded pupils who cannot keep up with the work of the general classes and who, in several subjects, require special instruction. There are teachers specially qualified for this work. They receive certificates after attendance at summer courses. Owing to the classes entailing expenses of several kinds, the Department pays special grants in order to encourage the providing of instruction for pupils who would otherwise be neglected.

9. SPECIAL GRANTS TO ART DEPARTMENTS

This part of the public school course of study, when supervised or taught by teachers with special certificates in art, earns a grant. The course entails extra costs upon the Board, both for the equipment required and the purchase of reproductions of works of art.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 63

Depart-
mental
memoran-
dum re-
garding
grants
referred to
in Exhibit 62
—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 63

Depart-
mental
memoran-
dum re-
garding
grants
referred to
in Exhibit 62
—continued.

10. SPECIAL GRANTS TO ENCOURAGE MUSIC

The aid for the work in music is to encourage the employment of teachers holding certificates in elementary music, with special qualifications to teach vocal music in the schools as prescribed in the syllabus of courses. This, too, is an optional course.

11. MEDICAL AND DENTAL INSPECTION

This work is also optional with Boards and is carried out under regulations jointly approved by the Department of Education and the Department of Health. There is supervision by provincial officers, but certain costs must be borne by the Board, including the services of qualified nurses, so that special grants to encourage Boards to maintain systematic inspection of the pupils' health are given. 10

12. RURAL SCHOOL LIBRARIES

The grants are to encourage the annual purchase of suitable books for the libraries. These books may be selected either from the catalogues issued by the Department, or purchased by the Board with the approval of the local Inspector.

EXHIBIT 2

(Suppliants')

Correspondence Between J. G. O'Donoghue and Dr. A. H. U. Colquhoun 20

PART EXHIBIT 2

7th May, 1923.

Dr. A. H. U. Colquhoun,
Deputy Minister of Education,
Parliament Buildings, Toronto.

Dear Dr. Colquhoun:—

If it will not be too much trouble, will you kindly give me the names of the Public and Separate school sections in the Township of Tiny, County of Simcoe; the population of each section; the average attendance in each school as of January 1st, 1922; and the grants paid to each in the midsummer months of 1922? 30

Yours sincerely,

"J. G. O'DONOGHUE."

Dict. O'D/GF.

PART EXHIBIT 2

Toronto, May 8th, 1923.

Dear Sir,—

In reply to your letter of the 7th instant, I enclose a statement showing the attendance and the grants paid in connection with the public and separate schools in the Township of Tiny, Simcoe County. There are no statistics in the Department showing the population in each section. However, I enclose the latest report of the Dominion Statistician which gives, on page 34, the population of the whole section of Tiny as 4026. You may also find the other

10 statistics of some interest,

Yours very truly,

J. G. O'Donoghue, Esq., K.C.
241-242 Confederation Life Bldg.,
Toronto.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 2

Correspon-
dence
between
J. G. O'Don-
oghue and
Dr. A. H. U.
Colquhoun
(1923)

—continued.

PART EXHIBIT 2

9th May, 1923.

Dr. A. H. U. Colquhoun,
Deputy Minister of Education,
Parliament Buildings, Toronto.

20 Dear Dr. Colquhoun:—

Many thanks for your prompt reply to my letter.

Yours sincerely,

"J. G. O'DONOGHUE."

per "J. F."

Dict. O'D/GF.

PART EXHIBIT 2

Toronto, January 21st, 1915

Dear Sir,—

In reply to your verbal request to verify the statistics relating to the

30 Township of Tiny, covering school enrolment, average attendance, and legis-
lative grants, the accountants of the Department have checked them up and
state that the figures may be relied upon as quite correct, according to the
official figures in the possession of this Department. The return in question
is enclosed.

Yours very truly,

Deputy Minister of Education.

T. F. Battle, Esq.,
Barrister, etc.,
302 Bay St., Toronto.

*In the
Supreme
Court of
Ontario.*

MEMORANDUM FOR J. G. O'DONOGHUE, K.C., SHOWING THE LEGISLATIVE GRANTS APPORTIONED IN THE TOWNSHIP OF TINY FOR THE YEAR 1922.

Exhibits	School Section	School Enrolment	Average Attendance	Legislative Grant	
No. 2	Rural Public—				
Correspondence between J. G. O'Donoghue and Dr. A. H. U. Colquhoun (1923) —continued.	S.S. 5 Tiny.....	47	38	\$452 50	10
	S.S. 6 Tiny.....	40	22	322 50	
	S.S. 10 Tiny.....	53	42	240 00	
	S.S. 12 Tiny.....	25	12	216 00	
	S.S. 14 Tiny.....	96	69	590 00	
	S.S. 15 Tiny.....	45	25	240 00	
	S.S. 16 Tiny.....	16	12	282 50	
	S.S. 17 Tiny.....	90	49	322 50	
	S.S. 18 Tiny.....	23	15	322 50	
	S.S. 19 Tiny.....	88	57	322 50	
	S.S. 21 Tiny.....	43	28	280 00	
	S.S. 22 Tiny.....	37	27	420 00	
		Separate—			
	S.S. 2 Tiny.....	214	159	380 00	20
	S.S. 13 Tiny.....	108	74	160 00	

Toronto, May 8th, 1923.

No. 21
Courses of Study and Examination of High Schools, Collegiate Institutes and Continuation Schools, revised 1924.

EXHIBIT 21

(Suppliants')

Courses of Study and Examinations of the High Schools, Collegiate Institutes and Continuation Schools, Revised 1924.

NOTE:—Extracts from this Exhibit appear at p. 125, 1.31 to p. 127, 1.0.

A copy of this exhibit will be found in the Book of Pamphlets,—Document 4.

No. 35
Courses of Study, Public and Separate Schools 1924.

EXHIBIT 35

(Respondent's)

Courses of Study, Public and Separate Schools, 1924

30

NOTE:—A copy of this exhibit will be found in the Book of Pamphlets,—Document 6.

No. 36
Instructions to School Inspectors re Grants in Counties, 1924.

EXHIBIT 36

(Respondent's)

Instructions to School Inspectors re Grants in Counties, 1924

NOTE:—A copy of this exhibit will be found in the Book of Pamphlets,—Document 7.

EXHIBIT 36A

(Respondent's)

Instructions to School Inspectors re Grants in Districts, 1924

NOTE:—A copy of this exhibit will be found in the Book of Pamphlets,—
Document 8.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 36A

Instructions
to School
Inspectors r
grants in
Districts
1924.

EXHIBIT 40

(Respondent's)

Circular, Special Departmental Grants, Public and Separate Schools, 1924

10 NOTE:—A copy of this exhibit will be found in the Book of Pamphlets,—
Document 9.

No. 40
Circular,
Special De-
partmental
Grants, Pub-
lic and Sep-
arate School
1924.

EXHIBIT 42

(Respondent's)

Circular of Instructions re Continuation Schools, May, 1924**CONTINUATION SCHOOLS**

The Minister of Education desires to call attention to the following
matters affecting Continuation Schools.

No. 42
Circular of
Instructions
re Con-
tinuation
Schools,
May, 1924.

1. WHAT A CONTINUATION SCHOOL IS

20 A Continuation School is established to continue educational work for
pupils of rural and small urban districts by providing two or more years of
High School training for those who have passed the Ontario High School
Entrance examinations. The Continuation School is usually established and
controlled by the same Board of Trustees as controls the elementary school of
the district. No Continuation School may be established unless at least the
full time of one teacher is given to Continuation School work. No teacher may
be employed who does not hold at least an Ontario First Class Certificate.

2. COURSES OF STUDY IN CONTINUATION SCHOOLS

30 The courses of study in Continuation Schools are the same as those for
High Schools and are outlined in the pamphlet entitled "Courses of Study and
Examinations of the High Schools, Collegiate Institutes and Continuation
Schools, 1922."

On account of the small staff usually in Continuation Schools, certain limitations must be made regarding optional subjects, e.g., not more than two languages besides English may be taught. If the full time of one teacher only be devoted to Continuation School work, not more than the first two years of the High School course may be attempted; if the full time of one teacher and at least half time of another teacher be devoted to Continuation School work, the first four years of the High School course may be attempted.

3. HOW TO ESTABLISH A CONTINUATION SCHOOL.

The establishment of a Continuation School rests with the Board of Trustees or Boards of Trustees concerned, subject to the approval of the Minister of Education. Many Boards of Trustees call meetings of their rate-payers before taking action. Such action is very desirable as it may assure more hearty support if action is taken. But Trustees are the responsible parties when action is taken. 10

The following are extracts from the Continuation Schools Act:—

(1) Subject to the Regulations and to the approval of the Minister, the Public School Board of any municipality or school section or a Separate School Board may establish and maintain one Continuation School with a staff of at least one teacher engaged for his whole time.

(2) The Board shall have in respect of such Continuation School all the powers conferred on Public or Separate School Boards as to acquiring a school site, erecting buildings and additions to existing buildings and providing equipment for and paying the cost of permanent improvements and of the maintenance of such Continuation School. 20

(3) Subject to the Regulations and to approval of the Minister, agreements may be entered into by two or more Public School Boards or by one or more of such Boards and one or more Separate School Boards for the establishment and maintenance of a Continuation School to be conducted in some place agreed upon by the Boards for the benefit of the pupils from all of such schools, and any such agreement shall specify the proportion of the cost of the establishment and maintenance of the Continuation School to be paid by each of such Boards or shall provide for the manner in which such proportions shall be determined. 30

(4) A Continuation School established under subsection (3) shall be under the control and management of a committee composed of not more than two-thirds of the members of each of the Boards by which it is established, who shall be appointed by such Boards respectively.

(5) A Continuation School shall not be established or maintained in a municipality in which a High School is maintained or in any other part of a High School district. 40

The following are extracts from the Regulations relating to the establishment of Continuation Schools:

There shall be three grades of Continuation Schools, established under the provisions of The Continuation Schools Act, Grades A, B, and C. These

schools may be established when as reported by the Continuation School Inspectors, the following conditions are complied with to the Minister's satisfaction:

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 42
Circular of
Instructions
re Con-
tinuation
Schools,
May, 1924
—continued.

(1) There shall be a reasonable prospect of the Continuation School being efficiently maintained.

(2) In Grade A, at least the time of three teachers shall be given to the work of the Continuation School; in Grade B, at least the time of two teachers and less than the time of three; and in Grade C, at least the equivalent of the time of one teacher and less than the time of two.

10 (3) Adequate and suitable accommodations shall be provided as prescribed in Regulation 3, adequate and suitable equipment as prescribed in Regulation 4, and an adequate and suitable staff of legally qualified teachers as prescribed in Regulation 5.

20 (4) Where practicable, Public and Separate School Boards which desire to establish a Continuation School should unite as provided in section 3 (3) of The Continuation Schools Act. Where, however, such union is impracticable by reason of either a Public or a Separate School Board being unable or unwilling to bear its share of the cost of establishing and maintaining a Continuation School, the Minister may approve of the establishment of a Continuation School under one of the Boards; but, in that case, the school shall be open to the children of the supporters of both Public and Separate Schools on the terms provided in section 5 (2) and (3), of The Continuation Schools Act, and, subject to the Minister's decision in the case of disagreement, shall be conducted under conditions as to staffs and accommodations that are acceptable both to Public and to Separate School supporters.

FEES

(1). No fees shall be payable by resident pupils or by county pupils or by pupils who are admitted to a Continuation School under the provisions of subsections 9 and 10 of section 7 of the Continuation Schools Act.

30 (2). Pupils other than those mentioned in section 1 shall pay such fees as may be prescribed by the Board, but such fees shall not be greater than the average cost per pupil for education in the Continuation School.

5. LEGISLATIVE GRANTS

Where the Regulations regarding accommodations, equipment, qualifications of the staff and the courses of study are observed, the annual Legislative Grant for Continuation Schools will be distributed in accordance with the following scheme:

I. FIXED GRANTS

- 40 (a) For Grade C Schools.
- (i) When the equivalent of the time of one teacher is given to the work.....\$150.00
 - (ii) When the whole time of one teacher and at least one-half the time of an assistant teacher is given to the work.....\$225.00
- (b) For Grades A and B.....\$300.00

II. GRANTS ON SALARIES

In the
Supreme
Court of
Ontario.
Exhibits
No. 42
Circular of
Instructions
re Con-
tinuation
Schools,
May, 1924
—continued.

(a) For Grade C Schools.

- (i) 30 per cent. of the excess of the Principal's salary over \$500; maximum grant \$225; and
- (ii) 30 per cent. of the excess of half the assistant's salary over \$250; maximum grant \$100.

NOTE.—No grant will be made on the salary of an assistant teacher unless he devotes at least half his whole time to the work of the Continuation School. As half the time of the assistant is given to Public School work, only half his yearly salary may be charged for services to the Continuation School.

(b) For Grades A and B, 30 per cent. of the excess of the salaries over \$1,000 of the Principal and the assistant or of the Principal and one assistant with the next highest salary, as the case may be; maximum \$450.

10

III. GRANTS ON ACCOMMODATIONS

FOR GRADE C SCHOOLS

GRADE	Closets	Water Supply	School Premises	School Building	Class-Room	Laboratory	Halls	Waiting-Rooms	Cap-Rooms	Teachers' Room	Desk and Laboratory Tables	Blackboards	Lighting	Heating	Ventilation
	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.
I.....	2 00	1 00			6 00				1 00	1 00	3 50	1 00	1 25	1 25	2 00
II.....	1 50	75			4 50				75	75	2 75	75	1 00	1 00	1 50
III.....	1 25	50			3 50				50	50	2 25	50	75	75	1 25
IV.....	1 00	25			2 75				25	25	1 75	25	50	50	1 00

20

FOR GRADES A AND B SCHOOLS

I.....	4 00	2 00	9 00	4 00	15 00	2 00	2 00	2 00	2 00	2 00	6 00	2 00	4 00	4 00	6 00
II.....	3 00	1 50	6 75	3 00	11 25	1 50	1 50	1 50	1 50	1 50	4 50	1 50	3 00	3 00	4 50
III.....	2 00	1 00	4 50	2 00	7 50	1 00	1 00	1 00	1 00	1 00	3 00	1 00	2 00	2 00	3 00
IV.....	1 00	50	2 25	1 00	3 75	50	50	50	50	50	1 50	50	1 00	1 00	1 50

IV. GRANTS ON EQUIPMENT

(1) In respect of equipment, ten per cent. of the total approved expenditure, but so as not to exceed \$90 in the case of Grade C Schools with one teacher, and \$140 in the case of all other Continuation Schools.

(2) In apportioning the Legislative grant on equipment, the maximum values recognized for each grade of schools shall be as follows:—

30

(a) For Grade C schools: Library \$300; Scientific Apparatus \$300; Biological Specimens, \$50; Maps, Charts, Globes, etc., \$50; Art Models, \$50.

(b) For Grades A and B schools; Library, \$450; Scientific Apparatus, \$450; Biological Specimens, \$75; Maps, Charts, Globes, etc., \$75; Art Models, \$75.

6. COUNTY GRANTS

1. (a) The County must pay the equivalent of the Legislative grant.

(b) County Special Grants:—Many counties have been giving special grants to the Continuation Schools of the county.

(2) Where the cost of education of county pupils at a Continuation School exceeds the amount apportioned by the Minister and any fees received, the county shall in lieu of the equivalent of the amount apportioned out of the legislative grant, pay to the board a sum to be calculated as follows:—

10 To eighty per cent. of the total amount expended in paying of debentures issued to pay for permanent improvements and for providing the interest payable upon such debentures shall be added the total cost of maintenance of the Continuation School—the amount apportioned out of the legislative grant and any sums received for fees shall then be deducted; the remainder shall be divided by the total number of days' attendance of all pupils at the school during the next preceding three years and the resulting amount shall be multiplied by the total number of days' attendance of county pupils during the same three years, and the resulting amount shall be payable by the county.

20 3. Where the board of a Continuation School in a town not separated from the county or in a village or township has notified the clerk of any county adjacent to that in which the continuation school is situate, that such school is open to pupils resident in such adjacent county on the same terms as to county pupils, the council of such adjacent county shall pay for the education of pupils from such county attending the Continuation School a sum equal to eighty per cent. of the cost of education of pupils at such Continuation School.

The amount payable under section 3 shall be ascertained as follows:

30 The total expenditure on the Continuation School shall be determined by taking the sum of the total expenditure for maintenance, the total expended in paying off debentures issued to pay for permanent improvement, and the total expended in paying the interest on such debentures:—From the total expenditure thus calculated the amount apportioned out of the legislative grant and any sum received from fees shall first be deducted, the remainder shall be divided by the total number of days' attendance of all pupils at such Continuation School during the year for which payment is to be made, the resulting amount shall be multiplied by the total number of days' attendance of pupils in respect of whom the county is liable, the percentage prescribed shall then be determined and the resulting amount shall be the sum payable by the county.

40

7. TOWNSHIP GRANTS

Where a Continuation School is maintained in a rural section, i.e., in a community not an incorporated village or town, the Township Council must pay the same grants for the Principal and Assistant of a Continuation School as would be paid to a Principal and Assistant of a Public School. In most of

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 42
Circular of
Instructions
re Con-
tinuation
Schools,
May, 1924
—continued.

In the
Supreme
Court of
Ontario.

the townships this amounts to \$600 in the case of a Grade C school and \$1000 in the case of a Grade B school. (See section 96, Public Schools Act, 1920.)

Exhibits

8. ESTIMATE OF AMOUNT OF GRANT

No. 42
Circular of
Instructions
re Con-
tinuation
Schools,
May, 1924
—continued.

An estimate of the amounts of the grants payable to the different grades of Continuation Schools in accordance with the above scheme is shown below:—

1. Grade C schools:

(i) Suppose the salary of the Principal to be \$1,250 and the value of the equipment to be the minimum required, or \$450.

(ii) Suppose the salary of the full-time teacher to be \$1,250 and of the 10 half-time teacher to be \$1,000, and the value of the equipment to be the minimum required, or \$750.

2. Grade B schools:

Suppose the combined salaries of the two teachers to be \$2,500 and the value of the equipment to be the minimum required, or \$750.

Under these conditions the income of the school will be as follows:

I. LEGISLATIVE GRANTS

	GRADE C (i)	GRADE C (ii)	GRADE B
(1) Fixed Grant.....	\$150	\$225	\$300
(2) Grant on Salary.....	225	300	450
(3) Grant on Equipment.....	45	75	75
(4) Grant on Accommodations.....	15	15	45
<hr/>			
Total Legislative Grant.....	\$435	\$615	\$870

(This will vary with the grading but is here estimated for fair accommodation.)

II. COUNTY GRANTS

- (1) Equivalent to Legislative Grant.... \$435 \$615 \$870
- (2) Extra amount from county to defray cost of educating county pupils.
This will vary with the attendance from the county.

III. TOWNSHIP GRANTS

30

This is available only when the school is located in a township, and will vary with the average assessment of the sections of the township.

9. LEGISLATIVE GRANTS TO DISTRICT SCHOOLS

The yearly apportionment by the Minister of the Legislative Grant to each Continuation School in the Districts shall be twice the total of the sums apportioned on the different bases set forth in the case of each grade of school.

(1). Where the Board of a Continuation School in a town, village or township in a District has notified the Department of Education that such a school is open and free to pupils resident in any of the Districts, the Department of Education will pay in lieu of one-half the Legislative grant a sum equal to 80% of the cost of education of such pupils at the Continuation School whenever this cost of education exceeds one-half the Legislative grant and the fees received by the board.

10 (2). Where the Board of a Continuation School in a town, village or township in a County adjacent to a District has notified the Department of Education that such School is open and free to pupils resident in such District, the Department of Education will pay for the education of pupils from the District a sum equal to 80% of the cost of education of such pupils at the Continuation School.

