DECISIONS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL; THEIR RELATION TO EDUCATION IN CANADA.

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INTRODUCTION.

Before entering into the discussion of the subject of this study it would be profitable to trace first the history and development of the judicial powers of the Privy Council. The origin of the privy council, from which has been formed the judicial committee, is, like that of most of our institutions of government, more or less shrouded in mystery. It is impossible to choose a definite date and say "That is the date of the beginning of the privy council". The power at present exercised by the judicial committee is a development brought about through centuries of growth. In order to trace this development it is necessary to go back to the earliest times when all institutions of modern government were in the germinal stage and known under different names than those now applied to them in their altered form.

During the Norman and Angevin period alterations of lasting importance were effected in the system of government then in vogue. During the reign of Henry I arose a body known as the Curia Regis, which was organized for judicial and financial purposes. "The Curia is the germ from which have developed the departments of government"(1). "The Curia Regis in it's widest signification and early use under William the Conqueror and William Rufus, seems to have denoted the National, Common or Great Council of the Realm - the Witanagemot in it's feudalized form - ..... The Curia in it's judicial aspect was invested with the old appellate jurisdiction of the Witanagemot and with the direct jurisdiction, as the feudal court of the King's vassals in all disputes between the tenants in capite"(2)

The Curia Regis as a judicial body and in it's financial powers was developed by Henry I and a regular routine of business established.

Under Henry II this body was re-organized and it's administration extended. From it itinerant justices were sent on circuit throughout the country. In the transaction of business the King himself was at the head and in early times attended and actively participated in the dispensation of justice. Henry II was accustomed to take this active part.

"From the reign of Henry I at the latest, the judicial functions of the Common Council of the realm appear to have been exercised by a supreme court of justice, to which the name"Curia Regis" is specially though as yet not exclusively appropriated, and which is attendant upon the King in his movements from place to place". (3) In the absence of the King the Justiciar presided, assisted by the officers of the Royal Household, the Chancellor and others appointed by the King. Described by Coke as " A noble, honorable and reverent assembly of the King and such as he wills to be of his Privy Council in the King's court or palace".

Until the reign of Henry II the Curia Regis continued as the supreme court. By that time it's business had so increased that eighteen judges were attached to it. In 1178 the King reduced this number to five and deprived the court of it's character of a final court of appeal by reserving for his own decision cases in which the Curia failed to give justice. This tribunal is the source of our present Courts of Common Law, for shortly after the Magna Carta the curia Regis was divided permanently into the Exchequer, Common Pleas and King's Bench.

(1) Anson Constit. Hist. P. 12.
(2) Taswell-Langmead Eng. Constit. Hist. P 124.
(3) Ibid.

After this division of the Curia Regis the King still continued to exercise his personal jurisdiction through his "Continual" or ordinary council, both as a court of final appeal and as a court of first instance, in cases not specially delegated to the Common Law courts. During the reign of Henry III this "Continual" council acquired strength and prominence due to the minority of the King. "This body ill-defined as to constitution and powers but always in immediate attendance upon the King first appears in the minority of Henry III. It is distinct from the larger deliberative assembly, the Commune Concilium, from the more frequently summoned assembly of the Magnates, and from the judicial and financial staff which transacted the business of the courts, the Chancery and the Exchequer"(1)"It's powers were most extensive and indeed indefinite. It was the King's standing council of advice in all matters of administration; it received, discussed and remitted to the proper courts a vast number of petitions.....for relief in various matters of judicial cognizance". (2)

In the exercise of judicial functions the Chancellor presided, after the abolition of the office of Justiciar. Each Chancellor endeavored to widen the jurisdiction. This assumption of powers was carried to such an extent that statutes in restraint of their powers were passed. These however, had little effect and"the council in the reign of Richard II had become a power co-ordinate with the King rather than subordinate to him, joining with him in all business of state, not merely assisting but restricting his actions". (3)

The King's Ordinary council continued to exercise it's jurisdiction, even after the establishment of Parliament and the recognition of the judicial powers of the House of Lords as a court of appeal and court of first instance. After the giving forth of branches such as the Star Chamber, it transmitted at a later date it's powers to the Privy Council, the judicial Committee of which latter body still exercises them.

"In every department of the executive it was the duty of the council to advise the Crown and there soon follows the assumption by the council of judicial powers, which to some extent supplemented and to some extent superseded, the action of the courts". (4)

The assumption of power by the council continued, during the infancy of Henry VI it added to it's consultative functions those of a council of regency. "The jurisdiction of the Council dangerously indefinite, but on the whole salutary in it's exercise, under Henry VII, had become a formidable engine of oppression before the death of Elizabeth". (5)

The Court of Star Chamber was the court which was the instrument whereby the court fell into disfavor. At it's inception, when created by the statute 3 Henry VII Cap.I justice was done. Indeed often it was only here that justice could be obtained speedily and at a small cost by the poor and often only here justice could be obtained by the weak.

By the statute of 16 Charles I Cap 10 the power of the Privy Council was "to inquire into all offences against the Government and to commit the offenders into custody in order to take their trial in some of the courts of law". But their jurisdiction was only to inquire, not to punish.

The council used the Star Chamber to enforce it's decrees and proclamations thus giving such decrees and proclamations the force of law.

(1) Anson P. 61
(2) Taswell-Langmead P. 144
(3) Stubbs Constit. Hist. III P. 247
(4) Anson P. 22
(5) Anson P. 27

"So long as the Star Chamber was available for the enforcement of proclamations there existed a judicial power residing in the executive, limited by no settled rules, exercisable at the Royal discretion and alleging the interests of government as the grounds of it's exercise". (1)

The mis-use of power resulted in the abolition, by the Long Parliament in 1641, of the Star Chamber and the forbidding of the privy council or council board from intermeddling in civil cases or suits of private interest between party and party. "With this enactment the judicial powers of the King's council acting as a court of first instance within the jurisdiction of the courts of law was brought to a close". (2) This enactment did not abolish the council for "The so-called Star Chamber is ..... only a committee of the privy council on which account also every privy councillor could occasionally take part in the proceedings and even the whole body sit as Star Chamber as was done at first in important cases, and later, at all events from Edward VI, was the general rule whence this penal jurisdiction became quite an ordinary portion of the political business of the ministerial council".(3) "The Privy Council as a whole is therefore at the present time reduced for ordinary purposes, to executive business which is formal and not discretionary, while it's consultative functions have disappeared". (4)

"The abolition of the Star Chamber did not abolish the council nor deprive it of all judicial power. It retained jurisdiction as a court of last resort in Admiralty matters and in all matters, civil and criminal arising in the King's lands beyond the seas!(5) That is, the King in council was not deprived of the right to hear petitions from adjacent Islands or the plantations.

In 1661 a committee was appointed to hear appeals and "doleances" from the Channel Islands. In 1667 a re-arrangement of the privy council was made, committees for Foreign affairs, for the Admiralty, for Trade and Plantations and for petitions of complaint and grievances were constituted with definite rules and duties. To the committee fot Trade and Plantations were assigned the appeals and "doleances from the Channel Islands. In 1687 this committee was made an open appeal of the whole council. Nine years later another change was made providing that appeals were to be heard by a committee of all the Lords or any three of them. "Thus we may say that down to the year 1833 all the petitions "des autres terres et de pay de par la mer et les Isles" were dealt with by an open committee of the privy council which advised the Crown as to the order to be made in each case". (6)

In the year 1833 the council ceased to be a council of the Crown being organized with the judicial committee and three standing committees. By the act of that year the following were assigned to the judicial committee:

(1) All appeals and complaints in the nature of appeals made to the Crown in council.
(2) All matters, which arising in Admiralty or Vice-Admiralty courts in the dominion of the Crown, might heretofore have been taken, by way of appeal, to the court of Admiralty.
(3) Any other matter as the Crown may choose to refer to the judicial committee for hearing or consideration.