(3) The cost of education shall be calculated in the same manner as fixed by the statute for calculating the part to be paid by a County Council to a Board of a Continuation School in a separated town. See Continuation Schools Act, Section 7 (11), as amended by Section 12 of The School Law Amendment Act, 1921. (No. 3 under County Grants.)

20 If in any year the amount voted by the Legislature of Ontario for any of the services recognized in the Regulations is insufficient to pay the grants in full, or if there is a balance over, the Minister may make a pro rate reduction or increase.

In view of the very liberal provision made for the maintenance of the Continuation Schools, the Minister expects that School Boards will pay adequate salaries and will use every available means to secure fully qualified and efficient teachers. Unless this is done, the full amount of the grants as indicated above will not be apportioned or paid.

TORONTO, MAY, 1924.

*In the
Supreme
Court of
Ontario.*

Exhibits

No. 42

Circular of
Instructions
re Con-
tinuation
Schools,
May, 1924
—continued.

**REASONS FOR JUDGMENT OF THE SUPREME COURT OF CANADA
DELIVERED 10th OCTOBER, 1927**

THE CHIEF JUSTICE. (CONCURRED IN BY RINFRET, J.).

This proceeding was instituted in order to determine the validity of three claims of "Roman Catholics" in the Province of Ontario with respect to Education:

(A) Their claim "to establish and conduct courses of study and grades of education in Catholic Separate Schools such as are now conducted in continuation schools, collegiate institutes and high schools"; and that "all regulations purporting to prohibit, limit or in any way prejudicially affect such right or privilege are invalid and *ultra vires*;" 10

(B) Their claim to exemption from taxation for the support of continuation schools, collegiate institutes and high schools not conducted by their own Boards of Trustees;

(C) Their claim to a share in public moneys granted by the Legislature of the Province of Ontario "for common school purposes" computed in accordance with what they assert to have been their statutory rights at the date of Confederation.

After a long and somewhat bitter struggle (Record, p. 233) the Separate Schools Act of 1863 (26 Vic., c. 5) was enacted by the Legislature of the Province of Canada. That statute, the appellants maintain, re-established the rights and privileges now in question. It was intituled; "An Act to restore to the Roman Catholics in Upper Canada certain Rights in respect to Separate Schools," and remained in force at Confederation. Whatever rights and privileges the Catholics of Upper Canada enjoyed under it in respect to their separate schools were made permanent by s. 93 (1) of the British North America Act, 1867. That section, authoritatively designated a code of legislative jurisdiction on the subject of Education for the older Provinces of Canada (Brophy v. A. G. for Manitoba, 1895, A.C., 202, 222-3), reads, 30 in part, as follows:

"93. 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;

(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 Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec; 40

(3) Where in any Province a System of Separate or Dissident 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."

*In the
Supreme
Court of
Canada.*

No. 20

Reasons for
Judgment
(The Chief
Justice)

—continued.

As put by Magee, J.A., in the present case, the safeguarding provisions of s. 93 "should be interpreted and effectuated in abounding good faith." (1926, 60 Ont. L.R., at p. 24). So to construe and apply sub-s. 1. of s. 93 that its manifest purpose shall not be defeated is the function of the Courts.

The rights and privileges which sub-s. 1 of s. 93 of the B.N.A. Act protects are rights and privileges "with respect to denominational schools" which "any Class of Persons have by Law in the Province at the Union." It is well-established that the "class of persons" whose legal rights and privileges are thus safeguarded is to be determined according to religious belief and that "Roman Catholics together" form such a class. As trustees, vested in their representative character with rights and privileges of members of that class, vindication of which is sought in these proceedings, the status of the appellants to maintain their petition of right was conceded at bar. (Ottawa S.S. Trustees v. Ottawa Corporation, 1917, A.C., 76, 81; Ottawa S.S. Trustees v. Mackell, 1917, A.C., 62, 69.)

It is, no doubt, also abundantly clear that only "rights or privileges" which existed "by law" at Confederation are protected by s. 93 (1). The statute expressly so states; and it has been so determined by the highest authority. *Maher v. Portland*, *Wheeler's Confederation Law*, at p. 367;

"Any practice, instruction or privilege of a voluntary character, which, at the date of the passing of the Act, might be in operation is not a 'legal right or privilege.'" (1917, A.C. at p. 69).

On the other hand, the "rights or privileges" within s. 93 (1) are not only those "in respect to denominational teaching," as some casual expressions of Lord Buckmaster in the *Mackell* case might suggest. There is no allusion in the Separate Schools Act of 1863 to religious instruction. There may be an invasion of a "right or privilege *with respect to denominational schools*" which, although most prejudicial to those schools, does not directly affect them in their "denominational aspect." The decision in *Ottawa S.S. Trustees v. Ottawa Corporation* (1917), A.C., 76, likewise delivered by Lord Buckmaster, makes this abundantly clear. A statute substituting a commission composed of Catholics, but nominated by the Government, to manage the Ottawa Separate Schools in lieu of the elected Board of Trustees was there held *ultra vires* as prejudicially affecting the right or privilege of the supporters of Catholic Separate Schools to have them managed by their own elected trustees.

The appellants submit that the Provincial Courts have misapprehended the scope and purpose of the Act of 1863 and also the effect upon it of sub-s.

1 of s. 93 of the B.N.A. Act. The view taken below is thus expressed by Hodgins, J.A., (Record, pp. 236-7, 60 Ont. L.R. at p. 30).

“The rights in respect of *denominational schools*, generally speaking, were the establishment and conduct of them by and under the immediate supervision of the Church which desired them, either in Quebec or Ontario, subject to regulations made pursuant to statute law. Rights and privileges in such schools, so far as they were “in relation to education” (as carried on by them) if affected, were to be dealt with by the Legislatures of the Provinces, subject to an appeal, not to the Courts, but to Federal authority, which was to correct any infringement 10 of those rights and privileges. These belonged not to a denomination as the creator and guardian of separate schools, but to the schools themselves, as part of a system of education. It was to the Provinces that education was committed and it is right that the systems of education established by them and the rights flowing therefrom, should be governed by their Legislatures and not by the Courts.”

The appellants point out that there is no reference in the statute of 1863 to “immediate supervision of the Church” and contend that the view that the redress of separate school supporters against provincial legislation adversely affecting their pre-Confederation legal rights and privileges is 20 confined to an appeal to the federal authority ignores the provisions of sub-s. 1 of s. 93 of the B.N.A. Act. The idea that the denominational school is to be differentiated from the common school purely by the character of its religious exercises or religious studies is erroneous. Common and separate schools are based on fundamentally different conceptions of education. Undenominational schools are based on the idea that the separation of secular from religious education is advantageous. Supporters of denominational schools, on the other hand, maintain that religious instruction and influence should always accompany secular training.

Any statute or regulation that would materially diminish or curtail 30 the scope of the education which denominational schools were, at the date of Confederation, legally entitled to impart, or that would tend to restrict the period during which supporters of such schools, Catholic or Protestant, were then legally entitled to have the education of their children subject to the influence of denominational control and instruction, would “prejudicially affect a right or privilege with respect to denominational schools” enjoyed by the class of persons of which such supporters form a section. Catholics deem it of vital importance that denominational influence over, and instruction of their children should continue during the period of their secondary education. Any attempted interference with such educational rights or 40 privileges, whether by statute or by regulation purporting to be made under statutory authority, contravenes subs-s. 1 of s. 93; the remedy is to invoke “the jurisdiction of the ordinary tribunals of the country”; the right of appeal to the federal executive under subs-s. 3 does not apply. This latter sub-section has to do with acts of the provincial authorities, which although not *ultra vires*, so affect rights and privileges theretofore enjoyed by a religious

minority, Protestant or Catholic (it may be under post-Confederation legislation) as to constitute, in the opinion of the Governor-in-Council, a grievance calling for Federal intervention. (*Brophy v. A.G. for Manitoba*, 1895, A.C., 202).

It would require an Act of the Imperial Legislature prejudicially to affect any right or privilege reserved under provision 1, and if the (statutes or) regulations impeached do prejudicially affect any such right or privilege, to that extent they are not binding on the appellants. The *Mackell Case*, *ubi sup.*

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

10 It was held by Rose, J. (59 Ont. L.R., at p. 150), with the approval of the Appellate Divisional Court, that, because the rights or privileges of the separate schools at Confederation in regard to legislative money grants depended upon legislation of the former Province of Canada and such grants were therein (26 Vic., c. 5, s. 20) described as "the fund annually granted by the Legislature of *this Province*" and "all other public grants, investments and allotments for common school purposes now made, or hereafter to be made by *the Province*," the newly created Province of Ontario was unaffected by any obligation in regard thereto and Catholic separate school supporters were not assured of a legal right to share in any appropriations or grants to
20 be made by Ontario for common school purposes. This view is utterly at variance with the spirit and intent of s. 93 (1) of the B.N.A. Act. Unless the legislatures of Ontario and Quebec are debarred from prejudicially affecting the rights and privileges of the respective religious minorities in regard to maintenance and support which their denominational schools enjoyed at Confederation under legislation of the former Province of Canada, the protection of such rights and privileges afforded by sub-s. 1 of s. 93 becomes illusory and the purpose of the Imperial legislation is subverted.

Moreover, by s. 129 of the B.N.A. Act, the Separate Schools Act of 1863 (26 Vic., c. 5) was continued in force "as if the Union had not been
30 made," subject only to a power of repeal or alteration "according to the authority . . . of the Legislature under this Act." That power of repeal or alteration is, like all other provincial legislative jurisdiction over education, subject to the restriction imposed by sub-s. 1 of s. 93. That the deprivation or diminution of a right to share in financial aid out of public moneys assured by law to their denominational schools at Confederation would prejudicially affect a privilege of Roman Catholics in regard to those schools seems incontrovertible.

It is also urged that inherent in the conception of a legislature is the
40 untrammelled right to make or withhold grants of public moneys and to attach thereto such conditions as it may see fit. That is, no doubt, true of every sovereign Parliament whose powers are unrestricted; it was true of the Legislature of the Province of Canada up to 1867; and it is likewise true since Confederation of a Canadian Provincial Legislature, save as otherwise provided in the B.N.A. Act. But, as Lord Herschell said, speaking for the Judicial Committee, in *Brophy v. A.G. for Manitoba* (1895), A.C., 202, at p. 222:

“It must be remembered that the Provincial Legislature is not in all respects supreme within the Province. Its legislative power is strictly limited. . . In relation to the subjects specified in sect. 92 of the British North America Act, and not falling within those set forth in sect. 91, the exclusive power of the Provincial Legislature may be said to be absolute. But this is not so as regards education, which is separately dealt with and has its own code . . . in the British North America Act. It may be said to be anomalous that such a restriction as that in question should be imposed on the free action of a Legislature, but is it more anomalous than to grant to a minority who are aggrieved by legislation an appeal from the Legislature to the Executive authority? And yet this right is expressly and beyond all controversy conferred.” 10

To impugn the efficacy of a restriction placed by s. 93 of the B.N.A. Act on the control of a provincial legislature over rights in regard to aid out of public moneys for denominational schools existing by law at Confederation would be to challenge the power of the Imperial Parliament, when creating a legislature, to impose on the exercise of one or more of its functions such limitations as, in its discretion, it may deem advisable.

(A) While the right of the trustees to determine the courses of study in separate schools rests primarily on the duty of management expressly imposed on them, a much discussed issue on this branch of the case was whether, in affording the secondary education undoubtedly imparted, as will presently appear, at and prior to Confederation, by schools established under the Common Schools Act and conducted as common schools (and not improbably in some Catholic separate schools), (Record, pp. 105, 267), trustees were exercising powers conferred on them by law, or whether their doing so was merely a practice lacking legal sanction, but tolerated by the educational authorities. 20

The Trustees of a Catholic separate school, under the Act of 1863 (26 Vic., c. 5) were elected 30

“for the management of such Separate School” (s. 3)

and had (s. 7) all the powers in respect of Separate Schools

“that the Trustees of Common Schools (had) and (possessed) under the provisions of the Act relating to Common Schools (C.S.U.C., 1859, c. 64);”

and they were required (s. 9) to

“perform the same duties and (were) subject to the same penalties as Trustees of Common Schools.”

The teachers of separate schools were required to have the same qualifications (s. 13) and were liable to the same obligations as teachers of the common schools (s. 9). 40

The preamble of the Act of 1863 states its purpose to have been

“to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools and to bring the

provisions of the Law respecting Separate Schools more in harmony with the provisions of the Law respecting Common Schools."

*In the
Supreme
Court of
Canada.*

It is, therefore, abundantly clear that, if, in 1867, trustees of common schools in Upper Canada had, by law, the right to provide in their schools for the secondary education now in question, Catholic trustees had, in the management of their separate schools, the same legal right.

No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

Turning to the Common Schools' Act in force in 1867 (C.S.U.C., 1859, c. 64) we find that it contains no limitation upon the scope of the education to be imparted or upon the courses of study to be conducted in the common
10 schools.

In rural school sections school trustees were required *inter alia* (s. 27) to provide school premises; to contract with, employ and pay teachers; to permit all residents between the ages of 5 and 21 to attend their schools (sub-s. 16); to exclude unauthorized text-books; and to report the number of children over 5 years of age and under 16 years of age in the school section and the number of "children and young persons" taught (distinguishing the sexes and those over and under 16 years of age), the average attendance, the branches of education taught with the numbers in each branch, and the text-books used.

20 By section 32 provision was made for the inclusion of all the school sections of a township under a single Board of five Trustees, who

"shall be invested with the same powers and be subject to the same obligations as Trustees (of schools) in Cities and Towns, by the seventy-ninth section of this Act."

Urban school trustees were required, *inter alia* (s. 79 (8))

30 "to determine (a) the number, sites, kind and description of schools to be established and maintained in the City, Town, or Village; also (b) the Teacher or Teachers to be employed; the terms of employing them; the amount of their remuneration, and the duties which they are to perform; (and) also (c) the salary of the local Superintendent of Schools appointed by them, and his duties;"

(sub-s. 11) to lay before the municipal councils an estimate of the sums required for purchasing or renting school premises, buildings, sites, etc., and (sub-s. 17) to report as in the case of rural trustees.

While there was no express statement of the ages of children eligible for attendance at urban common schools, the provision of sub-s. 16 of s. 27 (C.S.U.C., 1859, c. 64) conferring a right of attendance on all residents up to 21 years of age, was made applicable by sub-ss. 17 and 18 of s. 79.

40 Every common school teacher employed by the trustees (s. 27 (8)), on terms and for a remuneration and to perform duties to be determined by them (s. 79 (8)), was obliged

"to teach diligently and faithfully all the branches required to be taught in the School according to the terms of his engagement with the Trustees and according to the provisions of this Act" (s. 82 (1)).

The same obligations were imposed on teachers of separate schools (26 Vic., c. 5, s. 9).

Local superintendents were required to see that the common schools were conducted according to law (s. 91 (6)) and to report to the Chief Superintendent (sub-s. 12) the branches taught, the number of pupils in each branch, the text-books used, the average school attendance, etc.

County and Circuit Boards were also provided for and were empowered

“to select (if deemed expedient) from a list of text-books recommended or authorized by the Council of Public Instruction, such books as they may think best adapted for use in the Common Schools of the County or Circuit” (s. 98 (3)). 10

A Council of Public Instruction, constituted in 1850, (13-14 Vic., c. 48, s. 36), was continued (s. 114) and was empowered, *inter alia* (s. 119 (4)).

“to make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools, for the classification of Schools and Teachers and (sub-s. 5) . . . to examine, and at its discretion, recommend or disapprove of text-books for the use of schools. . .”

It is noteworthy that these powers were conferred in the Common Schools Act; and sub-s. 4 of s. 119 of that Act appears to have been the *only* statutory provision giving jurisdiction to the Council of Public Instruction to make regulations affecting common (or separate) schools. The language of subs-s. 4 may be compared with the wider terms in which the Board of Education, the predecessor of the Council of Public Instruction, had been empowered by the statute of 1846 (9 Vic., c. 20, s. 3) 20

“to make from time to time all needful rules and regulations for the *management* and good government of such School (s).”

By s. 26 of the Separate Schools Act of 1863 separate schools were declared to be

“subject to such regulations, as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada.” 30

These regulations were, no doubt, such as the Council of Public Instruction might legally make in exercising the power conferred upon it by s. 119 (4) of the Common Schools Act (the only provision which purports to confer, and define the subjects of, its jurisdiction to regulate), without derogating from the rights of management and control conferred on trustees by the Separate Schools Act. The Separate Schools Act, 1863, contained nothing corresponding to sub-s. 5 of s. 119 of the Common Schools Act which expressly gave supervision over text-books for common schools to the Council of Public Instruction. 40

Such appear to be the relevant statutory provisions on this branch of the appeal.

The trustees of all separate schools were elected for their "management." The trustees of urban common schools were explicitly required to determine the kind and description of schools to be carried on under their charge since 1847 (10-11 Vic., c. 19, s. 5 (3)), when the Legislature appears to have thought it advisable to make some distinct provisions for cities and towns, which were extended to villages in the C.S.U.C. of 1859, c. 64, s. 79 (8). In our opinion the effect of the legislation in force at Confederation, construing it without the aid of any extraneous evidence, is that it conferred on all separate school trustees, as part of, or incident to, the management and control of the

10 schools entrusted to them, the right to determine the subjects of instruction in and the grading of such schools. In the cases of urban trustees, and of township boards, constituted under s. 32 of the C.S.U.C., 1859, c. 64, this right is expressly conferred. (C.S.U.C., 1859, c. 64, s. 79 (8); 26 Vic., c. 5, s. 7).

There is, moreover, no doubt, as appears from the following extracts, that this view of the scope of the trustees' powers and duties was acted upon from 1847 by the provincial authorities. Indeed most of the official statements to be quoted were made after 1850, when the respondent asserts that the duty of school trustees to determine the courses of study and the books

20 to be used in the schools under their charge, imposed by the statutes of 1841 (4-5 Vic., c. 18, s. 7 (4)) and of 1843 (7 Vic., c. 29, s. 44 (7)), was transferred to the Council of Public Instruction under the power to regulate common schools then given to it. (C.S.U.C., 1859, c. 64, s. 119 (4)). Following a suggestion of their Lordships of the Privy Council in *Citizens' Insurance Co. v. Parsons* (1881), 7 A.C., 96, 116, we make of the official reports and documents in evidence the use indicated by Lord Blackburn in *Clyde Navigation Trustees v. Laird* (1883), 8 A.C., 658, 670. See, too, *Assheton Smith v. Owen* (1906), 1 Ch., 179, 213; *Goldsmiths' Company v. Wyatt* (1907), 1 K.B., 95, 107; and *Dunbar v. Roxburghe* (1835), 3 Cl. & F., 335, 354.

30 Reference may also be made to *Van Diemen's Land Co. v. Table Cape Marine Board* (1906), A.C., 92, 98, and to some observations of the Lord Chancellor in delivering the report of the Judicial Committee in the recent *Labrador Boundary Case* (1927), 43 T.L.R., 289, at pp. 297, 298 and 299.