The committee as created by statute, consisted of members who should hold or have held certain high judicial offices. The present composition of the committee consists of the Lord President, members of the privy council who have held high judicial office, the Lord Justices of appeal and two other persons whom the King may appoint by sign manual warrant. Four members are required to be present to hear an appeal.

In 1871 four paid members were appointed and they together with the Chancellor do almost all the work.

(1) Anson P. 29
(2) Ibid. P. 74
(3) Gneist Hist. of Engl. Constit. 505.
(4) Anson P. 77
(5) Maitland P. 320.
(6) Anson P. 287.

However, "it's composition is still in a state of transition". "When the Judicature Act of 1875 was passed it was intended that the committee and the House of Lords should be united into one supreme court of appeal and when this scheme was modified it was provided that the Lord Chancellor and the four Lords of appeal, whose appointment was then arranged for, should serve as paid members of the Judicial Committee, since then three Colonial Chief Justices have been added to the committee" and these have sat on cases recently before the committee. (1)

Thus we see that from early times the right to hear appeals from the King's lands beyond the seas has belonged to the Privy Council. There is the right of appeal from the Supreme Court of Canada to the Privy Council in all cases involving amounts in excess of $4000.00 with leave to appeal being granted. There is also a right of appeal direct to the privy council without a hearing by the Supreme Court of Canada as provided for by recent enactment.

"From very small beginnings, a jurisdiction over the Isle of Man and the Channel Islands this power, (of hearing appeals), steadily grew as conquest and colonization gave the King new lands beyond the seas. Thus the Privy Council became an ultimate tribunal for a vast empire, not for England, not for Great Britain, but for all other lands of the King in all corners of the globe - a marvellous jurisdiction now exercised by the Judicial Committee of the Privy Council". (2)

(1) Courtney "Working Constitution of the United Kingdom. P. 135.
(2) Maitland P. 320.

Chapter 1.

The Judicial Committee of the privy council, being the court of last resort for colonial matters has naturally played a very important part in the constitutional development of the British colonies. Possibly in no other sphere have their decisions been awaited with more anxiety or more widely felt interest and concern, than those in relation to the educational problems of this Dominion. Judgments involving the distribution of legislative power between the Dominion and the provinces have not been of vital concern to the average citizen. But, when the character of the education to be given to the youth of the land is involved, then every individual citizen is vitally interested and most deeply concerned. Thus we shall see that the whole Dominion became interested in the school question of a single province and that the settlement of that question involved one government in defeat and placed a new one in office.

The Dominion of Canada was constituted by the British North America Act of 1867. By that act the Canadas, Upper and Lower, Nova Scotia, and New Brunswick were united to form the Dominion of Canada. By the terms of the union each province was to have a legislature of its' own with certain powers and there was to be a Dominion Parliament having certain specified powers and residuary powers. As regards the subject of education the British North America Act enacts as follows, in the 93 rd section.

"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 dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

3. Where in any province a system of separate or dissentient schools exists by law at the union or is 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.

4. In case any such Provincial law as from time to time seems to the Governor General in council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section."

Thus we see that jurisdiction in relation to educational matters is vested in the provinces but subject to appeal to the Governor General in Council in any case, in which rights existing at law are interfered with.

This 93rd section of the act has given rise to a great deal of litigation. The Provinces chiefly concerned and from which the strife emanated were New Brunswick, Manitoba and Ontario. We will deal with the school question in each of these provinces separately. In order to obtain a clear understanding of the situation throughout the Dominion reference will also be made to the educational problems of some of the other provinces. Dealing with the litigation chronologically, New Brunswick will first receive our attention.

NEW BRUNSWICK.

We will first turn our attention to New Brunswick for it was in that maritime province that the first school difficulty arose, in the settlement of which the Judicial committee played a part.

Before entering upon the discussion of the points of controversy and the legal questions involved it would, perhaps, be advisable to review the state of education existing in New Brunswick prior to the culmination of the trouble in an appeal to the courts.

The first act passed for the establishment of Common Schools in that province was enacted in 1802. At that time the "state of education was very low, and a new generation was growing up in ignorance for lack of knowledge".(1) The act of 1802 appropriated the sum of 420 Pounds Sterling for distribution amongst the parishes of the province, ten pounds to each parish for assisting in the maintenance of the schools. The next legislation was in 1816 when an act was passed to establish Grammar schools in the various counties of the province. And an "Act to encourage the establishment of schools" made provision for the appointment of school trustees by the justices in session, and the raising of money for school purposes by assessment when ordered at a meeting of the freeholders and taxpayers. Two years later, in 1818, the power of assessing the inhabitants for the support of the schools was taken away and the sum of one hundred pounds appropriated from the public treasury to each parish, not more than twenty pounds annually to any one school. In the following year the Madras system was introduced and spread widely though it's duration was brief. According to this method the more advanced pupils taught the younger ones and in this manner the number of teachers required was reduced. One of these schools was established at Saint John and the legislature made a grant of 250 Pounds to assist in the erection of a school-house. In the same year a charter was granted to the Madras schools by Governor Smyth, this being later confirmed, in 1820, by the legislature. By 1827 there were 31 Madras schools in operation. In time these became virtually Church of England schools resulting in a falling off of the number so that by 1870 there were only 11 of them still in existence. These, however, continued until 1900 when their character as Church of England schools was recognized and by an arrangement part of their funds were transferred to the University of New Brunswick. In 1827 King's College was founded under the control of the Church of England but in the year 1847 the control of that church was greatly reduced.

That same year witnessed the enactment of a new measure for the support and improvement of Parish schools. It provided for the appointment of trustees for each parish whose duty it was to divide the parish into as many school districts as necessary. The Lieutenant Governor and Executive council were constituted the Provincial School Board and given authority to establish a training school for teachers at Fredericton, in connection with which a model school was to be established. The act also provided that trained teachers were to be granted licenses before teaching. Untrained teachers were permitted to continue teaching for a limited time but their remuneration was less than that of a trained teacher. Schools employing teachers of the 1st, 2nd, or 3rd class standing received respectively 30, 22 and 15 Pounds annually from the government. Two Inspectors were appointed and required to inspect each school at least once each year. The system as established by the act of 1847 formed the basis of the school system in force until the establishment of free schools in 1871.

(1) Hannay Hist. of New Brunswick Vol. I P.282.

The basis for the act of 1871 was the system in operation at the time in Nova Scotia. The act contained a provision that all schools conducted under it should be non-sectarian. The act did not arrive upon the statute books without some opposition. When the bill was in the committee stage an amendment was moved which, if passed would have rendered nugatory the fulfillment of the objects which prompted the act. The amendment was as follows: "That all schools existing at the time of the passing of the bill and all schools hereafter established, separate or common, should, provided they complied with the requirements thereof, be entitled to their share of the district assessment and other funds for the support of schools". This amendment was lost on a tie vote 6-6. Notwithstanding the petitions of Roman Catholics for separate schools the bill passed and came into operation January 1st 1872.

The first echo of the storm which the bill had aroused in New Brunswick was heard in the Dominion Parliament in 1872 when a resolution to the following effect was moved by Mr Costigan:-

"That the Legislature of New Brunswick in it's last session in 1871 adopted a law respecting common schools, prohibiting the imparting of any religious education to pupils and that prohibition is opposed to the sentiments of the population of the Dominion in general and to the religious convictions of the Roman Catholics in particular.

That the Roman Catholics, without acting unconscientiously cannot send their children to the schools established under the law in question, and are yet compelled, like the remainder of the population to pay taxes to be devoted to the maintenance of those schools;

That the said law is unjust and causes much uneasiness among the Roman Catholic population in general disseminated throughout the whole Dominion of Canada and that such a state of affairs may prove the cause of disastrous results to all the confederate provinces, and praying His Excellency, in consequence, at the earliest possible period to disallow the said New Brunswick School law". (1)

After a great deal of discussion, during which many and varied resolutions were submitted and rejected, the above resolution was defeated and in it's place was passed a resolution suggesting that the constitutionality of the act be determined, rather than that it be disallowed. The resolution was finally passed in the following form.

"That this house regrets that the school act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that province and hoped that it may be so modified during the next session of the New Brunswick Legislature as to remove any just grounds of discontent that now exist.

And this house deems it expedient that the opinion of the law officers of the Crown in England, and if possible of the judicial committee of the Privy Council, should be obtained as to the right of the New Brunswick Legislature to make such changes in the school laws as to deprive the Roman Catholics of the privileges they enjoyed at the time of the union in respect to religious education in it's Common schools, with the view to ascertaining whether the case comes within the terms of the 4th sub-section of the 93rd clause of the British North America Act 1867, which authorizes the Parliament of Canada to enact laws for the due execution of the provisions respecting education in the said act".

The act had already been referred by the Governor General to the Canadian Privy Council. The Minister of Justice reporting in January 1872 that the act was intra vires as there were no acts establishing separate, dissentient or denominational schools in New Brunswick. And on the further ground that the act applying to the school system in toto gave the Governor General no power of intervention. (2)

(1) Sess Papers 1873 Vol. VI No.7 Paper 44.
(2) Report of Sir John A Macdonald 1872 Sess. Papers Vol. V No 7 Paper 36. "The Provincial Legislatures have exclusive power to make laws in relation to education subject to the provisions of

In 1873 the matter was again brought before the Dominion Parliament by Costigan. This time a resolution was passed declaring it to be the opinion of the house "That the parties aggrieved by the operation of the New Brunswick School Law should have an opportunity of bringing the matter judicially before the Privy Council and that in the meantime it was the duty of the Government to advise the Governor General to disallow the several acts passed during the last session of the New Brunswick Legislature to legalize assessments made under the Common School Act and an amendment thereto". The Governor General, after hearing a delegation of members of the New Brunswick Government, declined to comply with the terms of the resolution.

In accordance with the resolution of 1872 the act was submitted for the consideration of the law officers of the Crown in England. They held the act to be intra vires, agreeing substantially with the opinion of the Minister of Justice already referred to.

In the Dominion Parliament the fight became very bitter. The extent to which the opponents of the school law sought to involve the Dominion in the domain of provincial powers may be judged by the terms of the following resolution which they endeavored to carry in the house. The resolution read as follows: "That an address be presented to Her Majesty, praying that she will be pleased to cause an act to be passed amending the British North America Act 1867, in the sense in which the House of Commons believes to have been intended at the time of the passage of the said act, by providing that every religious denomination in the Provinces of New Brunswick and Nova Scotia shall continue to possess all such rights, advantages and privileges with regard to their schools, as such denominations enjoyed in such provinces at the time of the passage of the said last mentioned act, to the same extent as if such rights, advantages, and privileges had been duly established by law". (1)

This resolution evoked a very strong and forceful protest from the Province of New Brunswick. The attempt to carry the fight to such lengths that the B.N.A.Act was to be amended in order that the Dominion Government should obtain power to force upon the people of one province an act which they did not want, stirred up the indignation of the people of that province. The very confederation itself was seriously imperilled by this move. The exact nature of the situation can be judged from the text of the resolution of the New Brunswick Legislature. "The people of New Brunswick cannot and will not so surrender their rights of self-government within the limits of the constitution, and will regard the passage of such a resolution as an infringement of the constitution, by those whose duty and interest should lead them to uphold the rights of the provinces, while maintaining the powers of the general government.....the Executive Council protest against the passage of such resolution, and emphatically assert the right of the Legislature of New Brunswick to legislate upon all questions affecting the education of the country free from interference by the Parliament of Canada".

In the meantime the validity of the School Act of 1871 was being tested in the courts. The Constitutionality of the act was attacked in an application for a writ of certiorari to remove an assessment for school purposes made by the Parish of Richibucto in the County of Kent, on the ground that the act was ultra vires, void and of no effect. The case is reported under the name of "Ex parte Renaud". (2)

the 93rd clause of the British North American Act 1867. Those provisions apply exclusively to the denominational, separate or dissentient schools. They do not in any way affect or lessen the power of Provincial Legislatures to pass laws respecting the general educational systems of the Province".

(1) Sess. Papers 1873 Vol VI No. 6 Paper 44.
(2) N. B. L. R. 1 Pugsley 273.

The basis of the attack on the act was subsection (1) of clause 93 of the British North America Act 1867. It was claimed that the Common Schools Act of 1871 prejudicially effected the rights and privileges of the Roman Catholic inhabitants of New Brunswick. The subsection upon which this action was based enacted a qualification on the general powers of legislation in reference to education vested in the provincial legislatures.

"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". Thus it was necessary to determine what rights or privileges any class of persons had in reference to denominational schools at the union and whether or not such rights or privileges were prejudicially affected by the legislation of 1871. Thus at the trial of the action it was necessary to examine into the system of education at that time. This is ably summed up in the judgment of Chief Justice Ritchie as follows:-

"At the time of the union what may fairly and legitimately be called the Common School system of the province was carried on under an act passed in 21 Victoria Chapter 9 entitled "An Act relating to Parish Schools". There were, no doubt, at the same time in existence, in addition to the schools established under the Parish Schools Act, schools of an unquestionably denominational character and under the immediate government and control of particular denominations, in which, there can be no doubt, or it may reasonably be inferred, the peculiar doctrines and tenets of the denomination to which they respectively belonged were exclusively taught, and therefore had, what may rightly be esteemed all the characteristics of denominational schools, pure and simple". (1)

The claim was made that certain rights and privileges existed under the provisions of the act of 1858 and that these were removed by the act of 1871. The act of 1858 was based upon the act of 1847 to which reference has already been made. (See Supra P.6) The later act provided for a Board of Education composed of the Governor in Council, a superintendent and four inspectors appointed by the Governor, each inspector representing his inspectoral district. Inter alia the following powers were conferred on the board by the act.

(1) To make regulations for the organization, government and discipline of parish schools.
(2) To make regulations for the examination, classification and mode of licensing teachers.
(3) To appoint examiners of teachers and to grant and cancel licenses.
(4) To prescribe duties of Inspectors.
(5) To provide for the establishment, regulation and government of school libraries and the selection of books to be used, but no books of a licentious, vicious or immoral tendency or hostile to the christian religion or works on controversial theology were to be admitted.