Dr. Egerton Ryerson, from whose *Reports and official Circulars* the extracts about to be quoted are taken, had been Assistant Superintendent prior to 1846 and was Chief Superintendent of the Schools of Upper Canada from that time until 1876. His statutory duties were, *inter alia* (C.S.U.C., 1859, c. 64, s. 106)

40 "(5) To prepare suitable forms, and to give such instructions as he may judge necessary and proper, for making all reports and conducting all proceedings under this Act, and to cause the same, with such general regulations as may be approved of by the Council of Public Instruction for the better organization and government of Common Schools, to be transmitted to the officers required to execute the provisions of this Act;"

“(6) To cause to be printed from time to time, in a convenient form, so many copies of this Act, with the necessary forms, instructions, and regulations to be observed in executing its provisions, as he may deem sufficient for the information of all officers of Common Schools, and to cause the same to be distributed for that purpose;”

Dr. Ryerson would appear to have used the Journal of Education, constituted by His Excellency the Governor-General in Council for that purpose, as a medium of communication with trustees and teachers. (Ex. 34, p. 100 N. 4)

In his Report to the Governor for the year 1847, at p. 118, (Journal of Education, 1849, Vol. II), the Chief Superintendent said (Record, p. 96), referring to conditions existing prior to the legislation of that year (10-11 Vic., c. 19):

“The statistics afford a clear but painful proof of the very elementary character of the Common Schools, and the absolute necessity of employing every possible means of elevating it.”

In enumerating the number of pupils in the different branches he said that “the 1,773 reported as pursuing ‘other studies’ seem to have been pursuing ‘higher studies,’ for under this head in Abstract C. will be found 41 Common Schools in which Latin and Greek were taught, 60 in which French was taught, and 77 in which the elements of Natural Philosophy were taught;”

and, citing a New York Report shewing the schools of that State to be more advanced in their studies, he proceeded. . .

“The introduction of these studies into our Common Schools has been sanctioned by the Legislative department of the Government.”

In his Circular of 1848, explaining the objects of the Act of 1847 in regard to Cities and Towns and suggested general regulations, the Chief Superintendent said, at p. 197 (Exhibit 6, Record, pp. 265-6):

“The Board of Trustees will, of course, determine the age at which pupils will be admitted in each kind, or class, of Schools, or in each department of a School comprising more than one department; the particular School which pupils in the different localities of a City, or Town, shall attend; the condition of admission and continuance in each School; the subjects of instruction and the Text-books to be used in each School, and in each department; . . .”

Page 6, paragraph V of the Chief Superintendent’s Report of 1849, dealing with the “Classification of Pupils, and Subjects taught in the Schools” (Record, p. 266), shews that these subjects included:

“Mensuration, Algebra, Geometry, Elements of Natural Philosophy, Vocal Music, Linear Drawing, and other Studies, such as the Elements of the Latin and Greek Languages, etc., . . . which are taught in some of the Common Schools.”

In the same Report, at p. 14, (Record, p. 267) we are told by the Superintendent of Common Schools for the Simcoe District that in the schools in seven townships (which he names) including the Township of Tiny,

“the teachers are capable of imparting a thorough English, and, in some instances, a good classical education.”

And, at p. 50 of the same Report (Record, p. 267), the Chief Superintendent said:

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

10 “It is also worthy of remark, that the Board of Trustees in each city and incorporated town in Upper Canada, has authority to establish Male and Female Primary, Secondary and High Schools, adapted to the varied intellectual wants of each city and town; while in each country School Section, it requires the united means of intelligence of the whole population to establish and support one thoroughly good School.”

At p. 18 of his Report of 1850, the Chief Superintendent said, (Record, p. 97)

20 “The board of trustees in each city, town and incorporated village, having the charge of all the schools in such municipality, is able to establish and classify them in such manner as to meet the wants of all ages and classes of youth. This is done by the establishment of primary, intermediate and high schools. In some instances, this system of the classification or gradation of such schools has been commenced by establishing a large central school under the direction of a head master, with assistants, having a primary and intermediate, as well as high school department—the pupils being promoted from one department to another according to their progress and attainments. In other instances the same object is pursued by having one high school and intermediate and primary schools in different buildings and parts of the city or town. These schools can also be male, or female, or mixed, as the board of trustees may judge expedient.”

30 At p. 204 the Chief Superintendent repeated the observations already quoted from p. 50 of his Report of 1849. (Record, pp. 97-8). At p. 309 of the same Report, 1850, (Exhibit 9, Record, p. 98) speaking of cities, towns and incorporated villages, he said:

“Each Board has the charge of all the Common Schools in the municipality, determines their number and kind, whether primary, intermediate or high schools, whether classical or English, whether denominational or mixed,”

and, at p. 310:

40 “In regard to the large central school houses in cities, towns, and villages, after the noble examples of the boards of trustees in Hamilton, London, Brantford, Brockville, and Chatham, etc. . . It may often be found more economical to bring all grades of schools into one building.”

In the Annual Report of 1852, at p. 41, Table B, (Record, p. 98), is given the list of higher subjects taught in the common schools and at p. 43, Table C,

the text-books, which include Latin, Greek and Euclid. In 1863 the Annual Report shows 20,991 pupils over 16 years of age attending the common schools and 12,094 in "other studies" (Record, p. 101) which, no doubt, included Latin and Greek. (Record, pp. 95-6).

As has been already stated the trustees of separate schools were granted the same powers as trustees of common schools (26 Vic., c. 5, s. 7).

In *Ottawa Separate Schools v. Mackell*, 1917, A.C., 62, at p. 71, their Lordships of the Judicial Committee, discussing the legal rights and privileges of separate school trustees, say that

"the kind of school referred to in s. 79 (C.S.U.C., 1859, c. 64) is, in their 10
opinion, the grade or character of school. . ."

The provisions of the Common Schools Act were generally understood to contemplate that, at all events in cities, towns, and villages, and in rural districts where s. 32 of the Act of 1859 applied, the trustees should determine, according to their conception of local educational requirements, the subjects to be taught and the scope of the education to be imparted in the school or schools under their charge and would appear to confer upon them the legal right to do so. It was a statutory duty in 1867 to provide in all common schools education suitable for pupils ranging from 5 to 21 years of age and of both sexes.

20

With the law in the state thus indicated it is not surprising that in many of the larger centres, where higher educational standards were necessary to meet local requirements, Common Schools, at and prior to Confederation, were carrying on, with the approval and encouragement of the Provincial educational authorities, courses in practically all the branches of learning now included in the curricula of high schools as well as public schools and were imparting to their pupils the education requisite to enable them to matriculate into the University, to enter the Normal School, and to take up the studies prescribed for the "learned professions."

From the official documents in evidence we learn that such secondary 30
education—apparently a complete high school course—was being given before Confederation in the central common schools of the Cities of Hamilton and London, that similar courses for girls were recommended for the City of Toronto, (Record, pp. 164, 165) and were contemplated for the Cities of Kingston and Guelph (Record, pp. 134-5) by the Common School Trustees of each of those three cities—all with the endorsement and active encouragement of the Chief Superintendent of Education (Record, p. 98) and, presumably, with the knowledge and sanction of the Legislature, to which his Annual Reports were submitted.

In the Annual Report of 1852 (already referred to) in Appendix A, 40
at p. 132 (Record, p. 99), the Chief Superintendent, referring to the City of London, says:

"The board of trustees deeming it proper to place within the reach of every class of the community, and of every child who might evince a taste and talent for a more extended range of studies than are generally

pursued at common schools, facilities for the acquisition of literary and scientific attainments, equal to those afforded by the higher order of academies, directed the principal to introduce, in addition to the other studies, that of classics, and during the past year about twenty-five pupils have availed themselves of the advantages thus afforded in the abstract sciences."

In the Annual Report of 1855 (Exhibit 12, Record, p. 100) the local Superintendent of Schools at Hamilton, says, at p. 282:

10 "Any child under twenty-one years of age, whose parents reside within the city limits, and who is qualified for admission into the junior class, can, by applying, gain an entrance into the Central School, and can remain there, free of charge, until he has passed through the various classes, and, if desirous, qualify himself for matriculation at the University. The course of instruction includes reading, writing, arithmetic, geography, grammar, history (Canadian, English and general), history of English literature, linear drawing, vocal music, bookkeeping, human physiology, astronomy, elements of natural philosophy and chemistry, algebra, Euclid and mensuration, natural history, botany and geology, and the Latin, Greek and French languages. . . The teachers at present
20 engaged in the City schools number thirty, and include a principal, a classical master, a French Master, a writing master, a music school master, thirteen division teachers in the Central School, and thirteen primary teachers."

And, in the Annual Report of 1863, the Honourable Mr. Justice John Wilson, who had been Local Superintendent at London, at p. 154, reporting on the London common schools, says (Record, p. 103)

30 "The board was unwilling to be connected with the County Grammar School. At the date secondly mentioned (1855), which I look upon as a turning point in our educational affairs in this place, something was added to the English course, with a few boys in the elements of the Latin language, forming merely a classical nucleus. . . Now the English course is at once extensive and thorough, embracing every subject of importance to the mechanic, the merchant or the professional man. The classical department has been extended so as to embrace Latin, Greek and French, and made comprehensive enough to qualify students for entering upon the study of any of the learned professions, or to matriculate in any college or university in the Province."

The Annual Report for 1867 (p. 89), showed in the counties, cities, towns and villages 31,132 common school pupils over 16 years of age, 72,987 doing
40 high school work and 8,019 in the "higher studies." (Record, p. 105).

While our attention was not drawn to any explicit evidence to that effect, there is little room for doubt that the attendance of pupils at the common schools who were taking the courses of high school work was included in the returns made for the purpose of ascertaining the proportion of the legislative grants to which the several school sections in which such schools were carried

on were entitled (C.S.U.C., .c. 64, ss. 106 (1) and 91 (1)); and also in determining the amount of public moneys to be apportioned to the separate schools (26 Vic., c. 5, s. 20). That could properly be done only if the trustees of common schools had the legal right to conduct the classes in which high school or classical education was given.

In the Journal of Education for September, 1865, (Exhibit 37), commenting on the New Grammar Schools Act, Dr. Ryerson (at p. 132) says (Record, p. 309):

“The Common School law amply provides for giving the best kind of a superior English education in the *High Schools*, in the cities, towns and villages, with primary ward schools as feeders (as in Hamilton); while to allow Grammar Schools to do Common School work is a misapplication of Grammar School funds to Common School purposes; Common Schools are already adequately provided for. . .” 10

Again in the issue of the same Journal for May, 1867, at p. 81, (Exhibit 38—Record, pp. 315-6)—only two months before Confederation, Dr. Ryerson writes:

“And according to the best opinions any course of studies which would attempt to be equally excellent for the higher education of both boys and girls, would be simply worthless for either. . . It therefore becomes advisable to discourage the present unusual attendance of girls at the Grammar Schools. 20

But it is often urged that “if our girls do not go to the grammar school there is no other provision made for their receiving an advanced education in our public schools.” This is a mistake. The Consolidated Common School Act, section 79, sub-section 8, authorizes the Common School Trustees of every city, town, or incorporated village “to determine (a) the number, sites, *kind and description* of schools to be established and maintained in the city, town or village (whether they be high schools for boys and girls, or infant schools, etc.) also (b) the teacher or teachers to be employed; the terms of employing them; the amount of their remuneration; and the *duties which they are to perform*.” There is thus every legal facility for the establishment of high schools for girls throughout the country, and it is in such institutions that those pupils ought to find the means of prosecuting the advanced studies which they now seek in the grammar schools, and which if they find there, it is at the expense of not employing their time to the best advantage, and of studying some subjects which are of very little use to them. (Italics appear in the original).” 30

The law in force at Confederation was continued by s. 129 of the British North America Act and remained practically unchanged until 1871. 40

In the Journal of 1868, p. 84, (Exhibit 24), Dr. Ryerson says (Record, p. 317):

“I regret to observe that the evil of inducing girls to enter the Grammar Schools, with the apparent object of unduly swelling the

number of pupils, has not diminished but has increased, although there are still several schools which are not open to this reproach. It therefore becomes the duty of the Department, in its administration of the law, to take care that no encouragement is offered to a course of action which is contrary to the intention of the Grammar School Law and Regulations, and injurious to the best interests of the schools and pupils.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

10 The law invests School Trustees with ample powers for the establishment and maintenance of schools or departments of schools in which girls, who have passed through the elementary Common School studies, may obtain that higher culture and instruction which they may require. But the organization and studies of the Grammar Schools are not adapted for mixed classes of grown up girls and boys, nor is it desirable that such mixed classes should exist.

20 The matter is of so serious an aspect, that I felt it my duty to consult the Principal Law Officer of the Crown in this Province as to the proper interpretation of the Law, and the following is the opinion he has given: "My interpretation of the Grammar School Act in relation to the question submitted by you is that boys alone should be admitted to those schools, and that consequently, the Grammar School Fund was intended for the classical, mathematical and higher English education of boys."

It therefore became my duty, as thus instructed, to apportion the grant of 1868 on the basis of the boys' attendance."

30 As against all this evidence indicative of the view current and acted upon by the Provincial educational authorities about the time of Confederation that trustees of common and separate schools had the legal right to provide for the secondary education of pupils attending their schools up to matriculation, the only document in the printed record on which the respondent relies shews the adoption by the Council of Public Instruction in 1858 of a regulation prescribing the courses of study for common schools (Record, pp. 80-82), which was declared in the Separate School Manual of 1863, issued by the Provincial Educational authorities, to be applicable to Roman Catholic Separate Schools (Exhibit 5A, Record, p. 304). These "prescribed studies" may be regarded as those "*required* to be taught" in the Common Schools (Exhibit 34 (1864) p. 75) i.e. as a minimum and not exclusive. While the curriculum of studies so prescribed was comparatively restricted, it included the first six books of Euclid and mensuration of surfaces and solids, and, for boys, trigonometry, and other matters in the discretion of the trustees. Indeed it comprised most, if not all, that is obligatory in the curriculum prescribed for High Schools to-day.

40 Our attention has been drawn to extracts (not printed in the Record) from a letter of the Chief Superintendent, published in "The Globe" newspaper of the 27th of March, 1866, copied in the Journal of Education and reprinted in Exhibit 33, intituled "Grammar School Manual" (compiled by J. George Hodgins, LL.B., Deputy Superintendent), at pp. 73-4. The main purpose of this letter was, as indicated by its heading in the Manual, to emphasize "The Necessity for Uniform Text-books in all Common Schools." Incident-

ally the writer alludes to the power and duty of the Council of Public Instruction

“to prescribe the subjects of instruction in the public schools and the text-books which shall be used in giving that instruction.”

It is then pointed out that

“teachers of public schools are not employed, therefore, to teach what subjects or books they please, but to teach those subjects and books which are prescribed by law.”

The Statute (C.S.U.C., 1859, c. 64, s. 79 (8)) declares it to be the duty of the trustees “to determine . . . the duties which (teachers) are to perform” 10 and (s. 82 (1)) of the teacher

“to teach diligently and faithfully all the branches required to be taught . . . according to the terms of his engagement with the trustees and according to the provisions of this Act.”

If, upon a proper construction of the statutory law (C.S.U.C., 1859, c. 64, secs. 27 (8) and (16), 79 (8) and 82 (1), and s. 32, and 26 Vic., c. 5, ss. 3-7-9), separate school trustees were given the right, as part of the management of the schools entrusted to them, to determine that secondary education should be given in their schools, the power of regulation conferred on the Council of Public Instruction could not be utilized to prevent or restrict the 20 exercise of that right. The subjects of that power were confined (C.S.U.C., 1859, c. 64, s. 119 (4)) to the “organization, government, and discipline of Common Schools” and “the classification of Schools and Teachers. . .” We assume a like power of regulation over separate schools. The Council was not empowered to curtail the courses of studies to be pursued or to determine the extent of the education to be imparted in the schools.

“Organization, government and discipline” are not apt terms to confer such jurisdiction; and “classification” does not imply anything of the kind. It had reference rather to the distribution of the pupils in classes according to the degree of advancement each had attained in his education and to the 30 due arrangement of the courses of study so as to provide for the teaching which the several Boards of Trustees might deem suitable for local requirements and to ensure that the time of both teacher and pupil might be utilized to the best advantage, that there should be no overlapping in the work and that for each class and for each term of the course there should be provided a sufficient, but not an excessive, amount of work.

The system was voluntary; local self-determination was fundamental in it; there was the minimum of governmental control.

“The character of the instruction given in every educational establishment is an expression of the people themselves upon the question of 40 education. . . The system begins and ends with the people. No school-house can be built, no teacher employed, no rate levied, except by the concurrence of the people. It was true that it was not voluntary as to the individual, but it was certainly voluntary in regard to the municipality.” (Journal of Education, March, 1860, p. 34 (Record, 297)).

It is significant that while the cognate matter of the recommendation and disapproval of text-books for use in common schools is entrusted to the Council (s. 119 (5)), the delimitation of courses of study in those schools is not mentioned in the enumeration of its functions. When the Legislature intended to give the Council the right to determine the courses of study it readily found language apt for that purpose, as in the case of the Grammar Schools, for which the Council was empowered to "prepare and prescribe a list of text-books, programme of studies, etc. . ." (C.S.U.C., 1859, c. 63, s. 15).

*In the
Supreme
Court of
Canada.*
No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

10 More noteworthy still is the fact that the recommendation and disapproval of text-books is treated as something not comprised within the power of regulation. The two matters are kept distinct, being dealt with in different sub-sections (s. 119, sub-ss. 4-5). While the Act of 1863 subjected the Separate Schools to regulations to be imposed by the Council of Public Instruction (s. 26), it contained no provision committing to that body any supervision over the text-books to be used in those schools. In the selection of text-books, as in the determination of the courses of study to be pursued in each separate school, the discretion of the trustees elected for its management was untrammelled.

20 The statutes which entitled pupils up to the age of 21 years to attend the common and separate schools were certainly not designed to enable the Council of Public Instruction, under the guise of regulation, so to restrict the courses of studies for which the trustees might provide that they would be suitable only for pupils up to the age of, say 12, or even 16 years.

As was forcibly pointed out during the argument, that would be to prohibit, not to regulate. (*Corporation of City of Toronto v. Virgo*, (1896), A.C., 88). If the power of regulation of the Council of Public Instruction could be so exercised, the work of the schools could be indefinitely cut down. No doubt, in the case of common schools, that might since Confederation be done directly by Provincial statutes, or by regulations authorized by them, because as to schools other than denominational schools legally established no limitation is imposed on the jurisdiction of the Legislature. But that an emasculation of the courses of study which Catholic separate school trustees were at the Union entitled to provide in their denominational schools for pupils up to 21 years of age would prejudicially affect a right or privilege with respect to such schools legally enjoyed by them is indisputable; and it would also affect the privilege of denominational teaching in Separate Schools, because parents desirous of having their children receive such training in those schools up to the age of 21 years would be obliged to submit to the
30
40 hardship of their obtaining only an inferior secular education. Legislation purporting to authorize such an injustice would contravene s. 93 (1) of the British North America Act; and it is obvious that what the legislature cannot do by direct action its creature may not do by regulation.

For the respondent it is contended that in the pre-Confederation public school system of Upper Canada the legal right to give secondary education was vested solely in the Grammar Schools—that they were designed to be

the intermediate schools between the common schools and the university; and that if the common schools carried on "High School" work it was only by toleration and not by legal right.

The latter part of this argument has already been dealt with.