The respective duties of the Superintendent, trustees and teachers were set out in the act. Section 8 in reference to the duties of the teachers included the following:

"Every teacher shall take diligent care and exert his best endeavor to impress upon the minds of the children committed to his care, the principles of Christianity, morality and justice and a sacred regard to truth and honesty, love of their country, loyalty, humanity and a universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, order and cleanliness, and all the virtues which are the ornaments of human society; but no pupil shall be required to read or study in or from any book, or join in any act of devotion objected to by his parents or guardians and the Board of Education shall by regulation secure to all children whose parents or guardians do not object to it, the reading of the Bible in Parish schools; and the Bible when read in Parish schools by Roman Catholic children shall, if required by their parents or guardians, be the Douay version without note or comment".

(1) N.B. L.R. 1 Pugs. 277.

In reference to this provision Ritchie C.J. says: "This paragraph, so far from making the schools denominational, or giving any rights or privileges in respect to a denominational school appears to be directly opposed to the idea of denominational teaching in the schools".(1) This was the view urged upon the Dominion Government by the Executive Council in their resolution in reference to the act. (2) The opponents of the school act claimed that this provision gave them the right to have religious education imparted in the schools. This view was not concurred in by Ritchie C.J. who pointed out that because in exceptional circumstances teachers may have taught the doctrines of a particular denomination no legal right or privilege was thereby conferred upon any class of persons nor was the denomination, whose tenets may have been taught, granted any rights or privileges over any other inhabitant. His judgment held that as the establishment of denominational schools was not recognized or provided for by the Act therefore the Roman Catholics as a class had no legal rights to claim any control over the schools or to insist that the doctrines of their church should be taught in all or any of the schools under the Parish School Act. Therefore the provision in the act of 1871, declaring that the schools should be non-sectarian, did not infringe the qualification expressed in subsection 1 of clause 93 of the B.N.A. Act 1867 and the act was intra vires.

The main differences between the Parish School Act of 1858 and the Common Schools Act of 1871 are in the provision contained in the latter for compulsory taxation. Section 8 of the earlier act is omitted and section 60 provided that the schools should be non-sectarian. These sections together with an allegation that section 58 of the later act prohibited grants of provincial aid to any schools but those operated under the Common Schools Act formed the basis of the claim that the act was ultra vires.

The Chief Justice held that the failure of the Board to make a regulation, as provided for under the Parish School Act, for the reading of the Bible, where the parents did not object, and by Roman Catholic children of the Douay version, did not render the act inoperative. He suggested that the case might fall within the provisions of the 4th subsection of section 93.

As regards the objection that schools not conducted under the act would in accordance with the terms of the act not be entitled to any grant it was pointed out that the act could in no way interfere with the inherent power of the Legislature to make grants as it saw fit.

The allegation based on section 60 of the act was disposed of and the claim on that grounds dismissed."The inability of a class of persons to have, under the Common Schools Act, that which possibly, they might, under certain exceptional and accidental circumstances, have had under the Parish School Act of 1858 but which they had no right to insist on having, is a damage not occasioned by anything which the law esteems an injury, a kind of damage termed in law "Damnum absque injuria" and for which there is no remedy. And so, in this case as there was no legal right to have denominational schools or denominational teaching, there is no injury in legal contemplation committed by the legislature dealing with the question in such a manner as to prevent the possibility arising and consequently no right th have the act of the Legislature abrogated".

In concurring in the judgment of the Chief Justice, Mr Justice Fisher pointed out that the right or privilege interfered with by an Act, in order to render such act unconstitutional, must needs be one in reference to denominational schools and he defined that type of school as "A school under the exclusive government of some one denomination of Christians where the tenets of that denomination are taught". He further pointed out that the right to the Douay version was a right to have it read in the Parish schools not in a denominational school, if it was a right at all. And that such right was not secured by the British North American Act. The rule for certiorari was consequently discharged.

(1) N.B.L.R. 1 Pugs. 284.
(2) Sess. Papers 1873 Vol VI No.6_ Paper 44.

The Dominion Government was still very active and actually made an allowance of $5000.00 to pay for an appeal to the Judicial committee of the Privy Council. Naturally this caused a great deal of resentment on the part of the New Brunswick Government. That government felt that the Dominion was actively engaged in an effort to overthrow it's legislation. A resolution was passed stating in no uncertain terms their attitude to the policy of the Dominion Government.

The School question next became an election issue in the Provincial elections in New Brunswick. In a House of forty-one members only five opponents of the Common Schools Act were elected. This result thoroughly demonstrated what the people wanted and their attitude to the Dominion policy of interference.

An appeal was taken before the Judicial Committee of the Privy Council. Unfortunately their judgment is not regularly reported. The only report is to be found in the Law Times of July 18, 1874. (see footnote) The appeal was dismissed, the judgment being given without calling on the respondents. Thus the constitutionality of the New Brunswick School Law was established and upheld by the Judicial Committee and public schools maintained in the province.

In 1875 the New Brunswick school law was again before the Dominion Parliament. After a very spirited discussion a resolution to the following effect was passed.

"That in the opinion of this house legislation by the Parliament of the United Kingdom encroaching on any power reserved to any of the provinces by the B.N.A. Act 1867 would be an infraction of the provincial constitution and fraught with danger to the autonomy of each of the Provinces, for this House to invite such legislation.

That on the 29th day of May 1872 the House of Commons adopted the following resolution:

"That this House regrets that the school act recently passed in New Brunswick is unsatisfactory to a portion of the inhabitants of that Province and hopes that it may be so modified during the next session of the Legislature of New Brunswick as to remove any just grounds of discontent that now exist".

That this House regrets that the hope expressed in the said resolution has not been realized;

That we most humbly pray that Your Majesty will be pleased to use the influence of Your Majesty with the Legislature of New Brunswick to procure such a modification of the said act as shall remove such grounds of discontent".

Footnote. Cartwright Vol II P.486 gives the following:
"The following notes of the judgment of the Privy Council as to the New Brunswick School law is taken from "The Times" of July 18, 1874. The judgment is not given in the regular reports.

"Maher vs The Town of Portland".

This was an appeal from the Supreme Court of New Brunswick in reference to the educational question and involved, it was stated, an important question as to the Roman Catholic inhabitants under the Common School Act 1871. Mr. Joseph Brown Q.C. and Mr. Duff Q.C.(of the Canadian Bar) were for the appellant. Sir John Carslake Q.C., Mr. Cowie Q.C. and Mr King Q.C.(the Attorney General for N.B.) for the respondents.

The appellant, one of the Roman Catholics of New Brunswick was assessed in 1872 under the Common School Act. The assessmnnt was made by the assessor of taxes for the Town of Portland. The warrant was issued by the Town council, in pursuance of a requisition of the Board of Trustees. The appellant felt aggrieved as a Roman Catholic and applied to the Supreme Court for a rule nisi, calling on the council to shew cause why a writ of certiorari should not issue to bring the order of assessment into court, with the view of it's being quashed. It was alleged that The Common Schools Act under which the assessment was made was void in contravention of the B.N.A. Act 1867, the 93rd section of which provided that in each Province the Legislature might exclusively make laws in relation to education, according to the provisions set forth, one of which was that nothing in any such law should 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 above resolution was passed after a resolution asking for Imperial interference had been defeated. This latter fact explains the meaning of the first paragraph of the resolution and further bears out the contention that the school question has threatened the very existence of the Dominion. The opponents of the act went so far as to ask the Dominion Government, after they found that it lacked the jurisdiction itself, to urge upon the Sovereign Imperial interference in matters by the B.N.A. Act exclusively assigned to the Provincial Legislature. The Dominion Government, while not going to the lengths asked proceeded in a manner similar to that which was to cause another danger to the confederation. That is, they accepted the statements of the opponents of the Act as being true without investigation and immediately took an active interest in the attempt to have the Act declared ultra vires.