The grammar schools were classical schools, Latin and Greek being compulsory subjects in their courses; but, while they were, no doubt, designed to impart secondary education, they also did primary and elementary school work. (Record, pp. 150 and 155). They were not really a part of the public school system. In 1867 they were governed by the provisions of the C.S.U.C., 1859, c. 63, which embodied, without material change, the Acts of 1853 (16 Vic., c. 186) and of 1855 (18 Vic., c. 132). The Grammar Schools were intended for boys only (Journal of Education, 1868, p. 84; Exhibit 24, Record, pp. 199, 317); when united with common schools (16 Vic., c. 186, s. 11 (4); C.S.U.C., 1859, s. 64, s. 27 (7) and s. 79 (9)) children of separate school supporters could not attend them (C.S.U.C., 1859, c. 64, s. 27 (16))—and there was no provision for the union of grammar schools and separate schools. The more advanced common schools refused to unite with the grammar schools and themselves carried on "high school" work with official approval. (Record, pp. 99, 100, 103, 274). Unions were discouraged (Record, pp. 308, 316). Grammar schools were departmentally controlled as to their courses of study (16 Vic., c. 186, s. 6); there was no statutory right to attend them—they were in fact select schools; and in many localities in Upper Canada, where secondary education was necessary, grammar schools were not accessible, and, if such education was to be available in those places, the common schools must impart it—as in fact they did. 10

Matters continued in that position for several years after Confederation, the changes complained of by the appellants having begun only in 1871. The common schools and the grammar schools then disappeared *nominatim* and there came into existence high schools (including collegiate institutes) for secondary education and public schools for primary and elementary education solely. It is now very generally assumed by "the man in the street" that the public school of to-day has replaced the common school and that the high school is the successor of the grammar school. But that is only partially true. At Confederation the common schools were by law unrestricted in their courses of study and were obliged to provide for pupils up to 21 years of age and, in many cases, furnished secondary education suitable for pupils proceeding to matriculation. The public schools, when created in 1871 (34 Vic., c. 33), were obliged to provide education only for children up to the age of 12 years (s. 3) and were required to comply with regulations (s. 37), which restricted the courses of study to primary or elementary education. The high schools (including collegiate institutes) since 1871 do not engage in primary or elementary work; on the other hand Latin and Greek are not compulsory subjects in them (Record, p. 200 and Exhibit 21, Document No. 4, "Book of Pamphlets," pp. 7, 8, 9); boys and girls alike have a statutory right to attend them (R.S.O. 1914, s. 268, s. 24 (c)); they are not select schools, but are common schools in the proper sense of that term. 30 40

From this brief statement it is clear that while the public schools of to-day do that part of the work formerly done in the lower classes of the common schools, i.e., the work of primary or elementary education, and the high schools (including collegiate institutes) have taken over the work of secondary education formerly done by the grammar schools, they have also taken over the same class of work which was concurrently done in the upper or high school classes of the more advanced pre-Confederation common schools, in which 72,987 pupils were being trained in 1867, of whom 8,019 pursued "the *higher studies*." (Record, p. 105). In many particulars the

10 high schools of to-day have the characteristics of the old common school. They are in fact quite as much the successors of those schools as they are of the superseded grammar schools. In so far as the legislation and the regulations governing High Schools may interfere prejudicially with the rights and privileges legally enjoyed in 1867 by the Roman Catholic separate schools they are *ultra vires*.

It is not surprising that the Chief Superintendent of Education, when transmitting to trustees, inspectors and teachers, in 1872, the regulations made under, and his instructions for the carrying out of, the Act of 1871, warned them that the

20 "new School Act and Regulations do *not* in any way affect the Separate Schools. It was not intended to affect them when the Act was passed; and it would be unjust to the supporters of these schools thus to legislate for them indirectly, and without their knowledge. The Inspectors will, therefore, be particular not to apply the Act, or any of the new Regulations to Separate Schools." (Exhibit 52, Record, p. 332).

The rights and privileges of Roman Catholic separate school supporters and the scope, intent and effect of the perpetuation of them by s. 93 (1) of the B.N.A. Act were probably better understood and appreciated by the Provincial educational authorities in 1872 (five years after Confederation)

30 than they are now. Emphasis was given to the above-quoted warning by its repetition in 1873 (Exhibit 23, *ibid.*); and the Minister of Education expressed the same view in 1876. (Record, p. 338).

Inasmuch as Continuation Schools were the outgrowth of the Continuation Classes provided for long after Confederation in connection with the public schools, they do not call for any special consideration.

It would, therefore, seem to be abundantly clear that in 1867 the trustees of Catholic separate schools, charged with their management and clothed with the powers of trustees of common schools, had the right by law to provide in them the secondary education requisite to enable the children of their

40 supporters to matriculate, to enter the Normal School, or to take up the study of any of the "learned professions." Such education, then imparted by many common schools, included most, if not all of the obligatory work now done in the Ontario High Schools and was designed to meet the requirements of ordinary pupils up to the age of 21 years. While the obligation of the trustees to provide for pupils up to that age is set forth in the current Ontario Separate Schools Act (R.S.O., 1914, c. 270, s. 45 (d)), the present

law and regulations would restrict the teaching to be given in Catholic separate schools to what is prescribed for the public schools of to-day, which are not required to provide for pupils over the age of 16 years. (R.S.O., 1914, c. 266, s. 73 (d)). (Under the Act of 1871 the public school obligatory age limit was 12 years of age). In other words, the present law and regulations of Ontario forbid Catholic separate schools to impart the high school education which they were legally entitled to furnish at Confederation. Under them, if Catholic pupils are to remain subject to the religious control and influence of their denominational schools, as in pre-Confederation days, until they reach the age of 21 years, it must be at the cost of acquiring in those schools only such education as is deemed suitable for pupils not over 16 years of age attending the public schools. (Record, p. 205, line 37). It would seem to be very plain that a right or privilege enjoyed at Confederation by the Roman Catholics of Ontario in respect of their denominational schools is thus prejudicially affected. 10

(B) The exemption of the separate school supporters under s. 14 of the Act of 1863 (26 Vic., c. 5) was

“from the payment of all rates imposed for the support of Common Schools, and of Common School Libraries, or for the purchase of Land or erection of buildings for Common School purposes, within the City, Town, 20 Incorporated Village or section in which he resides.”

From the fact that the Ontario Continuation Schools, High Schools and Collegiate Institutes are now doing work which formed part of that formerly legally done, or which might have been so done, by the common schools, it follows that separate school supporters are entitled to exemption from rates for the support of such Continuation Schools, High Schools and Collegiate Institutes. To compel Catholic separate school supporters to support the Ontario High Schools, etc., and to use them, if they would give their children up to 21 years a secondary education, is prejudicially to affect the right or privilege enjoyed by Roman Catholics as a class at the Union of 30 having such education given to their children under denominational influence and in separate schools managed by their own trustees. As put by Patterson, J., in *Barrett v. Winnipeg*, (1891), 19 Can. S.C.R., 374, at p. 424,

“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.”

(c) Sections 20, 21, and 22 of the Separate Schools Act of 1863 (26 Vic., c. 5) read as follows:

“20. Every Separate School shall be entitled to a share in the fund 40 annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal

authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township.

*In the
Supreme
Cour. t of
Canada.*

No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

10 21. Nothing herein contained shall entitle any such Separate School within any City, Town, Incorporated Village or Township, to any part or portion of school moneys arising or accruing from local assessments for Common School purposes within the City, Town, Village or Township, or the County or Union of Counties within which the City, Town, Village or Township is situate.

20 22. The Trustees of each Separate School shall, on or before the thirtieth day of June, and the thirty-first day of December of every year, transmit to the Chief Superintendent of Education for Upper Canada, a correct return of the names of the children attending such school, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open; and the Chief Superintendent shall, thereupon, determine the proportion which the Trustees of such Separate School are entitled to receive out of the Legislative grant, and shall pay over the amount thereof to such Trustees."

Section 33 of the Separate Schools Act in the C.S.U.C., 1859, c. 65, which embodied the material parts of s. 13 of the Taché Act of 1855 (18 Vic., c. 131), was in these terms:

30 "33. Every such Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, according to the average number of pupils attending such School during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township."

There is a striking difference between this provision and s. 20 of the Act of 1863. The basis of division remained the same—*pro rata* according to the average attendance. But the Taché Act of 1855 and the C.S.U.C., 1859, c. 65, both gave the right to share only in "the fund annually granted by the Legislature of this Province for the support of Common Schools" (i.e. the fund known as "The Common School Fund"), while by the Act of 1863 the like right is given to

40 "share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities."

All three statutes pointedly distinguish legislative and municipal grants of public moneys (which belonged to supporters of common schools and separate schools alike) from moneys raised for common school purposes by local assess-

ments, to which separate school supporters did not contribute because they were exempt. In the former only were separate school supporters given the right to share. The policy of the Legislature up to Confederation plainly was to put both kinds of schools on an equal footing in regard to sharing in the appropriation of public money.

The language of s. 20 of the Act of 1863 is most comprehensive in describing the public grants in which the right to share was assured to the separate schools. Formerly restricted to a right to share in "The Common School Fund" (a well-defined annual grant of long standing, which had been the subject of much legislation, and as to the distribution of which no complaint is made by the appellants) (Record, p. 219, line 11), separate school supporters were in 1863 given the added right to "share in all other public grants, etc." There is no allusion to "general grants" or "special grants"—"grants for urban schools" or "grants for rural schools"—"conditional grants" or "unconditional grants." All such grants are "public grants," i.e., grants of public moneys, in which common and separate school supporters have identical interests. Legislative and municipal grants for common school purposes differ widely from the annual legislative grant of "The Common School Fund." The latter is, to a substantial extent, a vote of the income of public moneys already set aside for educational purposes, while the former are wholly gratuitous grants of public moneys not so earmarked. In s. 20 of the Separate Schools Act, 1863, instead of merely adding the words "and in all other public grants, etc.," immediately after the words in the Taché Act

"shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools,"

the Legislature made the additional grants, to which the right of sharing was then extended; the subject of a distinct clause in these words:

"and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities."

Not only are the words "shall be entitled to a share" unnecessarily repeated, if the additional benefits conferred be restricted to grants *ejusdem generis* with the grant of "The Common School Fund," but an intention to exclude the application of that rule of construction, or of the kindred maxim "*noscitur a sociis*" (which would, if applicable, cut down the comprehensive words "all other public grants, etc.," to mean only "general grants," i.e., grants for common school purposes generally), is further evidenced by the fact that the added clause deals with investments and allotments as well as grants and with municipal as well as provincial grants, etc. A distinction is also made, no doubt advisedly, in regard to the expressed purposes of the respective grants, the object of the earlier grant of "The Common School Fund" being designated "for the support of common schools," while that of the latter is stated in the

broader terms: "for common school purposes." As observed by Lopes, L.J., in *Anderson v. Anderson*, 1895, 1 Q.B., 749, 755:—

"The doctrine of *ejusdem generis* is a very valuable servant, but it would be a most dangerous master."

In the same case Lord Esher, M.R., said, at p. 753:—

"*Prima facie* you are to give the words their larger meaning."

To exclude from the additional monetary benefits in which the right to "a share" was conferred on the separate schools in 1863 grants "for a common school purpose," made to particular schools, or otherwise restricted, and conditional grants for any such purpose, would defeat the apparent intention of the Legislature in 1863 to put separate schools on a footing of absolute equality with common schools in regard to all grants, municipal or legislative, of public moneys. Given such an application, the doctrine *ejusdem generis* would indeed be "a dangerous master." The only qualifications which the Legislature attached to the educational grants, legislative and municipal, in which it gave the separate schools the right to share, were that they should be "of public moneys" and should be made "for common school purposes."

But, it is said, if the Legislature of Ontario should see fit to restrict a grant to a particular common school or schools, or to make a grant for a particular purpose—such as, to aid schools in which "Darwinism" shall be taught—to apportion a share of any such special grant, in the former case to separate schools, and in the latter to schools in which "Darwinism" is not taught, would be to make a grant which the Legislature had not made. No doubt moneys so granted cannot be appropriated otherwise than as the Legislature directs; but the consequence is that any grant of that kind which prejudicially affects the right of separate schools under s. 20 of the Separate Schools Act, 1863, is *ultra vires*—whether it be provincial or municipal. Since Confederation for the purposes of s. 20, no distinction can be made between the powers of municipal councils and the powers of the Provincial Legislature Section 93 (1) of the B.N.A. Act admittedly forbids any invasion of the legal rights of denominational schools as existing at Confederation. In regard to the particular matter now being dealt with, the situation thus created is precisely the same as if the British North America Act had contained a provision in these words:

"Out of every grant of public moneys to be made by the Legislature of the Province of Ontario, or the municipal authorities of that Province, for common school purposes, there shall be paid to every Separate School a share thereof proportionate to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which have elapsed since the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township."

If, therefore, a grant of public moneys is made by the Legislature or by a municipal authority to aid or assist in the carrying out of what would in 1867 have been deemed a common school purpose, either it must be so made that

In the
Supreme
Court of
Canada.

No. 20

Reasons for
Judgment:
(The Chief
Justice).
—continued.

it is apportionable between the common schools (or their present day successors) and the separate schools, or compensation to the latter for their proportion of such grant must be provided for.

It may be that under s. 20 of the Separate Schools Act of 1863 there was no assurance that any grants other than that of "The Common School Fund" would be made in the future for common school purposes; but a definite right to share *pro rata* in them, if and when made, was thereby assured to the separate schools. After 1863 municipal authorities in Upper Canada could not grant public moneys for any common school purpose except on the basis provided by s. 20 of the Separate Schools Act. They were absolutely bound by its provisions. Of course until Confederation the Legislature of Canada retained full power to repeal or amend s. 20 of the Separate Schools Act. It could, either expressly or by implication, direct that s. 20 should not apply to any grant which it, or a municipal council, might make to a particular school, or for any common school purpose or purposes, or subject to any condition. But the Ontario Legislature cannot do so since 1867 if the consequence would be to affect prejudicially the right of separate schools to share, on the basis prescribed by s. 20, in all provincial or municipal grants of public moneys for common school purposes. The Ontario Legislature may deal as it pleases with the proportion of its grants for "common school purposes" in which separate schools are not interested. It may divide or dispose of that "proportion" in any way it sees fit amongst "public schools" and "high schools," etc.; but every dollar appropriated by it to aid those schools or the work done in them, whether by way of general grant or special grant (saving moneys granted to High Schools in continuation of former Grammar School appropriations), must be taken into account and treated as a payment to them "for common school purposes" in determining the share of "public grants" to which the separate schools are entitled. 10 20

The protection assured to separate schools by s. 93 (1) of the B.N.A. Act in regard to public aid is that their right to share *pro rata* on the basis of average attendance in all public moneys devoted to common school purposes should not be prejudicially affected by provincial legislation. Assuming the utmost good faith, and excluding any idea of a design to circumvent the provision of s. 20 of the Act of 1863, every grant for a common school purpose, whether made for a particular school or schools, or made subject to some restrictive term or condition, comes within the ambit of the protection of s. 93 (1) of the B.N.A. Act. The right to share in all such grants is given by section 20 of the Act of 1863 in the plainest possible terms; and the power of the provincial legislature to defeat that right or to affect it to the prejudice of the supporters of such schools has been categorically negated by the Imperial Parliament. The question is purely one of legislative power. 30 40

The Common and the Separate Schools Acts alike were continued in force after the Union by s. 129 of the B.N.A. Act as provincial legislation of Ontario, subject to repeal and amendment by the legislature, as to Common Schools without restriction, and as to Separate Schools within the limitations imposed by s. 93 (1) of that Act. *Dobie v. The Church Temporalities Board*, (1882), 7 A.C., 136, 147; *A. G. for Ontario v. A. G. for Canada*, 1896, A. C.,

348, 366-7. The presence of the words "this Province" and "the Province" in s. 20 of the Separate Schools Act of 1863 did not render that provision inapplicable after Confederation to the changed conditions which it brought about, as is argued for the respondent. Those terms meant after 1867 the new Province of Ontario which, as erected by s. 6 of the B.N.A. Act, comprises that part of the Province of Canada which had, prior to 1841, constituted the Province of Upper Canada and to which alone the Common Schools Act (C.S.U.C., 1859, c. 64) and the Separate Schools Act (26 Vic., c. 5) applied. Indeed it might be contended with equal force that, because "the Legislature" mentioned in s. 106 of the Common Schools Act (C.S.U.C., 1859, c. 64) had meant the legislature of the Province of Canada when that section was enacted, it could not after Confederation mean the Legislature of the Province of Ontario, and that Common Schools in Ontario after the Union (1867-1871) were no longer the "Common Schools in Upper Canada" for the purposes of s. 106, since Upper Canada had ceased to exist. As is truly stated in the appellants' factum (pp. 28-9):

20 "Confederation was the result of a compromise wherein the religious minority in both Upper and Lower Canada were guaranteed protection for their denominational or separate state-aided schools, and it would have startled and shocked the statesmen of that day had it been suggested that the obligations resting upon the then Province of Canada in respect to such state aid could be ignored by the Provinces to be established in place of the old Province, or, in other words, of the division of the Province of Canada into two Provinces, with the result that in Upper Canada or the Province of Ontario and in Lower Canada or the Province of Quebec, there was no guarantee of the Separate Schools sharing in state aid from annual grants for Common School purposes, but that after the Union the Legislature of Ontario and that of Quebec could make grants for Common School purposes without the Separate Schools being entitled to a share. It may be reasonably assumed that there was then no intention or desire by the Province of Ontario to evade the obligation that in that respect rested upon the Province of Canada, and that it was assumed that this obligation did continue is evidenced by the Separate Schools Acts passed from time to time by the Legislature of the Province of Ontario down to 1906, as appears in the Statutes."

30

Nor do the words, "and not otherwise appropriated by law," appended in s. 106 of the Common Schools Act (C.S.U.C., 1859, c. 64) to the description of the legislative grants to be apportioned by the Chief Superintendent, present a formidable difficulty. Section 20 of the Act of 1863 is subsequent legislation and, so far as there may be inconsistency, the terms of that section must prevail over those of s. 106 of the Act of 1859. Section 20 of the Act of 1863 precludes an appropriation by law of any grants made for common school purposes which would prevent the separate schools sharing proportionately in them.

40

Whether the legislature could validly formulate a scheme or impose conditions for the distribution amongst the separate schools themselves, other

than on the basis of average attendance, of the proportion of the total grants for common school purposes, as understood in 1867, to which the separate schools as a whole were entitled, is, perhaps, a debatable question. The facts that s. 20 of the Separate Schools Act of 1863 gives the right to share "to every separate school" and that s. 22, requires that payment be made by the Chief Superintendent directly to the trustees of each separate school of its proportion of the legislative grant, should not be lost sight of in considering this aspect of the matter. Having regard to the primary apportionment amongst the municipalities of moneys to be granted by the Legislature for the support of common schools, directed by s. 106 of the Common Schools Act (C.S.U.C., 1859, c. 64) to be made "according to the ratio of population in each" municipality, it would seem probable that where there is but one separate school in the municipality it is entitled absolutely to its entire *pro rata* share on the basis of average attendance of the moneys appropriated to such municipality and that the question suggested can arise only where there are several separate schools in the same municipality. But in no event may the share of any grant to which the separate schools of the Province are entitled be entirely or partly withheld from them so that the total amount payable to them as a whole will be lessened. 10

With the rights of separate schools *inter se* in the distribution of the grants of public moneys, however, we are not presently concerned. That the separate schools throughout the province, taken as a whole, have the right to receive annually a share in all public moneys validly granted for common school purposes (as understood in 1867) proportionate to the average attendance at such schools and that any such grants so made as to preclude the separate schools so sharing therein and without compensation being otherwise provided, are void, are, in our opinion, the certain consequences of the perpetuation by s. 93 (1) of the B.N.A. Act of the rights and privileges conferred by s. 20 of the Separate Schools Act of 1863. To hold otherwise would be to render illusory in a most material particular the substantial protection to religious minority rights in regard to education which the Imperial legislation of 1867 was designed to assure. 20 30

The parties agreed that in the event of the original suppliants being entitled to any proportion of the grants for common school purposes in the year 1922 (to which the suppliants monetary claim is presently confined), payment of which was withheld for non-fulfilment of some conditions attached to them, their recovery should be for the sum of \$736 demanded in the petition. Possibly for that reason no particulars were given as to the items of which this sum is composed. We are, therefore, unable to determine whether the grants of which portions were withheld from the original suppliant were or were not so made as to prevent "every separate school" from sharing in them. If so made, they were void and no part of them is recoverable. The claim for \$736, therefore, cannot succeed. 40

We are, for the foregoing reasons, of the opinion that the appellants are entitled to the following declarations for which they pray, to wit:

1. Every Board of Trustees of the Roman Catholic Separate Schools has the right to establish and conduct in the school or schools under its jurisdiction

courses of study and grades of education such as are conducted in what are now described as continuation schools, collegiate institutes and high schools and any and all such regulations purporting to prohibit, limit, or in any way prejudicially affect that right are invalid and *ultra vires*.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(The Chief
Justice)
—continued.