Following the upholding of the validity of the Act by the judgment of the Privy Council, the King Government, then in power in New Brunswick, in August 1875 made an agreement with the Roman Catholic members of the Legislature by which certain concessions were granted to the Roman Catholics, thus terminating their extreme opposition to the Act and their resistance to it's operation.

The terms of the agreement permitted members of certain religious orders to qualiy as teachers upon passing the prescribed examinations. Buildings, the property of such orders or of the Roman Catholic Church, might be rented for school purposes and religious instruction given after school hours.

The concessions granted by this arrangement soon were the source of further difficulties, resulting in more litigation. The court, in the case of Rogers vs Trustees of School District No.2 Bathhurst, (1) was called upon to adjudicate upon the matters in dispute.

In 1893 a petition was presented to the school authorities asking that the provisions of the School Act be carried out and alleging that the trustees of the above-mentioned School District had committed a breach of the rules in the School Manual by granting special privileges to the Roman Catholics. Among the acts were:

1. That members of the religious orders of the Roman Catholic Church were permitted to teach in the Common Schools without submitting to the rules imposed on others.

2. That members of religious orders taught in the schools in Fredericton, St. John, Moncton and Bathhurst. That they wore the Cross, Crucifix etc. and were paid by the public money and taught in conventual buildings the doctrines of the Roman Catholic Church.

Upon receipt of this petition, commissioners were appointed to investigate the charges. Their report failed to uphold the charges and an action was brought in the Equity court before Mr Justice Barker. The plaintiffs were an Orange Lodge. They alleged that the Schools were not being conducted as non-sectarian schools as was required by the Act but that on the contrary the trustees "maintained and conducted the schools in the interests of the Roman Catholic Church and for the purpose and with a view and intention to promote the prosperity of said Roman Catholic Church and assist in spreading, maintaining, inculcating, and securing the supremacy of the religion and doctrines of said Church and influencing the minds of the children of Protestant children being taught in the said School District, Bathhurst No.2.

(1) 1 N.B. Equity Rep. 266

Mr Brown and Mr Duff were heard in support of the appeal and a discussion arose on "denominational schools" in New Brunswick. Lord Justice James after conferring with the other members of the Committee gave judgment without calling on the respondents. Their Lordships concurred in the opinions of the court below and would advise Her Majesty that the appeal should be dismissed with costs.

Present: Sir James Colville, James L.J., Mellish L.J., Sir Montague Smith and Sir Robert P. Collier."

The attainment of these objects was being brought about, they alleged through the following agencies:

1. The renting of the Convent school-house
2. Employment of Sisters of Charity as teachers at the instance of the Bishop of Chatham.
3. The wearing of religious garb by the teachers.
4. The fact that teachers were not known by their ordinary names but by names given them by their order.
5. The Sisters were under the control of the Roman Catholic Church.
6. The salaries went to the Order rather than to the teacher.
7. An agreement with the Bishop whereby the Bible was not read.
8. Interference of priests in the conduct of the schools.
9. Sisters taught Roman Catholic doctrines in the schools.

In his judgment Barker J. dismissed the action, holding that the allegations which were established did not constitute acts sufficient to render the schools sectarian. In regard to an allegation in reference to the teaching of religious education before and after school, he inclined to the opinion that teaching before school would possibly be an infringement of the rules which provided that the schools were to be open to the pupils at least twenty minutes before the opening hour. If classes for religious instruction of the Roman Catholic children were being conducted the Protestant children would thus be deprived of their right to be in the class-room twenty minutes before opening time.

As to whether there was an evasion of the Act or not the Superintendent of Education under examination said "Under the School law and the regulations as they exist today it is not regarded by the Board of Education as an evasion at all". (1)

The following summary of the judgment gives the facts proven as well as the judgment on those facts.

"It is not a violation of the provisions of the Common School Act of New Brunswick against sectarian education of public schools for the school trustees to employ, as teachers, Sisters of a religious Order of the Roman Catholic Church and permit them while teaching to wear the garb of their Order".

Originally the regulation in this regard provided: "Symbols or emblems distinctive of any National or other society, political party or religious organization shall not be exhibited or employed in the schoolroom in it's general arrangement or exercises or on the person of any teacher or pupil". This was amended by the addition, after the word "exercises" of the following clause. "But nothing herein shall be taken to refer to any peculiarity of the teacher's garb or to the wearing of the cross or other emblem worn by the members of any denomination of Christians or Temperance organization". In "Ex parte Renaud" (2) Ritchie C.J. had questioned the advisability and validity of the regulations as first enacted.

"The fact that such teachers contribute all their earnings beyond what they use for their support to the treasury of their Order for religious purposes does not affect their right to be employed in the public schools of the province."

"The holding in a school-room before and after school hours of Roman Catholic exercises by a teacher who is a Sister of the Religious Orders of the Roman Catholic Church, for the benefit of the Roman Catholic children does not render such school sectarian."

The trustees of Bathurst School District No.2 had rented the Convent building school-room and classes were held there. The complainants alleged that there was sufficient accomodation available elsewhere. Sisters of the religious orders of the Roman Catholic Churchwere employed as teachers and they gave religious instruction before and after school hours to the Roman Catholic children. The complainants alleged that the entire school was under the authority of the Bishop of Chatham. This allegation was not proven. The judgment in the action, however, turned, not so much upon the proof of the allegations, as upon what constituted a sectarian school. Everything not actually sectarian to the full extent of the meaning of that word was regarded as non-sectarian. In this action the judge held that the proven facts were not sufficient to render the schools sectarian.

(1) 1 N.B. Equity L.R. 288
(2) N.B. L.R. 1 Pugs. 290

The judgment in this case ended litigation in regard to the school system in New Brunswick. The provision in force in that province at the present time in regard to the character of the schools as to being separate or common public schools is that enacted in the School Act, Consolidated Statutes 1903. Section 119 of that Act reads "All schools under the provisions of this chapter shall be non-sectarian".

A terse and accurate summary of the system in use at present is given in the Canada Year Book 1916-17 (1) as follows:

"In New Brunswick the regulations provide that it shall be the privilege of every teacher to open and close the daily exercises of the school by reading a portion of Scripture, (out of the Common or Douay version as he may prefer), and by offering The Lord's Prayer, and that his duty shall be to maintain a deportment becoming his position as an educator of the young, and to strive diligently to have exemplified in the intercourse and conduct of the pupils throughout the school, the principles of Christian morality". The regulation further enumerates certain"moral actions and habits" concerning which it shall be the duty of the teacher to give instruction to the school as occasion may require. He may not, however, use in school any religious catechism or interfere with the religious tenets of any pupil."

Thus we see that the effect of the judgment of the Judicial Committee of the Privy Council in upholding the validity of The Common Schools Act of 1871 has been the establishing and maintaining of the provincial autonomy in reference to determining the character of the education to be given in the schools of the province.

As has been pointed out prior to the Act of 1871 the Roman Catholicshad enjoyed certain privileges. These were not granted to them by law but had been obtained by assumption and gradual accretion. The practises, which they claimed as rights and privileges by law, were practises they had been carrying on without legal sanction and if not in actual violation of the law at least without regard to it. The Legislature had not relinquished it's jurisdiction in legislating, in reference to the character of the education to be given in it's schools, by the granting of rights to the Roman Catholics, which it could not revoke.