2. Supporters of Roman Catholic Separate Schools are exempt from the payment of rates imposed for the support of any continuation school, collegiate institute or high school not conducted by the Board of Roman Catholic Separate School trustees for the municipality or school section in which they reside. Section 39 (1) of the High Schools Act (R.S.O., 1914, c. 268) is
10 invalid as to supporters of separate schools.

3. Every statutory provision enacted by the Legislature of the Province of Ontario, which involves a departure from the principle of apportionment between common and separate schools *pro rata* on the basis of average attendance at such schools, as provided by section 20 of the Separate Schools Act of 1863 (26 Vic., c. 5), of all legislative and municipal grants of public moneys for any purpose that was, under the law as it stood in 1867, a common school purpose, (saving grants to High Schools in continuation of former Grammar School appropriations) would, if valid, prejudicially affect a right or privilege with respect to their denominational schools which Roman Catholics had by
20 law at the Union and is, therefore, *ultra vires*. Each of the statutory provisions enumerated in paragraph (2) of the prayer of the Petition of Right falls within this category.

The appeal should accordingly be allowed to the extent indicated.

DUFF, J. :—

No. 20
Reasons for
Judgment
(Duff, J.)

The claims of the appellants reduce themselves to two. The first concerns the right, which they allege the Roman Catholics in Ontario possess, to establish and conduct, free from control or regulation by the Legislature as respects the scope of instruction, denominational schools of the character of those known as "common schools" in 1867, which designation would
30 include, it is contended, schools of the type and status of the present high schools, collegiate institutes and continuation schools; coupled with a consequential exemption from all taxation for the support of such last mentioned schools.

The second concerns the rights of such denominational schools in relation to public grants in aid of education.

It is important, first of all, to state, succinctly, but with some precision the propositions of law and fact which the appellants advance in support of these claims.

As to the first it is said that at the date of Confederation Roman Catholics,
40 in Upper Canada, enjoyed, by law, the right to establish denominational schools and to conduct them by boards of trustees chosen by themselves; that, as respects text-books and courses of study, free and unfettered control of such schools was vested, by law, in the several boards of trustees, whose

authority was sufficient to enable them to sanction courses of study co-extensive in scope with those now pursued in high schools, collegiate institutes and continuation schools.

That by force of section 93 (1), Roman Catholics of Ontario now enjoy these same autonomous rights coupled with the consequential right of exemption from taxation above indicated; that these rights are constitutional rights, and that any legislation is void, which, if valid would prejudicially affect them.

As to the second claim, it is said that, by the Separate Schools Act of 1863, which remained in force at Confederation, every separate school, that is to say, every Roman Catholic denominational school established pursuant to law, was entitled to receive a part of every sum of money granted by the Legislature for "common school purposes" (which phrase included by the appellants' construction of it the maintenance of schools of the types of the present secondary as well as elementary schools), and that this part was determined, (without regard to the purpose or conditions of the grant) by an arithmetical ratio, based upon the number of pupils attending the school, and having no relation to the subjects taught, the text-books used or the efficiency of instruction—every separate school being entitled to its part, calculated according to the alleged statutory ratio, however advanced, however rudimentary, the nature of the education imparted might be. This right to share in the public grants, it is said, is now also a constitutional right, guaranteed by section 93 (1) of the British North America Act. 10

It will be convenient to consider these two sets of propositions separately; but before proceeding to do so, it is well to observe that they seem to entail this consequence; that every supporter of a separate school, however elementary the character of the education may be, which is imparted by the denominational school or schools in his section or municipality, is exempt, not only from taxation for the support of public schools, but from all taxation also for the support of secondary schools; an exemption that was valid fifty years ago, if valid to-day. The appellants' propositions also involve this further consequence, that every public school, as to courses of study and text-books, is under the independent dominion of its board of trustees, who may prescribe only the most rudimentary studies; and yet each separate school, however rudimentary the studies pursued, is entitled to its part of all sums granted by the Legislature for "common school purposes," which purposes include, I repeat, as the appellants contend, the maintenance of schools of the type of the present collegiate institutes. 30

We are concerned only with rights protected by section 93 (1) of the British North America Act, rights relating to denominational schools existing at the date of the Union and established by law; rights, that is to say, which could be maintained, as the trial judge observes, "in face of opposition," rights which the courts would be bound to enforce or protect; and which were moreover, declared in some statutory enactment in operation at that date. 40

I shall first consider the appellants' propositions touching the character of the schools they were entitled to maintain and the extent to which they were under an exclusive denominational control; the question of the public grants will be examined separately. The Attorney General takes his stand upon

the conclusion unanimously adopted in the Ontario Courts, but the rights bestowed upon Roman Catholics by the statutes in force at the relevant date in relation to their denominational schools were no wider than this; they were entitled to establish schools of the class known as "common schools," to manage them by boards of trustees nominated by themselves, but with respect, *inter alia*, to the courses of study to be followed, it was their duty to proceed in obedience to such regulations as might be promulgated by the central educational authority of the province, the Council of Public Instruction.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Duff, J.)
—continued.

It will be observed that the appellants' propositions divide themselves
10 into two branches: first, schools known as "common schools" were intended to provide, where that was desirable in the view of the local authorities, courses of study sufficiently advanced to enable the pupils to obtain the necessary preparation for entrance to the provincial university or the learned professions; to provide, it is said, let me repeat, a programme of studies not inferior in scope to the programmes now defining the courses of study in the secondary schools of to-day.

Second, within the superior limit, thus indicated, each board of trustees had supreme discretionary power as to the course of studies to be pursued in the schools within its jurisdiction, and, in the case of separate schools, this auth-
20 ority extended to the use of text-books.

The appellants, in order to succeed, must make good their propositions on both these branches; they must establish that the legislation on the subject of common schools contemplated schools of the advanced character mentioned, and they must also establish that, in the conduct of such schools, boards of trustees were, as regards text-books and programmes of study, independent of the regulative authority of the Council of Public Instruction. Obviously, if such schools were in these respects subject to an over-riding authority in the Council, the appellants have no legal ground for impeaching legislation upon these subjects, or regulations upon them, of a character which could lawfully
30 have been put into force by the Council of Public Instruction in exercise of its controlling powers.

Primarily, we must look to the Separate Schools Act of 1863 to ascertain the measure of control Roman Catholics were entitled to exercise over their denominational schools; and also the degree on which such schools were subordinated to the dominion of the Council of Public Instruction.

Four sections of the statute (the 4th, 9th, 13th and 26th) require attention here, but of these we are at present chiefly concerned with the 26th.

The language of that section is this: "The Roman Catholic Separate Schools shall be subject to such inspection, as may be directed, from time to
40 time, by the Chief Superintendent of Education, and shall be subject also to such regulations, as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada."

The view of this section, which naturally first presents itself, regards it as investing the Council with a comprehensive authority to pass general regulations governing the management and conduct of separate schools.

The first member, dealing with inspection, purports, independently of any other legislation upon the subject, to entrust the Chief Superintendent with complete discretionary power. So, also, in this view, the second member, *ex proprio vigore*, imports the bestowal upon the Council of the fullest authority to formulate regulations, which it is the duty of the separate school authorities to observe—"such regulations as may be imposed from time to time."

Two other views suggest themselves as to the effect of the second branch of section 26. First, that the authority thereby given does not include control by the Council over separate schools in matters other than those in relation to which jurisdiction may, from time to time, be entrusted to the Council, under the Common Schools Acts or other legislation; that the section envisages the Council as a body charged with public duties and endowed with powers of regulation in respect of defined subject matters under the existing Common School Acts or under subsequent amending legislation, and that in all such matters (but only such) the separate schools are subordinated to the Council. According to the other view (and subject to one qualification, this construction is adopted in Mr. Hellmuth's argument), the office of the section is merely to declare that the Council's functions, as affecting separate schools have relation to the subject matters (and those only) which, at the date of the statute, were within the field of its authority under the Common School Acts—so that in exercising those functions, it would always remain subject to the limits fixed by those Acts at that date. 10

The appellants' argument adopts this last mentioned construction, with the qualification that the Council's authority does not, by force of section 26, extend to the subject of text-books. 20

Either the first or second of these three interpretations, as it seems to me, is preferable to the third. The section places separate schools under the dominion of regulations put into force from time to time; in terms there are no limits as to subject matter or otherwise. In fulfilling its duties under the section, the Council would, of course, be bound to observe any limitations governing it by force of the pertinent enactments of the Separate School law, as well as those necessarily proceeding from the nature of the subject matter; the duty being a duty to regulate only, must be performed in good faith for the purpose for which it is imposed, and, especially, with a vigilant eye to the fact that the purpose of the legislation was to make better provision for a system of Roman Catholic denominational schools. But, subject to this, there appears to be no very potent reason for restricting the natural sense of the words. Resort to other legislation seems unnecessary. And if the section is said to contemplate the Council, in exercising its powers thereunder, as acting within the field marked out by the Common School Acts, the words, on the more natural reading of them, would seem to direct us, for our guidance, to the provisions of those Acts at the time of the exercise of the power, rather than at the date of the Separate Schools Act. 30 40

In my own view of the Common School Acts, further discussion of the relative merits of these three readings would be superfluous. I shall proceed, provisionally, upon the footing that the construction advocated by the appellants (except as touching the subject of text-books) is the right construction.

Even on this assumption, it will sufficiently appear from a strict examination of the provisions of the Common School Acts, invoked by the appellants, that they furnish no reliable ground for overturning the conclusion of the Ontario judges as to the scope of the Council's powers; a view which, it will appear, dictated the practice of the Council itself in exercising its functions under the statutes of 1850 and 1859—a practice, which was, it will further be seen, acquiesced in by the Legislature itself.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Duff, J.)
—continued.

The relevant provisions of section 119 of the Common School Act of 1859 are to be found in clauses 2, 3, 4 and 5, which are in these words:

10 “119. It shall be the duty of such Council, and they are hereby empowered.

2. To adopt all needful measures for the permanent establishment and efficiency of the Normal School for Upper Canada, containing one or more Model Schools for the instruction and training of Teachers of Common Schools in the science of Education and the art of Teaching:

20 3. To make from time to time the rules and regulations for the management and government of such Normal School; to prescribe the terms and conditions on which students will be received and instructed therein; to select the location of such school, and erect or procure and furnish the building therefor; to determine the number and compensation of teachers, and of all others who may be employed therein; and to do all lawful things which such Council may deem expedient to promote the objects and interests of such school;

4. To make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools, for the classification of Schools and Teachers, and for School Libraries throughout Upper Canada;

5. To examine, and at its discretion, recommend or disapprove of text-books for the use of schools or books for School Libraries.”

30 Clause 4, if alone, could hardly be susceptible of debate. There are two subject matters for regulation, or rather perhaps, two phrases designating a group of subject matters, “the organization, government and discipline of common schools,” and the “classification of schools and teachers.” These phrases in their unstrained meaning denote subject matters of regulation which include branches of instruction; and “classification of schools,” in the ordinary purport of the words, embraces the function of determining the different classes and their several typical characteristics.

40 Various reasons are propounded by the appellants for ascribing to these phrases a narrower compass. I shall first consider those reasons which derive any substance they possess from the terms of the common school legislation itself.

The provision of the Common School Act to which the appellants appear to ascribe the greatest force is clause 8 of section 79, which defines the powers of urban boards of trustees. By that clause such trustees are authorized and required to determine the several kinds and descriptions of schools which

shall be maintained under their jurisdiction. This clause, it is argued, is incompatible with the attribution to the Council of supreme control over courses of study and "classification of schools."

To each board of trustees the task, it is said, is committed of classifying the schools under its charge, and this clause, it is argued, empowers the board to do this by reference to the character of the instruction in them; and this, it is further said, conveys the right to prescribe the branches of study. And again, the argument runs, in fulfilling this mandate, the trustees are invested with an independent discretion, untrammelled by superior authority.

I have searched the statute without success for something to justify this version of sections 79 and 119. The intention to subordinate boards of trustees to the Council in matters over which the Council has the power of regulation is positively declared by clause 16 of section 79, which directs such boards to see that the schools under their care are "conducted according to the authorized regulations." In light of this provision, clause 8 of section 79, and clause 4 of section 119 must not be read as conflicting or mutually exclusive, but as complementary enactments. We need not stop to discuss the precise effect of clause 8. This seems beyond dispute: it is the duty of trustees, in "classifying" (to quote the phrase of the Chief Superintendent) the schools within their jurisdiction, to observe the regulations upon that subject proceeding from the Council. If, as the appellants argue, they are entitled, in performing their duty under that clause, to act according to a canon based, as suggested, upon subjects of instruction—then, they are, it cannot be doubted, subordinate to the paramount jurisdiction of the Council in relation to the subject "classification of schools." 10 20

The argument of the appellants virtually deletes the phrase "classification of schools" from clause 4. The phrase can hardly, in this context, be read as denoting the classification of pupils; which seems rather to fall under the wider subject "government and discipline of schools." As this reading, however, is the only alternative reading suggested by the appellants, it is proper to observe that, if adopted, it would not at all advance the argument. "Classification of pupils," if these words have any substance at all, includes the arrangement of classes by reference to the subjects of instruction and the stages of advancement which the pupils have reached. It would not be easy to reconcile the possession by the Council of final authority in relation to the subject so described with the possession by the boards of trustees of completely autonomous jurisdiction in relation to subjects of instruction and "classification of schools" in the proper sense of the words. Indeed, there seems little room for doubt that the ordinary and natural reading of clause 4 is the true reading. "Classification," as applied to "schools" in the sentence in which it here occurs, can have no other force than that which it has when applied to "teachers"—grouping them into classes and ascribing its appropriate qualifications to each class. Furthermore, this argument which attributes to clause 8, section 79, the effect of so limiting the natural meaning of clause 4 of section 119 as to exclude courses of study from the regulative jurisdiction of the Council, seems to ignore the fact that no such clause as clause 8 forms any part of section 27, in which the powers of rural boards of 30 40

trustees are enumerated. The nearest approach to clause 8 to be found in that section is clause six by which such trustees are empowered to establish a female as well as a male school.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Duff, J.)
—continued

If the argument be sound and the subject matter of courses of instruction be not within the scope of section 119, then the Act is silent upon the regulation of that subject matter in rural schools. It is nothing to the purpose to say, as appears to have been contended in the courts below by the appellants, that, by force of section 7 of the Act of 1863, all the powers of urban trustees, under section 79 of the Common Schools Act, are entrusted to rural as well as
10 to urban boards of separate school trustees. Even if this proposition could be accepted, it leaves untouched the difficulty, just mentioned, as to the regulation under the Common Schools Act of the conduct of instruction in rural schools. But the proposition itself is inadmissible. By section 7 of the Act of 1863, trustees of separate schools are to have as respects separate schools the powers that trustees of common schools "have and possess, under the provisions of the Act relating to Common Schools." There is nothing in the Common Schools Act investing any board of trustees with authority to direct the conduct of instruction in rural schools. Assuming clause 8 to have the meaning put forward, it confers no jurisdiction on anybody, over
20 any rural school; and there is nothing in section 7 of the Separate Schools Act, which can properly be read as endowing the board of trustees of such schools with authority to ignore, in the exercise of their powers, the limits necessarily imposed, by the terms in which such powers are defined in the Common Schools Act.

Another argument must be noticed, which is derived from the form of section 6 of the Grammar Schools Act of 1853, where the powers of the Council, as touching such schools, are set forth. By that section the Council is required to "prescribe a list of text-books, programmes of study and general rules and regulations for the organization and government of County Grammar
30 Schools." In this context, it is argued, the general words "Organization and government" as applied to schools cannot include text-books and programmes of studies, which are specifically mentioned. And the use of the phrase "organization and government" in this sense, supplies a reason, it is urged, for similarly restricting the meaning of the same phrase in the clause we are considering. This argument, by which we are invited to resort to a statute passed in 1853, for the construction of an enactment, passed in 1850, I do not find convincing. It is always unsafe to construe the general and unambiguous language of one enactment by reference to phrases found in another. *McLachlan v. Westgarth*, 75 L.J.P.C. 117. Phrases and even clauses are so
40 often introduced into Bills on their passage through Parliament in response to importunities from various quarters, that such discrepancies can seldom be safely relied upon as furnishing a clue to the intention of the legislature. The history of grammar schools in Upper Canada, disclosed in the material before us, suggests an adequate explanation of the explicit mention of text-books and studies.

The common school legislation provides other much more apposite and useful contrasts. The system of common schools was instituted by a statute

of 1841; and, by that statute, the regulation of courses of study and text-books was committed to the local authorities (the School Commissioners) who, in townships and parishes, were annually elected, and in incorporated cities and towns, were appointed by the several corporations. The Act provided for a Superintendent of Education, who was invested with no regulative authority over text-books or studies of any kind in respect of the conduct of schools; but (section 4, sub-section 5) was required to address to the persons employed in carrying out the provisions of the Act "such suggestions as may tend to the establishment of uniformity in the conduct of the Common Schools throughout this Province."

10

Section 7, sub-section 4 of this statute may usefully be quoted in full. By it the Commissioners were entrusted with a duty "to regulate for each school, respectively, the course of study to be followed in such school, and the books to be used therein, and to establish general rules for the conduct of the schools, and communicate them, in writing, to the respective teachers."

Complete local autonomy in relation to studies, text-books and generally in the management and conduct of the schools was a dominant principle of the common school system as first established. But, in 1850, this system has undergone a striking transformation. Local authority to regulate studies, to regulate text-books, "to establish general rules for the conduct of the schools and communicate them in writing to the respective teachers" finds no place in the statute of that year. For this local control there is substituted the central authority of the Council of Public Instruction to pass regulations under the terms of clause 4, section 119, and to deal with the subject of text-books as provided in clause 5; coupled with the enactments requiring local authorities to see that the regulations of the Council are observed. These changes point to an intention to improve the efficiency of the common schools by subjecting them to an over-riding central control. The progress of legislation in these years, at all events, gives little countenance to the surmise that it was the design of the legislature in 1850 and later to leave each school to the exclusive control of the local board of trustees in the primary essentials of education.

20

30

I come now to a branch of the appellants' argument to which the appellants themselves attach a high degree of importance. The argument is that the provision of section 119 (clause 5 of that section), entrusting the Council with certain functions therein defined, in respect of the use of text-books in schools, justifies, by reason of the frame of it, an inference that the subject matters of regulation designated in clause 4 were not intended to include programmes of study. The presence of clause 5, according to the argument, containing, as it does, a special disposition upon the subject of text-books, requires us to read clause 4 as excluding that subject from its purview; and, it is said that if the general language of clause 4 does not embrace that subject, it must also exclude the kindred matter, programmes of study. When the structure of section 119 is examined, and in particular the structure of clause 5, and especially when the history of the two clauses is also taken into account, it will be seen that there is little substance in this contention.