The attck on the Act and the attempt to frustrate it was complete. Every possible grounds or opportunity was resorted to. The attempt to neutralize the effect of the Act, by amendment, failed in committee. Resort was made to Dominion authorities. The Governor General was petitioned to disallow the Act. This failed as the report of the Attorney General, adopted by the Canadian Privy Council, declared the Act to be intra vires. An appeal was made to the Supreme Court of New Brunswick, again without success. The Dominion Parliament was the next means by which pressure was exerted on the Provincial Authorities. The lengths to which the opponents of the Act were willing to carry this has been discussed. The opinion of the Law Officers of the British Crown was obtained again upholding the validity of the Act. Finally the matter came before the court of final appeal, the Judicial Committee of the Privy Council. The constitutionality of the act was again upheld. And thus was saved? inviolate to the province, it's exclusive right to legislate in reference to education within the limits of it's jurisdiction. Possibly no Act has ever been submitted to such a rigorous attack as the Common Schools Act of New Brunswick. It is at least safe to say that only in reference to education have Acts been so strenuously opposed. Once their jurisdiction was established beyond any possibility of successful attack, the provincial authorities by an arrangement alleviated as far as possible, without compromising their position, the unnecessary hardships, enacted by the operation of the statute, on particular classes. Thus the successful working of the school system was materially aided.

New Brunswick was the first province after Confederation which had to defend it's right to determine the nature of the education given in it's schools. It was, however, not the last. The influence of the strife and of the judgment in it's case was, as we shall see, very important in the determination of the rights of other provincial legislatures to enact legislation in reference to education.

(1) Reprinted "Education in Can" Dept. of Trade & Commerce.

Chapter II.

MANITOBA.

The strife in the Province of Manitoba in regard to the "School Question" has re-echoed throughout the whole of this Dominion. What was primarily a question for the one province became an active issue in Dominion politics. Little more than a quarter century has elapsed since the words "The Manitoba School question" carried a significance to people in every part of this country. It immediately divided the people into two very distinct classes each class regarding the other as advocates of coercion. The extent to which this strife reached can be judged by the fact that it was the cause of the downfall of a Dominion Government. The conservative party was driven out of power and the Liberals under Sir Wilfred Laurier were given the reins of government as a result of the trouble over the "School Question" in Manitoba. This merely adds further proof to the statement that the system of education to be given in the schools of this country is one of the most vital problems for our solution. In the conflict that was waged in Manitoba on this contentious matter the Judicial Committee of the Privy Council was resorted to on two occasions.

Before proceeding directly to a discussion of the legal issues involved in this litigation it is best to briefly regard the history of education in the province.

Manitoba was admitted as a province into the confederation, in 1870, having been formed out of part of the North-West Territories, as purchased by the Dominion from the Hudson's Bay Co. The latter had obtained title to the territory known as Rupert's Land by virtue of a Royal Charter granted to them in 1670. The Hudson's Bay Co., though owners of the land were using it only for commercial purposes. Their interests were in the fur trade and, as any agricultural pursuits would interfere with the fur trade they did not encourage settlers. The first real attempt at settlement was made in 1812 when Lord Selkirk brought out a company from the old country and sent them by way of Hudson's Bay to the North-West. Lord Selkirk had only been able to obtain the consent of the Company and a grant of land from it after he had secured a controlling interest by purchase of stock. Shortly after the settlers, the missionaries arrived and they assumed the double duty of looking after the spiritual and educational needs of the colonists. Thus we have the first school established at St. Boniface by Bishop Provencher of the Roman Catholic Church in 1818. When the missionaries of the other denominations arrived they opened schools for the caring of the educational needs of the children of their parishioners. The government of the colony, after the resumption of the territory from Lord Selkirk's heirs, until 1835 was by the Hudson's Bay Company. In 1835 the District of Assiniboia was formed and a governor and council appointed by the Company were placed in charge of the internal administration of the colony. This council, however, made no public provision for schools although in the year 1851 the following resolution was passed:

"That One Hundred Pounds be granted from the public funds to be divided equally between the Bishop of Rupert's Land and the Bishop of (St. Boniface) the North-West to be applied by them at their discretion for the purpose of education" (1)

By the year 1870 there were a few schools in the French Parishes and in the English Parishes, 14 Anglican and 2 Presbyterian schools. (2)

(1) Begge Hist. of North-West Vol III 393.
(2) Bryce Historical Review of Education in Manitoba.

These schools were controlled by the denominations by which they were maintained. "The means necessary for the support of the Roman Catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools, and the rest was paid out of the funds of the church contributed by it's members". (1)

This is the situation at the time of the entry of Manitoba into confederation. However, the "School Question" in Manitoba, in order for an accurate understanding, requires a knowledge of the events preceding such entry.

Government of the territory by the Hudson's Bay Co. was unsatisfactory to both the settlers and the company, their interests being so diverse. Consequently, the settlement having increased in size, negotiations opened between the Hudson's Bay Co. and the Imperial Government regarding a surrender to the Crown of the claims of the Company. Canada had been regarding the West for some time. Many of the far-seeing leaders in parliament advocating that the territory of the Dominion should embrace the North-West. When negotiations opened Canada sent representatives to England where an agreement was reached whereby upon payment of the sum of 300,000 Pounds Sterling the Company was to relinquish it's claim to the land except it's forts and the land around the same and a specified share of the land. Canada agreed to pay this amount, the Imperial Government guaranteeing the payment. December 1st 1869 was the date set on which Canada was to receive the North-West from the Company. However, in the negotiations preceding the transfer and in the subsequent proceedings the Dominion authorities made a mistake which entailed disastrous consequences. They ignored entirely the settlers. This mistake was paid for in blood at a later date. The settlers quite naturally resented their being considered as mere chattels which could be disposed of by sale of the land upon which they lived. The blundering policy of the Canadian Government was carried further than this. Their next move was to send surveyors into the territory to survey it off into sections. This act was done before the territory had been actually transferred to Canada so that there was no right or justification for their so doing. Even these blunders were not the limit for in 1868 two characters, Mair and Snow, made their appearance in the colony. They came supposedly for the purpose of administering relief to the settlers after the grasshopper scourge. The method of administration adopted was to give employment on a road which they purported to be building to the Lake of the Woods. Payment for work was made in provisions but as the provisions had exhorbitant values placed upon them the settlers considered that they were the victims of unscrupulous swindlers. Begge (2) lays the blame for the two latter blunders on the Hon. William McDougall and pays tribute to the Governor, McTavish, for his efforts to avoid any trouble and bring about a settlement of the differences without strife or bloodshed. The smouldering enmity was further fanned by the actions of some of the settlers who claimed and boasted of their friendship with the persons in power in the Canadian Government. These individuals, after the land was surveyed, endeavored to usurp for themselves the most fertile sections. Even these mistakes were not all. The Hon. Wm McDougall at that time Minister of Public Works in the Canadian Government had himself appointed as Governor of the territory. This appointment was also made before the actual transfer of the territory had taken place. In fact, when McDougall was at Pembina he was unaware of the date at which the transfer was to be effected. Owing to the unsettled condition of the territory the Imperial Government was to fix the date of transfer by proclamation. That McDougall was unaware of the date appears from his own letters. (3) The commission appointing McDougall as Governor was accompanied by instructions which required him to proceed and be prepared to take over his duties when the actual transfer was effected. In October 1869 the new Governor arrived at Pembina. In November he endeavored to enter the territory but was stopped at the Barrier by the French Metis organization of which John Bruce was president and Louis Reil secretary.

(1) Affidavit of Archbishop Taché (see appendix)
(2) Begge Creation of Manitoba
(3) Ibid.