40

Clause 4 is concerned with a power of regulation which *ex facie* is an unrestricted power, or restricted only by reference to the designated subject matters; it is a power to make "such regulations, from time to time as the Council deems expedient." This power extends to subject matters defined by comprehensive, general terms, "organization, government and discipline of schools," "classification of schools and teachers." While *ex facie*, the various matters comprehended under these general expressions are all within the ambit of the clause, no emphasis is laid upon any particular matter, nor is any duty imposed in terms to deal with any particular matter in any special way or at all. The Council are given the fullest discretion as to the time and manner in which they shall discharge any particular branch or phase of the responsibilities committed to them. Clause 5, on the other hand, is concerned with a particular subject—text-books, and, in connection with that matter, a duty is imposed upon the Council; the duty to examine text-books. And then the Council is invested with a discretion to recommend or to disapprove of text-books examined with a view to the use of them in schools.

Of all matters which *ex facie* are comprehended within the general words in clause 4, one matter is singled out for special treatment, under clause 5. This clause does not, as clause 4 does in itself, endow the Council, simpliciter, with a general authority to make regulations. As to the subject with which it is concerned, the functions of the Council are stated with much greater particularity; to examine; to recommend; to disapprove, under a sanction nominated in another section. The draughtsman has carefully avoided any words which might be construed as imparting a general authority to regulate. This clause, then, treats the subject matter with which it deals as standing in a special category; the Legislature, in order to express its intention has selected language which shows that the object of clause 5 would not have been attained, had that clause been omitted, and the subject of text-books left at large, under the general jurisdiction of the Council under clause 4. The presence of such a clause would appear to justify no inference leading to any restriction of the applicability of the general words of clause 4 in relation to any subject other than text-books.

This conclusion becomes even less doubtful when one looks at the origin and history of the two clauses. Provision was first made in the Act of 1846 for the Council of Public Instruction (under the name of the Board of Education), and in that Act clause 5 of the statutes of 1850 and 1859 first appeared as clause 2 of section 3—the subject of text-books having been, as already mentioned, by the earlier statute of 1841, committed to the independent control of the local authorities.

Before the passing of the statute of 1846, the Chief Superintendent, and others concerned for the welfare of the recently established popular schools, had come to realize some of the evils arising from a diversity of text-books, which are discussed at length in the reports of the Chief Superintendent during the twenty succeeding years. It was then determined that some authority over the subject must be vested in a central body. It was considered that, at the beginning, at all events, it would be sufficient to give that body a power of recommendation only; and the Act of 1846, when it took the

form of law, contained a clause corresponding with that which appears in the Act of 1859, except that in the clause itself the sanction attached to the use of a disapproved text-book (loss of the government grant) appears in the clause itself, and not in a separate section, as in the later Act of 1859.

The policy which inspired this clause did not go into effect without vigorous opposition. This subject of school books had aspects other than the educational aspect. There were numerous interests, as appears from the material before us—some of them, no doubt, powerful—which did not welcome the views of the Chief Superintendent and Council, who, shortly after the Act of 1846, published a list of recommended books. Indeed, notwithstanding the recommendations of the Council, and the provisions of the law designed to bring about the observance of such recommendations, unrecommended text-books continued to be used for many years; and it was not until twenty years after the passing of the Act of 1846 that the Council, being satisfied that the policy of uniformity of text-books had won a “common consent” in the province, felt itself warranted in declaring that all books other than those recommended were disapproved. As late as 1866, a most determined effort was made by a well known publishing house in Great Britain, represented by Canadian publishers and backed by most powerful Canadian influences, to bring about the abrogation of this system, and a reversion to the old plan of the Acts of 1841 and 1843, by which the choice of text-books for each school was left to the local board of trustees. 10

It is hardly surprising, therefore, that when, in 1850 a Bill to consolidate and re-enact the School Law was introduced into the Legislature, the clause in the earlier statute of 1846, defining in carefully selected words the special rôle of the Council, in the matter of text-books, was left unaltered, or that it remained unaltered down to the date of Confederation. In view of all these considerations I can perceive little to recommend it in the argument that the presence of clause 5 justifies the inference contended for. 20

I am not suggesting that under clause 5 there is no authority to regulate. In disapproving of a text-book or list of text-books, the Council executes a power of disallowance under the sanction of a grave penalty, and is, of course, exercising a power of regulation; a power to make a rule, of a defined character, it is true, but still a rule, governing the use of text-books in schools. In recommending, also, the Council, by naming a book or books recommended, creates a situation from which, by force of other sections, duties arise that are incumbent upon the local authorities and officials responsible for the execution of the Act. Section 27 (18), 79 (15), 91 (6), 98 (3). 30

The recommendations of the Council, once made, become, by force of these other sections, rules binding on local authorities and officials in the sense that their discretion is thereby limited; although section 119 does not, in entrusting the Council with the duty of recommending, confer, *ex proprio vigore*, a power to prescribe; and as already observed, the power to disallow is a power to regulate which can be executed only in a limited specified way. 40

And here we may conveniently examine the contention of the appellants that section 26 of the Act of 1863 does not extend to the subject of text-books. I will not for this purpose dwell upon the view sketched above, according to

which this section gives a general power of regulation, subject only to relevant enactments of the separate school law, and to the limitations necessarily implied in the fact that the power is given for the purpose of enabling Roman Catholics to carry on more satisfactorily their system of denominational schools; and that, at least, that section subordinates such schools to regulation by the Council in respect of all subject matters, which may from time to time fall within the ambit of its jurisdiction in relation to common schools.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Duff, J.)
—continued.

I shall assume, for the present, that section 26 authorizes only such regulations as the Council might, at the date of the Act of 1863 have put into
10 force under their existing powers in relation to common schools—but assuming that, I can discover no satisfactory reason for denying that such an authority would embrace the power to make recommendations as to text-books, and to disallow such text-books under clause 5 of the Act of 1869. I shall not repeat what I have said as to clause 5, I can think of no reason for excluding—under the construction contended for—the authority given by that clause from the power of regulation which is the subject of section 26.

Section 9 of the Separate Schools Act must not be overlooked. By that section trustees of such schools “shall perform the same duties and be subject to the same penalties as the trustees of Common Schools.” There is no excep-
20 tion of the duties incumbent upon Common School trustees under sections 27 (18) and 79 (15).

I have said that the view above stated as to the jurisdiction of the Council under the statutes of 1850 and 1859 (and incidentally, of the argument of the appellants that under those statutes the local boards of trustees were invested with completely autonomous powers in relation to the courses of study to be pursued in their several municipalities and school sections) was the view which dictated the practice adopted by the Council and the Chief Superintendent in executing their duties under those statutes.

This is demonstrable from the documents in evidence. In 1855, a manual
30 was published under the authority of the Council for the guidance of “trustees, teachers and local superintendents,” giving the statutes of 1850 and 1853 (the Grammar Schools Act), “together with the forms, general regulations and instructions” for executing the provisions of those statutes. The publication was issued, no doubt, pursuant to the duty of the Chief Superintendent under section 35 (3) of the Act of 1850, which required him to “cause forms, instructions and general regulations of the Council to be printed from time to time,” and distributed for the information of the officers of common schools; and the manual included “general regulations for the organization, govern-
40 ment and discipline of the common schools of Canada” as well as a programme of studies entitled “The Order and Classification of Studies for the Common Schools in Upper Canada.” Again, in a similar publication, issued under the authority of the Council, in 1861, and edited by the Deputy Superintendent of Schools, there appears the same programme, which is described as the “Order and Classification of Studies Prescribed for the Common Schools of Upper Canada, as observed in the Upper Canada Model Schools, Toronto,” and it is stated that this programme had been adopted by the Council on the 31st December, 1858.

This programme directs, or at all events assumes, that the pupils are to be classified in three divisions, and it is stated that, in the Model Schools, pupils in these divisions are arranged in five classes, corresponding to the five reading books of the Irish National Series of Readers, which had been recommended by the Council. In the manual of the same description, published in 1864, compiled by the same editor, this programme again appears. It is not without importance to notice that certain subjects—trigonometry and some of the physical sciences—are given in this curriculum as “extra” subjects, which may be taught *at the discretion of the school authorities*, but not more than one in any single term. Still again, in a manual printed for the Council in 1863, after the enactment of the Separate Schools Act of that year, this same programme is reproduced and it is there said to be applicable to separate schools. 10

No inconsiderable weight attaches to these publications, issued successively under the authority of the Council, in the years 1856, 1861, 1863 and 1864, as indicating the view accepted by the Department as to the powers of the Council, and carried out with circumstances of the greatest publicity. It is impossible to suppose moreover, that those responsible for the legislation of 1859 were ignorant of the proceedings of the Council. We have already seen that the enactments of the Act of 1850 touching the powers of the Council were reproduced without pertinent change in the Act of 1859; and it seems to be a fair inference from this, taken together with the unqualified language of section 26 of the Act of 1863, as well as of section 9 of that statute, that the Council had not misunderstood the scope of the powers with which it was intended to invest them. The Council in professing to prescribe this programme of studies for the direction of those responsible for the conduct of the common schools, was assuming in the most public manner an over-riding authority in relation to such matters. In this the Legislature must be presumed to have acquiesced. 20

The appellants have not, I conclude, established their contention as to the autonomous jurisdiction of boards of trustees, and they fail equally, I think, in adducing satisfactory reasons for holding that in scope of instruction, the common schools of 1867 were on the same footing as collegiate institutes, high schools or continuation schools to-day. 30

The system of public instruction, at Confederation, included a provincial university, grammar schools, a normal school with model school attached, common schools and separate schools, which, admittedly, for the present purpose, may be grouped with common schools.

On behalf of the appellants, it is argued that it was one of the functions of the common schools, at that date, to train pupils for entrance to the university and the learned professions, and for that purpose to provide the necessary instruction in Greek and Latin, mathematics and what were called the “higher branches of English”; that, in this respect, they were, in truth, co-ordinate with the grammar schools. 40

The Common Schools Act of 1859 nowhere defines in terms the scope of the instruction to be imparted in such schools, but the type of school contemplated by the common school legislation may be inferred with confidence

from the school legislation as a whole, and the official acts of the Council of Public Instruction and the Chief Superintendent, who were mainly charged with the administration of the school law.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Duff, J.)
--continued.

Obviously, for our present purpose, the qualifications of teachers, the provision made for training them, the programmes of studies officially promulgated, the character of the authorized text-books may supply useful criteria. The Council of Public Instruction, which was entrusted with the office of regulating the conduct of the grammar schools and with the management of the Normal School, was also charged with duty, as we have seen, of regulating
10 the programmes of study and prescribing text-books for common schools, and of prescribing the qualifications of teachers of such schools.

The programmes of study promulgated by the Council are in evidence, so, also, are the regulations prescribing the qualifications of teachers. The programmes are not framed with the view of fitting pupils for the university, as at once appears from a comparison of the list of subjects taught with requirements for matriculation; the qualifications for teachers are just as plainly not designed to provide instruction for any but the most elementary schools, and of the Normal School training, it is sufficient to say that Latin and Greek find no place in the curriculum. But, most important of all, are
20 the lists of text-books recommended by the Council of Public Instruction for the common schools.

I have already mentioned that it was the duty of the local authorities to provide the schools with authorized text-books, and to see that no unauthorized books were used. It is true, as already observed, that there was, for years, much laxity in the enforcement of these rules, but it is beyond doubt that the school books necessary for effective instruction of pupils reading for matriculation in the university or for entrance into the learned professions, could not, if the law were observed, be used in common schools, at any time after 1847, when the first list of recommended books was sanctioned; and, after
30 the year 1866, the use of a text-book in Latin or Greek, in a common school, would, by force of the regulation passed in that year, have entailed the loss of the government grant.

The position of the Grammar Schools in the system is also of considerable significance. The Grammar School Act of 1853 required each grammar school to make provision for instruction in the higher branches of a "practical English Education" in Latin, Greek and mathematics, so as to prepare students for the University of Toronto.

Grammar Schools had been established long before, but the object of this Act was to cause them to take their proper place as intermediate schools
40 between the common schools and the University. The Chief Superintendent repeatedly emphasizes the relative status of the two systems of schools. "The Grammar School should be a connecting link between the common schools and the University; the common schools should be the feeders of the grammar schools, and these should be the feeders of the University" (Report for 1850, p. 22). Such expressions occur frequently in the Reports in evidence. In 1865, after the enactment of the Grammar School Act of that year, Dr. Ryerson addressed a number of circulars to local authorities explaining the

object of the new statute 19 Doc. History, pp. 41, 42, 43 and 44 (e 46). "The object of the Act is to make Grammar Schools what they were intended to be intermediate schools between the Common Schools and University College prepare pupils for matriculation in the university—to impart to others the higher branches of an English education, including the elements of French." These schools are not, he says "in any way the rivals of common schools, nor permitted to do common school work but a higher educational work which can be done by neither the common school on the one hand, nor by the Collège on the other." "The object of the Act," he says, "is to make your grammar school what it ought to be, a High School 10 for your City—an intermediate school between common schools and the University," and providing a higher "English" education for those not desirous of studying Greek and Latin. "They are," he says, not to "poach upon common school ground," but to provide instruction supplementary to the "elementary" education of the common schools. The Act of 1865 and the new programme of studies under it, together with the regulations already mentioned, disallowing for common schools all text-books not recommended by the Council (a regulation having the effect of excluding grammar school subjects from the common schools, under penalty of loss of the government grant) finally marked in a decisive way the distinction between the respective 20 rôles of the two classes of schools. The High Schools and Collegiate Institutes of to-day are the descendants of the grammar schools, the "public schools" of the Common Schools.

It seems necessary to refer to the mass of quotations from the Chief Superintendent's Reports adduced by the appellants for the purpose of shewing that common schools were subject in the matter of courses of study to the exclusive control of the boards of trustees, and in support of the contention, I have just been considering.

In reading these extracts, it is important, first of all, to remember that local autonomy was the rule for some years, and that it was only in 1850 that 30 the Council received general powers of regulation; and, most important of all perhaps, that even in the vital matter of text-books it took years to bring the practice into conformity with the regulations. Then extracts, separated from the context are apt to mislead.

I shall mention only a few of the passages quoted.

In his report for the year 1847, Dr. Ryerson states that there were, in that year, in Upper Canada, forty-one common schools in which Latin and Greek were taught, seventy, French, and seventy-seven, the elements of natural philosophy; 1847 being the year in which the first list of recommended books was published, a list not including a text-book in any of these subjects. The 40 figures produced are in themselves of little value, but the change which occurs in a few years is important. By 1852, the last year for which the figures are available, seven schools were teaching Latin and two Greek. In the report of the year 1867, there is a significant statement. In that year, it appears from a table in the appendix, that in none of the cities (and these include Hamilton and London) were any text-books but authorized text-books in use—the result, perhaps, of the regulation, above mentioned, of 1866. Mr.

Hellmuth, naturally enough, dwelt with some emphasis upon the report of the local Inspector for Hamilton for 1853, and that for London in 1863, as giving two conspicuous instances of common schools engaged in training pupils for matriculation in the University, and maintaining efficient classes in Latin, Greek and French. In 1867, as the report shews, this had ceased. I refer to one more extract. It is from a circular of the Chief Superintendent in the year 1847. In this circular, addressed to Mayors of Cities and Towns, he appears to say that the Local Board of Trustees is to determine (*inter alia*) "The subjects of instruction and the text-books to be used in each school" and this passage is adduced as supporting the appellants' contention as to the powers of boards of trustees. A circular, issued a month later shews that as to text-books, the Chief Superintendent only meant to say that Trustees were entitled to select text-books from a list recommended by the Provincial Board of Education.

As to subjects of instruction, this circular was issued before the Act of 1850, in which clause 4 of section 119 of the Act of 1859 conferring on the Council, for the first time, general powers of regulation, first appeared.

My conclusion, after examining these extracts, with some attention, is that when they are read with due regard to date and context, and to the circumstances in which they were published, they afford little support to the appellants.

As against the argument the appellants seek to found upon these passages may be set the official acts of the Council in prescribing programmes of studies, and the following passage from a letter published in March, 1866:

"Of private schools and their teachers, the law takes no note; but the Legislature, that provides by law funds for the support of public schools, has the undoubted right of prescribing the condition on which such schools shall be entitled to public aid. The Legislature has invested a body called the Council of Public Instruction, with the power and imposed upon it the duty to prescribe the subjects of instruction in the public schools, and the text-books, which shall be used in giving that instruction. A teacher of a public school is not, therefore, employed to teach what subjects and books which he pleases but to teach those subjects and books which are provided by law, and no school is entitled to public aid which is not conducted according to law."

"The Legislature has authorized the Council of Public Instruction to prescribe and sanction text-books for the national schools, and to prohibit the use of others; and every school corporation and county boards are required to select text-books from the authorized list of such books; and if any such Board has recommended any text-books not in the authorized list, it has acted without authority and has violated the third clause of the Common School Act. With the law-abiding people, the law should be supreme."

On the first branch of the appeal therefore the appellants fail.

The appellants' claim in relation to the public grants rests upon section 20 of the Act of 1863.

The principle of division laid down by that section assumes the existence of a fund, which has been appropriated for the benefit of the common schools generally in each municipality. It is upon this fund, so appropriated for a given municipality, that the section operates. The Act of 1863 contains no provision for the distribution among municipalities of public moneys granted for school purposes. In the absence of some specific appropriation it is necessary to resort to the provisions of the Act of 1859 to ascertain the fund in which, under section 20, a given separate school is to share. 10

That statute deals with the distribution of moneys voted for common school purposes in sections 106, 120, 121 and 122. These sections enact, in effect, that moneys annually granted, in aid of common schools, shall, after providing for certain specific appropriations set forth in section 120, and for any other express appropriations, be divided among the municipalities, according to population. The fund for each municipality having been thus ascertained, section 20 comes into play.

It seems quite clear that the Legislature did not intend to tie its hands by section 106 (1) in such a way as to necessitate the apportionment of all moneys voted for common schools, according to a fixed arithmetical ratio. 20 The qualification "not otherwise expressly appropriated" sufficiently manifests the intention of the Legislature to reserve its freedom of action. A special appropriation directing the disbursement of moneys voted for the common schools on a different principle would, therefore, have involved no departure from section 106 or section 20, and this applies to the methods of distribution now attacked. The fact that they are laid down in a general Act is, of course, immaterial.

Assuming section 20 to have created a "legal right or privilege" within the meaning of section 93 (1), it was not a right "in law" to require the Legislature to refrain from granting appropriations for special purposes or for the aid 30 of schools reaching a certain standard of excellence or of school sections conforming to a certain standard of expenditure.

To none of the appropriations affected by the rules of apportionment, to which the appellants object, could a claim have been made under that section, or under that section combined with section 106. The appellants have been deprived of nothing to which any "right or privilege," under those sections, could attach.

It may be said that although strictly the "right or privilege" in itself is not prejudiced by the legislation impeached, it is nevertheless deprived of value or rendered less valuable thereby. But assuming that to be a legitimate 40 ground of complaint, under section 93 (1), there is no evidence of such prejudice, either as affecting the Roman Catholics as a whole or the representative plaintiffs. There is not the slightest reason for supposing that the existing grants, if distributed according to the arithmetical ratios of section 106 and section 20, would yield a larger sum for Roman Catholics as a whole. But more important still, it is impossible to know (if under compulsion of a constitutional limitation, the Legislature were obliged to follow an unwise and

wasteful plan of distribution) whether the grants would be as generous as they now are, under a system designed to ensure a fruitful expenditure. There is, of course, no suggestion that the statutes now in force, separate schools are placed upon a footing of inequality with the public schools. Grants are shared by all schools alike, upon identical conditions.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Duff, J.)
—continued.