From there he was escorted back to the boundary. The council of Assiniboia, meeting about this time, passed a resolution expressing a want of confidence and satisfaction in the steps taken by Canada but expressed confidence in the future administration by the Canadian Government. At the same time it advised Mr McDougall to remain out of the territory.

On the 2nd of November 1869 Riel and his men seized Fort Garry, the property of the Hudson's Bay Co., and billeted themselves there until the arrival of the troops under Wolsley in 1870. Following the seizure of Fort Garry, Riel issued a proclamation calling upon the English to elect 12 representatives to meet with the same number elected by the French Parishes. These representatives were elected but their instructions precluded any action on their part for they were instructed to watch proceedings and report. The council met, though refused recognition by Governor McTavish, on November 16th. After much friction and a policy of watchful waiting carried on by both sides, a Bill of Rights was at last formulated.(1) It was at first proposed that delegates be sent to present the Bill to McDougall at Pembina, but of this nothing came. On December 26th/69 Grand Vicar Thibault and De Salaberry arrived in the settlement as special commissioners from the Canadian Government. They were more or less ignored. On the 27th of the same month Mr Donald A. Smith arrived as an envoy from the Dominion authorities. He was well received by the majority of the people though viewed with suspicion by Riel who virtually kept him a prisoner and has been charged with duplicity in an endeavor to procure the commission of the envoy. After the arrival of Smith, at his request, a mass meeting was called which met January 19 1870. At this meeting it was moved and carried that twenty representatives be elected by the English and twenty by the French to meet "to consider the subject of Mr Smith's commission and to decide what would be best for the welfare of the country". The representatives elected in pursuance of the terms of this resolution met on the 26th of January. The outcome of their deliberations was the adoption of a second List of Rights (2) on February 3 1870. Three delegates were named by the meeting to go to Ottawa, in acceptance of the invitation extended by the commissioners, for the purpose of negotiating with the Canadian Government with a view to arriving at an amicable settlement of the difficulties. The delegates named were Judge Black Rev. Father Ritchot and A. H. Scott. Following this a provisional government was formed on February 9th with Louis Riel as President. Events in the settlement began to assume a more serious aspect. During this trying period Governor McTavish was seriously ill and thus unable to cope with the situation. Riel as President assumed very great authority thus alienating the English and many followers of his own nationality. The troubles which broke out in the colony culminated in the execution of Thomas Scott on March 7th/70 under Riel's orders and in spite of the strenuous efforts of Smith to prevent bloodshed. This tragedy, which has dyed red the pages of Manitoba's history was the climax in Riel's career. Many of his supporters were estranged by the lengths to which their leader had gone and indignation was manifest throughout the whole of the Dominion. Shortly after the shooting of Scott Bishop Taché arrived in the settlement as a special envoy commissioned by the Canadian Government. On March 15th a meeting of the Council of the Provisional Government was held to complete arrangements for the departure of the delegates to Ottawa. They were furnished with a copy of the List of Rights ostensibly those of February 3 1870. A copy of the list certified to and approved 22nd March was found in the papers of Thos. Bunn who was the secretary of the Provisional Government. This list is list Number 3 (3).

(1) See Appendix Copy given by Begg P.110 and by Bryce, "Creation of Manitoba". 111
(2) " " " " " "
(3) Ibidem.

On the 23rd of March the delegates commenced their journey to Ottawa. Upon their arrival there they were arrested and imprisoned being charged with the murder of Thomas Scott. There was not sufficient evidence to support the charge and they were released. At the time of their arrest their papers were taken from them and copies sent to the Secretary for the Colonies, in England. The copy of the List of Rights so sent was a copy of List number 3. The object of this reference will appear at a later stage in our discussion. After their release the delegates entered into negotiations with the Canadian Government which resulted in the Manitoba Act. On the 17th of June Rev. Ritchot returned to the settlement and a special sessions of the Council of Assiniboia was called to hear his report. This session adopted the report of the delegate, agreeing to enter confederation as a province of the Dominion in accordance with the terms and provisions of the Manitoba Act. The provisional government still continued to remain in office until the arrival of the troops in August. Upon the arrival of Colonel Wolsley, the President and his chief aide sought refuge in the United States. Thus was Manitoba created a Province of the Dominion of Canada.

The Manitoba Act, which came into force on the 15th day of July, by Royal proclamation dated in May of 1870, provided for the government of the province by two Houses; a legislative Assembly and a Senate. The latter body was of short duration being abolished in 1876. In 1875 Premier Davis passed through the Assembly a bill providing for the establishment of Public schools but it was so mutilated by the Senate that it would have failed to accomplish it's object and was consequently abandoned. The action of the Senate in thus altering the school bill was largely responsible for it's abolition.

The Manitoba Act provides that "the provisions of the British North America Act 1867, except those parts thereof, which are in terms made, or by reasonable intendment may be held to be especially applicable to, or only to affect one or more, but not the whole of the provinces now comprising the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way and to the like extent as they apply to the severak Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act". (1)

Section 22 of the Manitoba Act dealt with the matter of education and read as follows:

"In and for the Province the said Legislature may exclusively make laws in relation to Education, subject and according to the following provisions:-

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have BY LAW OR PRACTICE in the Province at the Union.

(2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education:

(3) In case any such Provincial law, as from time to time seems to the Governor General in Council requisite for the due executions of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section".

There are several essential differences between the provisions in the British North America Act 1867 in regard to education and those in the Manitoba Act dealing with the same subject. The corresponding sections are 93 in the former Act and22 in the latter. The differences are worthy of notice because great stress was laid upon them in the arguments before the various courts. There are four chief differences as follows.

(1) Manitoba Act 33 Vict. Chap. 3 Section 2.

(1) The inclusion of the words "by practice" in the first subsection of the later Act.

(2) The entire omission in the Manitoba Act of any clause corresponding to the second subsection of the B.N.A. Act.

(3) The extension of the right of appeal to the Governor to include Acts or decisions of the Provincial Legislature.

(4) The right of appeal being granted absolutely, and not conditionally upon the previous existence or subsequent establishment of a system of separate or dissentient schools.

These differences must be borne in mind for future reference when the Act is under discussion.

Before proceeding to a discussion of the legal battles involving the system of education in Manitoba it is best to review the legislation enacted in the Province in reference to this contentious subject.

In it's first session, the Manitoba Legislature, in 1871 placed upon the statute books a School Act, establishing a system of Public Schools. By the provisions of this Act a Board of Education was formed consisting of two sections, Roman Catholic and Protestant. Each section of the Board controlled the schools of it's own faith. The Act provided that Roman Catholics and Protestants were to be taxed for the support of their own respective schools only. The Legislative grant, it enacted, was to be apportioned between the two sections of the Board. The schools were operated under the provisions of that Act until 1890 when a new Act was passed. The new Act, however, embodied the essential principles and provisions of the first act. The new Act provided for the appointment by the Lieutenant Governor in Council of a Board of Education consisting of thirteen Protestants and nine Roman Catholics. Section 5 of the Act dealt with the powers of the Board subsection (e), of which, enacted that the Board had power "to select all books, maps and globes to be used in the schools under it's control and to approve of the plans for the construction of schoolhouses provided, however, that in the case of books having reference to religion and morals such selection by the Catholic section of the Board shall be subject to the approval of competent religious authority."

As regards taxation the Act contained a provision that corporations or persons neither Roman Catholic or Protestant should pay taxes to the School Board of the majority but the minority should receive a share thereof.