During the argument it was suggested that it was not competent to the appellants by means of a Petition of Right to obtain (as they are attempting to do) a declaration that certain statutes of the Ontario Legislature are *ultra vires*. The question is important, and the appellants' right to maintain
10 their petition in its present form is not at all free from doubt. The Attorney General, however, is content to have the questions raised passed upon in the present proceedings, and no such objection has been taken by him at any stage. A speedy determination of those questions is, moreover, obviously desirable in the wider public interest, and, in the circumstances, it would appear that the Court is not under a duty to consider the technical question, upon which no opinion is pronounced.

The appeal should be dismissed.

MIGNAULT, J.:—

Three claims, which are thus summarized by the Chief Justice, are
20 advanced on behalf of the appellants:—

No. 20
Reasons for
Judgment
(Mignault,
J.)

(A) Their claim "to establish and conduct courses of study and grades of education in Catholic Separate Schools such as are now conducted in continuation schools, collegiate institutes and high schools"; and that "all regulations purporting to prohibit, limit or in any way prejudicially affect such right or privilege are invalid and *ultra vires*";

(B) Their claim to exemption from taxation for the support of continuation schools, collegiate institutes and high schools not conducted by their own Boards of Trustees;

30 (C) Their claim to a share in public moneys granted by the Legislature of the Province of Ontario "for common school purposes" computed in accordance with what they assert to have been their statutory rights at the date of Confederation.

As to claims (A) and (B), I fully accept the judgment of the Chief Justice, and I feel that I cannot usefully add anything to what he has said in allowing these two claims. It seems to me inconceivable that when it granted to the Roman Catholics of Upper Canada the privilege of having their own separate schools, the Legislature could have intended to render this privilege valueless by allowing the Council of Public Instruction of that Province to restrict, by regulations, the scope of the education to be given in these schools. The
40 educational systems both of Ontario and Quebec were established by the same Legislature, and it is a matter of common knowledge that in Quebec the religious minority of that province has always had full control of its own schools, including its high schools.

To my very great regret, however, I find myself unable to accept in its entirety the decision of the Chief Justice with regard to the third claim. As

briefly as possible, I will explain wherein my views differ from those of my Lord.

The appellants' case must be that a right or privilege with respect to denominational schools which the class of persons whom they represent had by law in the province at the Union has been prejudicially affected by the legislation of which they complain.

The crucial question therefore is: what was the right or privilege which this class of persons had by law at the Union to claim for their separate schools a share of public moneys granted by the Legislature for the support of common schools or for common school purposes? To answer this question, reference must be had to sections 20, 21 and 22 of the Separate School Act of 1863 (26 Vict., c. 5) which read as follows: 10

"20. Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township. 20

21. Nothing herein contained shall entitle any such Separate School within any City, Town, Incorporated Village or Township, to any part or portion of school moneys arising or accruing from local assessment for Common School purposes within the City, Town, Village or Township, or the County or Union of Counties within which the City, Town, Village or Township is situate.

22. The Trustees of each Separate School shall, on or before the thirtieth day of June, and the thirty-first day of December of every year, transmit to the Chief Superintendent of Education for Upper Canada, a correct return of the names of the children attending such school, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open; and the Chief Superintendent shall, thereupon, determine the proportion which the Trustees of such Separate School, are entitled to receive out of the Legislative grant, and shall pay over the amount thereof to such Trustees." 30

There is no difficulty, nor is any complaint made, as to the distribution between common (or public) schools and separate schools of the Common School Fund, which section 20 describes as "the fund annually granted by the Legislature of this Province for the support of common schools." 40

The point on which, with great deference, I have been unable to agree with the Chief Justice is with respect to the character, either general, or both general and special, of "all other public grants, investments and allotments

for common school purposes," of which, under section 20, "every separate school" is entitled to a share.

In other words, what is the meaning and effect of the following language of section 20:—"Every separate school . . . shall be entitled also to a share in all other public grants, investments and allotments for common school purposes now made or hereafter to be made by the Province or the municipal authorities?"

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Mignault,
J.)
—continued.

Sections 20, 21 and 22 of the Separate School Act of 1863, I think, must be read with section 106 of the Common School Act of 1859, Consolidated
10 Statutes of Upper Canada, 1859, chapter 64.

Section 106 is a long section, but I need specially refer only to subsection 1, the effect of which is to empower the Chief Superintendent of Education to apportion annually, on or before the first day of May, all moneys granted or provided by the Legislature for the support of common schools in Upper Canada, and not otherwise appropriated by law, to the several counties, townships, cities, towns and incorporated villages according to the ratio of population in each as compared with the whole population of Upper Canada.

Consistently with this enactment, section 20 of the Separate School Act of 1863 states that every separate school shall be entitled to a share in the
20 fund annually granted by the Legislature of the Province for the support of common schools, and shall be entitled also to a share in all other public grants, investments and allotments for common school purposes now made or hereafter to be made by the Province or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months . . . as compared with the whole average number of pupils attending school in the same city, town, village or township.

That is to say, the Chief Superintendent, as directed by section 106 of the Common Schools Act of 1859, having apportioned all moneys granted or provided by the Legislature for the support of common schools in Upper
30 Canada, and not otherwise appropriated by law, to the several counties, townships, cities, towns and incorporated villages according to the ratio of population in each as compared with the whole population of Upper Canada, every separate school is entitled to share in the amount thus apportioned, according to the average number of pupils attending such school during the twelve next preceding months, as compared with the whole average number of pupils attending school in the same city, town, village or township.

Consistently also, section 22 of the Separate School Act of 1863, after requiring the trustees of each separate school to transmit twice annually a correct return of the names of the children attending such school, together
40 with the average attendance during the six next preceding months, directs that the Chief Superintendent shall, thereupon, determine the proportion which the trustees of such separate school are entitled to receive out of the Legislative grant, and shall pay over the amount thereof to such trustees. The trustees thus receive the share of the legislative grant to which their separate school is entitled from the Chief Superintendent, and the latter, in his apportionment, cannot apportion moneys otherwise appropriated by law.

In my opinion, the legislative grant which the Chief Superintendent apportions, and of which he subsequently pays a share to the trustees of each separate school, is a general grant for the support of common schools or for common school purposes. A special grant, say for the rebuilding of a particular school destroyed by fire, would be otherwise appropriated by law, and the Chief Superintendent could not deal with it in his apportionment. Section 20 of the Separate School Act places legislative grants on the same footing as municipal grants, and I cannot understand how the latter could be apportioned among the Common and separate schools of the municipality unless they also are general grants. 10

Section 20, as I read it, embodies an undertaking, which is now binding on the Legislature of the Province of Ontario by virtue of section 93, subsection 1, of the British North America Act, that there should be then or thereafter no discrimination against the separate schools with regard to the common school fund and "all other public grants, investments and allotments for common school purposes." The grants, investments and allotments contemplated must have been of a general character, for "every separate school," as explained above, was entitled to claim a share therein. If the Legislature, after the passing of the Separate School Act of 1863, made such a grant, investment or allotment for common school purposes, no new enactment was required to entitle "every separate school" to a share therein, and in that sense there existed, at the Union, a "right or privilege by law" which could have been enforced before the courts. But, in my judgment, nothing in section 20 would have entitled "every separate school" to claim a share in a grant made in favour of a particular common school. If, for instance, to refer again to the same illustration, the Legislature had granted \$10,000 to rebuild a school in the City of Ottawa which had been destroyed by fire, it is to me inconceivable that "every separate school" in Ottawa could have asserted a claim, under section 20, to a share in such a grant. Such special grants cannot be said to be grants "for common school purposes" within the meaning of section 20. The generality of the apportionment contemplated, I think, indicates the generality of the grants which were to be apportioned among the common and separate schools respectively. 20 30

The appellants seem to concede this point. In their factum, they say:

"It may be that a grant by the Legislature towards the rebuilding of a school that has been destroyed by fire, or something of a like nature, might be construed not to be a grant for common school purposes. . . ."

There is indeed an obvious distinction between a particular common school purpose, and common school purposes generally. It may be further observed that the whole context of section 20 shows that both the Common School Fund and the other public grants referred to were general in their character, and were made in favour of all common and separate schools, since all of them participated therein. This admittedly was true of the Common School Fund, and I see no reason for doubting that the other public grants contemplated were also general grants. 40

This is further shewn by the extract from the supply bill of 1865, at page 125 of the Appendix of Statutes. The grants for common schools thereby made were general grants. I think we have here an illustration of the contemporaneous practice at or near the time when these statutes were enacted.

It is said that the Legislature of Ontario may evade the obligation which results from section 20 by the simple device of making special grants to each public school designated by its name. That a power may conceivably be abused is, however, no reason for denying its existence if it be clearly granted by law. But I do not think we should assume that this power to
10 make special grants will be abused. The obligation undertaken by the Province, and rendered intangible by section 93 of the British North America Act, is one of the safeguards stipulated by the religious minorities both of Quebec and of Ontario. It is even more than a legal obligation, it is, if I may say so, an obligation binding in honour. And I cannot assume that it will be deliberately evaded in the manner suggested.

In full agreement with the Chief Justice, I may add that conditions in excess of those laid down by section 20 of the Separate School Act of 1863 cannot, in my opinion, be imposed on the separate schools in order to entitle them to obtain a share in the grants to which the section applies. That section
20 is still in force and cannot be changed by the Legislature. I also agree that any statute which purports to impose such conditions, as well as all statutes and regulations which are in contravention of claims (A) and (B) of the appellants, are *ultra vires*.

NEWCOMBE, J:—

The suppliants, the Board of Trustees of the Roman Catholic Separate Schools for School Section No. 2 in the township of Tiny, and the Board of Trustees of the Roman Catholic Separate Schools for the city of Peterboro, on behalf of themselves and the other Boards of Trustees of Roman Catholic Separate Schools in the province of Ontario, claim, by their amended petition
30 of right,

(1) Payment of the sum of \$736 to the first named Board, that being the sum to which, under the Act of the former Province of Canada respecting Separate Schools, ch. 5, of 1863, Sec. 20, the Board claims to be entitled for the year 1922 in excess of that which it has received.

(2) That it may be declared that certain Acts or parts of Acts of the legislature of Ontario respecting education, which are enumerated, and which were enacted in 1871 and subsequently, prejudicially affect the rights or privileges of the suppliants as claimed to have been conferred
40 by the Separate Schools Act of 1863 and secured by section 93 of the British North America Act 1867, and that these provincial enactments are *ultra vires*, in so far as they affect the rights of the suppliants.

(3) That it may be declared that the suppliants have the right to establish and conduct courses of study and grades of education such as are now conducted in the continuation schools, collegiate institutes and

In the
Supreme
Court of
Canada.

No. 20
Reasons for
Judgment
(Mignault,
J.)
—continued—

No. 20
Reasons for
Judgment
(Newcombe,
J.)

high schools of Ontario, and that any and all regulations purporting to prohibit, or in any way prejudicially to affect, such right are *ultra vires*.

(4) That it may be declared that the supporters of Roman Catholic Separate Schools are exempt from the payment of rates imposed for the support of the continuation schools, collegiate institutes and high schools not established or conducted by the suppliants or other Boards of Trustees of Roman Catholic Separate Schools.

(5) Such further or other relief as may be requisite.

The petition was dismissed at the trial, and the judgment was affirmed by the Appellate Division, from which it comes to this Court. 10

I agree that the appeal should be dismissed and with the reasons for that result which are expressed by my brother Duff, but perhaps I may usefully add the following.

I am satisfied that, even if the procedure by petition of right were available for the trial of the issues which the parties have presented, the suppliants' case must fail in all particulars. I shall consider presently the first claim of the petition, by which it is sought to recover the sum of \$736. But as to the other branch of the case, relating to the field within which a right is said to be secured to the trustees of the Roman Catholic Separate Schools of Ontario to carry on these schools, one cannot read the Statutes of 1859 and 1863 and the earlier Statutes, which must be read together, without realizing that the trustees are not at large, and that there were powers of regulation existing in the legislature at the time of the Union, and which were then carried forward, by the exercise of which the Separate Schools, equally with the Common Schools, were to be regulated and governed. The Council of Public Instruction had the comprehensive power, conferred by section 119, clause 4, of the Act of 1859, "to make such regulations from time to time as it deems expedient for the organization, government and discipline of Common Schools, for the classification of schools and teachers, and for school libraries throughout Canada." And, when, by the Act of 1863, provision was made for the establishment and conduct of the Roman Catholic Separate Schools, it was declared by section 26 that they "shall be subject to such inspection as may be directed from time to time by the Chief Superintendent of Education, and shall be subject also to such regulations as may be imposed from time to time by the Council of Public Instruction for Upper Canada." I have examined carefully the post-Union Statutes and Regulations of which the suppliants complain, but I am unable to perceive that any of these operates prejudicially to affect any right or privilege which the suppliants, or the class of persons they represent, had by law in the province at the Union. If these provisions had been prescribed by the Council of Public Instruction previously to the Union there could have been no sound objection to their validity, and the power of regulation which, within the scope of the Acts of 1859 and 1863, the province possessed at the Union were not reduced by the British North America Act. The denominational school to which section 93 (1) refers, were, so far as they were Roman Catholic Separate Schools of Upper Canada, regulated schools, and I do not doubt that the provisions to which the suppliants object are 20 30 40

within the powers of regulation which the Province had in 1863, and continued to possess at and after the Union.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Newcombe,
J.)
—continued.

With regard to the \$736, this is claimed as part of the appropriations sanctioned by the legislature in aid of the schools for the year 1922. But the money appears to have been applied in the manner authorized by the Statutes as expressed, and I can find no sanction for diverting any part of it to a different purpose. There is nothing in the British North America Acts to compel the legislature to make a grant, or to avoid conditions prescribed for earning it, or to prevent a specific appropriation. Therefore if, to put cases which
10 appear to be very plain and simple, the grant be for the sole benefit of one of the Common Schools, or if it be payable only to those schools which comply with a condition for example, that they have a specified attendance, or a certain standard of efficiency, it is nevertheless an effective grant, and it would require the authority of the legislature to direct that it shall be shared by other schools, or by those which do not comply with the legislative conditions imposed.

It is said in effect, and this branch of the case depends upon the proposition, that when such a grant is made the Board of Trustees of a Roman Catholic Separate School has, by force of the legislation as it stood at the
20 Union, and by the effect of section 93 (1) of the British North America Act 1867, a legal right or privilege to enforce against the Provincial Government payment of a share of the grant in the proportion of the average number of pupils attending that separate school to the whole average number attending school in the same city, town, village or township; and, strangely enough, this contention is put alongside of another which maintains that the Special Act, or the Act which imposes the condition, is *ultra vires* of the legislature. I can understand, although I cannot justify, the latter suggestion. It involves the argument that legislative capacity for the grant in question has been withheld.
30 But I confess I do not see how it is that, if, as must be the case, the authority of the legislature is necessary to the making of a grant, that grant can operate for a purpose which was not authorized by the provisions which sanction it. The Court cannot take the place of the legislature to make a grant. The British North America Act has been productive of some results which perhaps were not anticipated, but it has not, I am persuaded, created anything so difficult of conception as a present legal right to share in a future legislative grant, and still less when the grant is by its terms not shareable, or capable of distribution in the manner claimed. Therefore in this particular also the petition must fail, whether its object be to enforce payment of the \$736 or to obtain a declaration of the invalidity of the grants.

40 LAMONT, J.:—

The question for determination in this appeal is whether certain legislation enacted by the Legislature of the Province of Ontario was beyond the power of the Legislature to enact.

No. 20
Reasons for
Judgment
(Lamont, J.)

For the appellants it is contended that it was; that it amounted to a contravention of s. 93 (1) of the British North America Act of 1867. That section reads as follows:—

“93. 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 particular respects in which the appellants contend that their rights were invaded by the impeached legislation, are:

1. That it takes away the right of the Roman Catholics to have taught in their separate schools all the courses of study and subjects of instruction which are now being taught in the continuation schools, collegiate institutes and high schools of Ontario and that as a consequence thereof the Roman Catholic ratepayers are taxed for the support of these institutions, from which taxation they should be exempt.

2. That it altered the basis of the annual grants made by the Legislature for public school purposes in a manner which prejudicially affects the share thereof which each separate school is entitled to receive.

The argument on behalf of the appellants on the first branch of the case, briefly put, is as follows: That prior to Confederation the Roman Catholics of Ontario had, by law, the right to have their denominational schools managed by trustees of their own faith and choosing; that as part of the management thereof the trustees of each separate school had the right to prescribe the courses of study to be taught in their school; that this right was confirmed to them by s. 93 (1), above quoted, and, as a consequence of such confirmation the Legislature after Confederation was powerless to validly impose any restriction or limitation upon their said right, or to prevent the trustees of such schools from causing to be taught therein all the subjects now being taught in the continuation schools, collegiate institutes and high schools. That these institutions are to-day teaching only the subjects taught in the common schools prior to Confederation and as by law separate school supporters are exempt from contributing to the support of common schools, they are exempt from contributing to the support of institutions doing common school work. What we have to ascertain in the first place, therefore, is: Did the trustees of the separate schools at Confederation have an unqualified and unfettered right by law to prescribe the courses of study to be taught in their schools? If so the legislation impeached in this action is an infringement of that right and, therefore, invalid.

The rights and privileges in respect to denominational schools which the Roman Catholics of Ontario had by law at Confederation, were those given to them by the Act of 1863 (26 Vict., c. 5), Sec. 2 of that Act provided that any number of persons, not less than five, and being heads of families and Roman Catholics, might convene a public meeting of persons desiring to establish a separate school for Roman Catholics and for the election of

trustees thereof. Sec. 3 provided for the election of three of such persons present to act as trustees "for the management of such separate school." The trustees were declared to be a body corporate and to have power to impose, levy and collect school rates from persons sending children to or subscribing toward the support of such schools, but persons paying rates to separate schools were declared exempt from contributing to the support of the common schools. In addition the trustees were to have all the powers in respect of separate schools that the trustees of common schools had and possessed under the Act relating to common schools (s. 7). It was also
10 enacted that the trustees of separate schools should perform the same duties and be subject to the same penalties as the trustees of common schools (s. 9).

Then s. 26 reads as follows:—

"26. The Roman Catholic Separate Schools (with their Registers), shall be subject to such inspection, as may be directed from time to time, by the Chief Superintendent of Education, and shall be subject also, to *such regulations* as may be imposed, from time to time, by the Council of Public Instruction for Upper Canada."

Turning now to the Act respecting Common Schools (C.S.U.C. 1859, c. 64) we find therein set out the powers, duties and obligations of the trustees
20 of common schools ss. 27 and 79. There it is expressly stated to be the duty of the trustees to see that the schools under their charge were conducted according to the authorized regulations and to see that no unauthorized text-books were used.

By s. 119 (4) it was expressly declared to be the duty of the Council of Public Instruction

"To make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools, for the classification of Schools and Teachers, and for School Libraries throughout Upper Canada."

30 Does the authority to make regulations for the "organization, government, discipline and classification" of schools, include authority to make regulations prescribing the courses of study to be taught therein? The language of the section is, it seems to me, sufficiently wide to cover such authority. Furthermore both before 1859 and afterwards until Confederation the Council of Public Instruction had not only been in
40 existence with the duty and authority set out in 119 (4), but, acting under that authority had prescribed the courses of study in the common schools. This shews that prior to Confederation it was understood and accepted that the Council's authority to make regulations for the common schools embraced that of prescribing the studies to be taught therein. Then again the history of the legislation is instructive:

Under the Common School Act of 1841 (4-5 Vic., c. 18) it was the duty of the trustees (then called commissioners):

In the
Supreme
Court of
Canada.

No. 20
Reasons for
Judgment
(Lamont, J.)
—continued.

“To regulate for each school, respectively, the course of study to be followed in such school, and the books to be used therein, and to establish general rules for the conduct of the Schools.”

At that date the local authorities had an unrestricted control over the courses of study. Two years later, however a restriction was placed upon their powers. By 7 Vict., c. 29 (1843), it was declared to be the duty of the trustees

“To regulate for such School the course of study, and the books to be used therein, and to establish general rules; subject, nevertheless, to the approval of the Township, Town or City Superintendent.”

This Superintendent was appointed by the council of the township, 10 town or city.

Under this Act the power to prescribe the courses of study could only be exercised by the joint concurrence of the trustees and the local superintendent. But although this Act restricted the control of the trustees there was, as yet, no attempt at central control.

In 1846 (9 Vict., c. 29) it was enacted that the Governor might appoint a fit and proper person to be superintendent of schools in Upper Canada, whose duty it was to be:

“To prepare suitable forms and regulations for making all Reports, and conducting all necessary proceedings under this Act, and to cause 20 the same, with such instructions as he shall deem necessary and proper for the better organization and government of Common Schools, to be transmitted to the Officers required to execute the provisions of this Act.”

Section 27 of the Act provided as follows:—

“And be it enacted, That it shall be the duty of the Trustees of each School section:

.....
To see that the School is conducted according to the regulations herein provided for;”

30

A comparison of the Acts of 1843 and 1846 shews that in both Acts the duties of the trustees are set out at length, but, while in the Act of 1843 express authority was given to the trustees to prescribe the courses of study, with the consent of the local superintendent, no such authority appears in the Act of 1846; but in that Act it was declared to be the duty of the trustees to conduct their schools in accordance with the regulations therein provided for, which regulations were those authorized to be made by the Superintendent of Schools for Upper Canada for “conducting all necessary proceedings under this Act.”

In 1850 a further step was made by the appointment of the Council of 40 Public Instruction with the powers set out in s. 119 (4), above quoted which council took the place of the Superintendent of Upper Canada so far as the question under discussion is concerned.

Considering the wide language in which the authority of the Council of Public Instruction to make regulations is expressed, the course of the legislation and the practice prevailing over many years, I am of opinion that it was the intention of the Legislature prior to Confederation, in order to secure greater uniformity, to vest in the Council of Public Instruction authority to prescribe the courses of study for the common schools. That being so and the Roman Catholic separate schools being, by s. 26, expressly made subject to such regulations as might from time to time be imposed by the Council of Public Instruction, the trustees of each separate school at
10 Confederation were in duty bound to see that their school carried out such programme of studies as the Council of Public Instruction might, by virtue of the authority vested in them to make regulations, impose.

For the appellants it was argued that even if that were so, it was incumbent upon the Council of Public Instruction to exercise their authority and actually make regulations for separate schools before the right of the trustees to prescribe the studies would be displaced and that as, up to Confederation, no such regulations had been made, the effect of s. 93 (1) was to confirm the right of the trustees unfettered by any regulation which might afterwards be made.

20 In my opinion this contention cannot be supported, for even assuming (which is disputed) that up to Confederation no regulation as to the courses of study in separate schools had been made by the Council of Public Instruction, the authority of the Council to prescribe these courses by regulation was always there, and the right of the trustees was always subject thereto. It was the right of the trustees to manage their separate schools subject to the right of the Council to step in and make regulations relating (*inter alia*) to courses of study, that was confirmed by s. 93 (1).

The right of the Council to prescribe the subjects to be taught did not mean (as the appellants seem to fear) that in the exercise of the right the
30 Council could, by forbidding the teaching of subjects beyond those required—say for a Kindergarten class—in effect destroy the separate schools. No authority, in my opinion, was ever given, either to the Superintendent of Upper Canada or to the Council of Public Instruction, to make regulations which would wipe out, wholly or in part, either the common or the separate schools. Prior to Confederation the Legislature could have done this, but after Confederation even the Legislature was powerless to abolish separate schools. The power bestowed upon the Council was to make regulations for the organization, government, discipline and classification of common schools. At Confederation the common schools had a distinct and definite
40 place in the system of education of Upper Canada. They were to furnish the elementary instruction for the pupils of their respective school districts; while the grammar schools were to furnish instruction,

“in all the higher branches of a practical English and Commercial Education including the Elements of Natural Philosophy and Mechanics, and also in the Latin and Greek Languages and Mathematics so far as to prepare students for University College or any College affiliated with the University of Toronto.”

(Grammar School Act, 1853, 16 Vict., c. 186, s. 5).

As was stated by the Chief Superintendent in a circular issued by him in 1866, the object of the Grammar School law was

“to make the Grammar Schools the High Schools of their respective localities—intermediate schools between the Common Schools and the University, in arts, in law, and in the department of civil engineering, to give to intended surveyors their preliminary education, and to impart the higher branches of an English and commercial education to those youths whose parents do not wish them to study Greek and Latin.”

In the educational system of Upper Canada the common schools were, 10 therefore, intended to be the primary schools, with the grammar schools as intermediate schools between the common schools and the University. These were their respective fields and the duty of the Council was to make regulations prescribing courses of study which would enable the schools to effectively provide instruction covering the field which the Legislature intended they should occupy, but not to destroy or limit their usefulness by restricting the field of their operations.

In the actual working out of the system no doubt there were common schools which taught subjects that were intended to be taught in the grammar schools, and, no doubt, some grammar schools gave instruction in subjects covered by the primary course, but this over-lapping was, I think, due to the exigencies of the particular localities. It must not be forgotten that at that time the province was young and in process of being settled. Some settlements grew more rapidly than others with the result that they required educational facilities beyond those which the common schools were intended to supply before sufficient provision was made in these settlements for secondary education; while in other settlements whatever may have been the cause thereof, the grammar schools, instead of confining themselves to the work of intermediate schools, were found to be furnishing instruction in subjects some of which belonged properly to the intermediate course, while others belonged to the elementary courses of the common schools. It is not, however, to the manner in which the system worked out in actual practice that we must look for guidance in determining the sphere of operation of the primary and intermediate schools, but to the intention of the Legislature as disclosed in the various Acts. 20 30

Once we know the limits of the field which it was intended the common schools should occupy, we know the field to be covered by the separate schools, for, in my opinion, in so far as secular education was concerned the separate schools were intended to be simply common schools under denominational management. 40

The right of the Roman Catholics, however, to have separate schools carries with it, in my opinion, the right to have separate schools of the class of the common schools at Confederation, and covering the same field so far as secular education is concerned, that is to say primary schools furnishing elementary instruction.

The line of demarcation between the primary and intermediate schools may not always have been definitely drawn or closely adhered to, for the reason that it was at times difficult to keep, or to induce the ratepayers to keep, the educational facilities up to the requirements of the respective localities, but I do not think it can reasonably be said that the separate schools of to-day under the impeached legislation have lost their status as primary schools of the class to which the Act of 1863 intended them to belong.

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Lamont, J.)
—continued.

The appellants also relied upon s. 79 (8) of the Common School Act of 1859, which declared it to be the duty of the Board of School Trustees of
10 every city, town and village .

“To determine the number, sites, kind and description of school to be established and maintained in the city, town or village.”

They contended that “kind and description” in this sub-section meant the “grade or character” of the school which would necessarily include the courses of study and branches of education taught therein, and they referred to the decision of the Privy Council in *Ottawa Separate Schools Trustees v. Mackell*, 1917, A.C. 62, as supporting their contention.

In that case their Lordships, at page 71, say:—

20 “The ‘kind’ of school referred to in sub-s. 8 of s. 79 is, in their opinion, the grade or character of school, for example, ‘a girls’ school,’ ‘a boys’ school,’ or ‘an infants’ school,’ and a ‘kind’ of school, within the meaning of that sub-section, is not a school where any special language is in common use.”

By the examples given their Lordships have indicated that the “kind,” “grade or character” of a school which the trustees have a right to determine refers rather to the class of persons for whose education the school was to provide than to the courses of study to be taught in such school. The term, in my opinion, would also cover the right to determine whether the school should be a central, branch or ward school. I am, however, unable to find
30 anything in the judgment which lends support to the appellants’ contention that the “grade or character” of the school implies a right to grade in the sense of prescribing the courses of study. The examples given, in my opinion, point to the opposite conclusion.

I am, therefore, of the opinion that the impeached legislation so far as this branch of the case is concerned, does not prejudicially affect any right or privilege guaranteed to the separate schools by s. 93 (1) of the British North America Act, 1867.

This conclusion disposes of the further contention of the appellants that the Roman Catholic ratepayers were not liable to taxation for con-
40 tinuation schools, collegiate institutes and high schools.

The only exemption they had under the Act was that they should not be liable to contribute toward the support of common schools, that is, as I have said, schools furnishing elementary instruction.

The continuation schools, collegiate institutes and high schools under the legislation and regulations in force all furnish instruction in matters pertaining to secondary education and they cannot, in my opinion, be classed as common schools. The Roman Catholic ratepayers are, therefore, not exempt from taxation for the support of these institutions.

On the other branch of the case the contention of the appellants is that the impeached legislation has altered to their prejudice the basis of distribution of legislative grants which prevailed at Confederation.

The right of a separate school to share in the legislative grants is governed by s. 20 of the Act of 1863. That section reads as follows:—

10

“20. Every Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, and shall be entitled also to a share in all other public grants, investments, and allotments for Common School purposes now made or hereafter to be made by the Province or the Municipal authorities, according to the average number of pupils attending such School during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending school in the same City, Town, Village or Township.”

20

The object of this section was to enable the separate schools to obtain a share of the legislative grants for common schools.

It will be observed that there is no obligation on the legislature to make any grant, but the section provides that such grants as the legislature shall make for common school purposes are to be distributed upon the basis set out in the section.

The difficulty, in my opinion, is not with the basis of distribution but in determining what moneys are to be deemed grants within the meaning of the section. As to the “fund annually granted by the Legislature for the support of common schools,” both respondent and appellants appear to be agreed that it relates to a fund known as the “Common School Fund” concerning which no question arises in this litigation. It is as to the construction to be placed upon the words “all other public grants for common school purposes” that the parties differ. To my mind the question involved, stated briefly, is: Are “public grants . . . for common school purposes” to be limited to general grants in which all schools are to share, or do they include grants made for a specific purpose or grants made conditional upon their being earned.

30

The respondent contends that a grant for a specific purpose or a grant made conditional upon its being earned, is not a grant for common school purposes within the meaning of s. 20.

40

The contention of the appellants as set forth in their factum is as follows:

“It may be that a grant by the Legislature towards the rebuilding of a school that has been destroyed by fire, or something of a like nature, might be construed not to be a grant for Common School purposes,

but that a grant to Common, now called Public Schools dependent upon their attaining a certain standard of efficiency or equipment or raising a sufficient amount of money to pay expensive teachers, is not such a grant as will entitle the Roman Catholic Separate Schools to share in, is denied by the appellants, and it is submitted such a grant is distinctly a grant for Common School purposes, whether called special or general."

*In the
Supreme
Court of
Canada.*

No. 20
Reasons for
Judgment
(Lamont, J.)
—continued.

It will be observed that under s. 20 the distribution is to be made between the common and separate schools in each city, town, village or township.

At the time s. 20 was enacted the statutory provision governing the
10 apportionment of the legislative grants was s. 106 (1) of the "Common Schools Act of 1859," which reads as follows:

"106. It shall be the duty of the Chief Superintendent of Education, and he is hereby empowered—

1. To apportion annually, on or before the first day of May, all moneys granted or provided by the Legislature for the support of Common Schools in Upper Canada, and not otherwise appropriated by law, to the several Counties, Townships, Cities, Towns and Incorporated Villages according to the ratio of population in each, as compared with the whole population of Upper Canada."

20 The sum therefore which the Chief Superintendent had for apportionment was not the whole of the moneys voted by the Legislature for the support of common schools, but only such portion thereof as remained after deducting the amounts "otherwise appropriated by law." Having made the apportionment on the basis of population among the counties, townships, cities, towns and villages, it was then the duty of the Chief Superintendent to determine the proportion of the moneys allotted to each city, town and village or township, which the trustees of the separate schools situate therein respectively, were entitled to receive (s. 22 of the Act of 1863). As the sum total of the moneys apportioned did not include the portion of the grant "appropriated
30 by law," that is specifically appropriated by the Legislature, the separate schools were not entitled to share in such portion. That the separate schools cannot rightfully claim a share of the moneys appropriated by the Legislature to specific purposes seems to me to be clear and is I think, practically admitted by the appellants in their factum. If, for example, the Legislature were to make a grant to assist in rebuilding a certain school house destroyed by fire, would the trustees of a separate school in the same township be entitled to a share thereof by virtue of s. 20: In my opinion they would not. If the trustees brought an action to enforce such a claim it would be a good answer thereto that the Legislature had voted the money for a specific purpose
40 and that it could not be properly applied to any other purpose. In such a case a Court could not properly direct that the moneys be applied in a manner other than that specifically directed by the Legislature. The same reasoning applies to a grant for apportionment among schools attaining a certain standard of efficiency or equipment, or made payable upon the performance

*In the
Supreme
Court of
Canada.*

No. 20

Reasons for
Judgment
(Lamont, J.)
—continued.

of a condition. Unless the required standard be attained or the condition performed the grant would not be available for distribution.

I am, therefore, of opinion that by "Public Grants . . . for Common School purposes" in s. 20, the Legislature meant general or unconditional grants in which all schools were to share. In other words "Grants . . . for Common School purposes" meant "Grants for the purposes of all Common Schools." These would include conditional grants for the same purpose once the condition had been performed. But as the authority of the Legislature to say whether or not any grant at all should be made, or to specify the conditions upon which public moneys shall be devoted to school purposes, 10 is supreme, the only limitation imposed by s. 20 upon the exercise by the Legislature of its authority, so far as conditional grants are concerned, is that the separate schools must be given the same right as the common (now public) schools, to perform the conditions and earn the grant.

I would dismiss the appeal.

IN THE SUPREME COURT OF CANADA

Monday the 10th day of October, A.D. 1927.

*In the
Supreme
Court of
Canada.*

PRESENT:

THE RIGHT HONOURABLE FRANCIS ALEXANDER
ANGLIN, P.C., CHIEF JUSTICE,
THE RIGHT HONOURABLE MR. JUSTICE DUFF, P.C.,
THE HONOURABLE MR. JUSTICE MIGNAULT,
THE HONOURABLE MR. JUSTICE NEWCOMBE,
THE HONOURABLE MR. JUSTICE RINFRET,
THE HONOURABLE MR. JUSTICE LAMONT,

*No. 21
Order of the
Supreme
Court of
Canada.*

10

IN THE MATTER OF A PETITION OF RIGHT

BETWEEN:

THE BOARD OF TRUSTEES OF THE ROMAN
CATHOLIC SEPARATE SCHOOLS FOR SCHOOL
SECTION NUMBER TWO IN THE TOWNSHIP OF
TINY, AND THE BOARD OF TRUSTEES OF THE
ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE
CITY OF PETERBOROUGH, ON BEHALF OF THEM-
SELVES AND ALL OTHER BOARDS OF TRUSTEES
OF ROMAN CATHOLIC SEPARATE SCHOOLS IN THE
PROVINCE OF ONTARIO,

20

(Suppliants) APPELLANTS;

—AND—

HIS MAJESTY THE KING,

(Respondent) RESPONDENT.

The appeal of the above-named appellants from the judgment of the Appellate Division of the Supreme Court of Ontario pronounced in the above cause on the 23rd day of December in the year of our Lord, 1926, affirming the judgment of the Honourable Mr. Justice Rose sitting in and for the Supreme Court of Ontario rendered in the said cause on the 13th day of May, in the year of our Lord, 1926, having come on to be heard before this Court on the 20th, 21st, 22nd, 23rd and the 25th days of April in the year of our Lord, 1927, in the presence of Counsel as well for the appellants as the respondent, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment, this Court did order and adjudge that the appeal should be and the same was dismissed.

Ent'd fol. 88
40 J.B. No. 9.
G.A.A.

"E. R. CAMERON,"
Registrar.

(L.S.)

AT THE COURT AT BUCKINGHAM PALACE

The 20th day of December, 1927.

*No. 22.
His
Majesty's
Order in
Council
granting
special leave
to appeal,
20th Decem-
ber, 1927.*

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY,
 MASTER OF THE HORSE,
 SECRETARY SIR W. JOYNSON-HICKS,
 SECRETARY SIR JOHN GILMOUR
 SIR ARTHUR STEEL-MAITLAND.

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 2nd day of December 1927 in the words following, viz. :—

20

30

40

“WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Board of Trustees of the Roman Catholic Separate Schools for School Section No. 2 in the Township of Tiny and the Board of Trustees of the Roman Catholic Separate Schools for the City of Peterboro on the part of themselves and all other Boards of Trustees of Roman Catholic Separate Schools in the Province of Ontario in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and Your Majesty Respondent setting forth (amongst other matters) that the Petitioners claimed by Petition of Right :—(1) a declaration that they had and have the right to establish and conduct courses of study and grades of education such as are now conducted in Continuation Schools Collegiate Institutes and High Schools and that all regulations purporting to prohibit limit or in any way prejudicially affect such right are invalid and ultra vires ; (2) a declaration that the supporters of Roman Catholic Separate Schools are exempt from the payment of rates imposed for the support of Continuation Schools Collegiate Institutes and High Schools not established or conducted by Boards of Trustees of Roman Catholic Separate Schools ; (3) and judgment in favour of the Petitioners first named for a sum of money equivalent to what those Petitioners allege is the difference between the amount paid to them out of the legislative grant of Ontario for the year 1922 and the amount that would have come to them if effect had been given to the statute in force at Confederation which statute it is contended created a right that the legislature had no power to affect prejudicially and for a declaration that the Acts of the Legislature of Ontario altering the basis of distribution which existed by law at the date of the Union are ultra vires ; that the Petitioners commenced this Action by Petition of Right in the Supreme Court of Ontario under the fiat of the Attorney General of Ontario on the 17th April 1925 and the Attorney General

In the
Privy
Council.

No. 22.
His
Majesty's
Order in
Council
granting
special leave
to appeal,
20th Decem-
ber, 1927
—continued.

"of Ontario on behalf of Your Majesty in his defence denied all the
"claims of the Petitioners: that the Supreme Court on the 13th May
"1926 delivered judgment dismissing the Petition: that the Petitioners
"appealed to the Appellate Division and on the 23rd December 1926
"judgment was given dismissing the Appeal: that the Petitioners
"appealed to the Supreme Court of Canada and on the 10th October
"1927 judgment was given dismissing the Appeal on an equal division
"of opinion: And humbly praying Your Majesty in Council to order
"that the Petitioners shall have special leave to appeal from the Judgment
"of the Supreme Court of Canada of the 10th October 1927 or that Your
"Majesty may be pleased to make such further or other Order as to
"Your Majesty in Council may appear fit: 10

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's
"said order in Council have taken the humble Petition into consideration
"and having heard Counsel in support thereof and the Solicitors for the
"Respondents having signified in writing their consent to the prayer
"thereof Their Lordships do this day agree humbly to report to Your
"Majesty as their opinion that leave ought to be granted to the Petitioners
"to enter and prosecute their Appeal against the Judgment of the Supreme
"Court of Canada dated the 10th day of October 1927. 20

"And Their Lordships do further report to Your Majesty that the
"authenticated copy under seal of the Record produced by the Petitioners
"ought to be accepted (subject to any objection that may be taken
"thereto by the Respondent) as the Record proper to be laid before
"Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was
pleased by and with the advice of His Privy Council to approve thereof and
to order as it is hereby ordered that the same be punctually observed obeyed
and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer adminis- 30
tering the Government of the Dominion of Canada for the time being
and all other persons whom it may concern are to take notice and govern
themselves accordingly.

M. P. A. HANKEY.