Section 31 of the Act contained the provision upon which the Act of 1890 was attacked, the Roman Catholics claiming that by this section they were granted privileges which the Act of 1890 took away from them. It read "No Protestant shall be required to pay for Roman Catholic schools nor any Roman Catholic be required to pay for protestant schools".

In 1894 the Act was amended. Sections 18 and 19 were repealed and new sections substituted providing for the division of cities and districts into wards for the election of trustees. To the minority was given the right to retain the old district or to extend it to include members of their denomination residing in the vicinity, where no school of the same denomination existed. The minority were granted the further right of electing three trustees.

The schools were operated under the provisions of the Act of 1890 and amending Acts until 1900. In that year the previous Acts in reference to education were repealed and two new measures were enacted, 53 Vict Chap 37 and 53 Vict Chap 38. The first of these two established a Department of Education in the government, granting to it the power to appoint Inspectors of schools, teachers of Normal Schools etc., Provision was made for an Advisory Board consisting of seven members. Four of these were to be appointed by the Department, two to be elected by Public School teachers and the 7th to be elected by the University Council. The powers conferred upon this Board included the right to prescribe the form of religious exercises to be used in the schools.

The Public Schools Act, Chapter 38, wrought such drastic changes in the existing school system that it is essential for us to view the sections carefully by means of which the alterations were effected. These sections are as follows:

(3) Provided that all Protestant and Roman Catholic school districts were subject to the Act.

(5) Declared that the Public schools were to be free.

(6) Provided that "Religious exercises in Public schools shall be conducted according to the regulations of the Advisory Board".

(7) Enacted that religious exercises were to be entirely at the option of the school trustees.

(8) "The Public schools shall be entirely non-sectarian and no religious exercises shall be allowed therein except as above provided".

(90-93) Conferred upon the councils of Rural Municipalities, towns and cities the power to levy taxes for school rates.

(106) Read s.s. (3)"Any school not conducted according to all the provisions of this or any Act in force for the time being or the regulations of the Department of Education, or the Advisory Board, shall not be deemed a Public School within the meaning of the Law and such school shall not participate in the Legislative grant".

(141) Provided that authorized books were required to be used upon penalty of forfeitur e of the Legislative grant.

(178) By this section it was enacted that where Protestant schools showed a deficit between assets and liabilities the Roman Catholics were to be exempted from taxation to make up such deficit.

(179) Roman Catholic Districts cease to exist, their assets and liabilities being transferred to the Public School Districts.

Under the provisions of this Act the City of Winnipeg passed a bylaw levying a rate for Municipal and School purposes, in the said city for the year 1890. The requisition by the Protestant School Board was for $75,000.00 and that of the Roman Catholic for $2,550.00. Each Board gave a list of names of those liable for the payment of such taxes. This levy of a rate brought to a head the opposition to the Act. During it's passage through the House it had been bitterly opposed by the French members and the English Catholic members. An application was made to the court to quash the bylaw on the grounds of illegality, the following among others: "That because by the said bylaws the amounts to be levied for school purposes for the Protestant and Roman Catholic schools are united and one rate levied upon Protestants and Roman Catholics alike for the whole sum". The basis of the estimates was not attacked but it was contended that the amounts required by the respective Boards should be levied separately. On behalf of the Roman Catholics an application was made by a Mr Barrett (1) and by a Mr. Logan in the interests of the Church of England.

The Barrett application came before Killam J. The applicant, in support of his motion filed an affidavit setting out that he was a Roman Catholic, resident of Winnipeg and a ratepayer. He alleged that the result of the assessment was that each Protestant would have less to pay than hitherto and each Roman Catholic more, because the Roman Catholics could not conscientiously send their children to the Public Schools and they would therefore have to support their own schools in addition to being taxed for the support and maintenance of the Public Schools.

(1) Barrett vs City of Winnipeg 7 Man. R. 273
(2) Logan vs City of Winnipeg 8 Man. R. 3.

A second affidavit was filed, Archbishop Taché being the deponent. In his affidavit the archbishop gives the history of Roman Catholic schools in the Province of Manitoba.(1) This affidavit was accepted by all parties as a true statement of the facts. It declared that prior to the passing of the Manitoba Act, the schools in existence were controlled by the different denominations. The claim was made that the Act of 1890 prejudicially affected the Roman Catholics in that they were required to pay taxes for the support of Public Schools and in addition were deprived of their right to have religious instruction combined with secular education. The petitioners further attacked the Act as prejudicially affecting their rights and privileges with respect to denominational schools in two ways; 1. By the establishment, in competition with denominational schools of free schools supported by public funds, thus placing the denominational schools at a disadvantage.
2. That the Public schools received money for their support that would otherwise go to the denominational schools.

Mr Justice Killam gave a lengthy and carefully considered judgment in which he dismissed the application. He reviewed the situation existing in the older Provinces of the Dominion and contrasted that in force in the Maritimes to the systems in the Canadas. "There were then two wholly different sets of circumstances existing in Canada and the Maritime Provinces when they were united, to which the limitations in the subsections of the 93rd section of the Confederation Act became applicable. In the former there were what I conceive to be denominational schools recognized by law, the supporters of which could invoke the authority of the law to maintain them by compulsory assessment upon their co-religionists, and could by so doing relieve themselves from the liability to assessment for the support of the Common schools, and were by law entitled to have apportioned to them a share of the provincial funds granted in aid of Common Schools. Thus there were a distinct class of persons having distinct rights and privileges in respect of denominational schools, among which was that of obtaining immunity from taxation for the support of the Common Schools. This immunity could well be said to be a right or privilege in respect of denominational schools, as being dependant upon the establishment and support of such schools." (2)

The judgment proceeds to point out that in Manitoba there was no public school system supported by public funds, or any mode of taxation and that the existence of such in other provinces determined the right to immunity from taxation.

As regards the petitioners claim that the Public Schools were actually Protestant schools the judgment held that upon the face of it the Public Schools Act did not create a system of denominational schools or assume to compel any member of any class to support denominational schools other than his own, and laid down the proposition that "There is no such difference between Roman Catholic and Protestant ideas in education as to make any school which is undenominational a denominational school of the opposite faith if it is not denominational of their faith. Schools established by the Public Schools Act are not denominational".

The situation in Manitoba was succinctly epitomized in the following words: "Under the state of affairs existing here before the union with Canada, there was simply an absence of any law requiring any person to contribute to the support of schools, it was not dependent upon, or connected with denominational schools, and cannot be said to have been either BY LAW or Practice a right or privilege with respect to denominational schools".

The argument that the competition of the Public Schools placed the denominational schools at an unfair advantage was dismissed, the judge pointing out that there was no monopoly, for any denomination or other body interested could establish schools. And the argument in reference to the Public Schools depriving the denominational schools of support they would otherwise receive was held to be too remote as such is the result of any taxation.

(1) See appendix.
(2) 7 Man. Rep. 273.

Killam J. held that the British North American Act 1867 was not an attempt to settle the "School Question" for Canada but merely an enactment for the protection and to ensure the continuance of existing systems in each particular province joining confederation at it's inception. As to the words "By Practice" he says "I attach very little importance to the words "by practice" ..... and consider that they might have been added owing to the anomalous situation existing in Manitoba due to the confusion through doubtful authority of the Hudson's Bay Co." (1) This statement was made in disposing of the argument that the addition of the words "or practice" in the Manitoba Act showed an intention to prevent the occurence of any trouble such as had arisen in New Brunswick. However, it must be remembered that in regard to this the New Brunswick Act which was attacked was passed in 1871 whereas the Manitoba Act was passed in 1870. This very decided opinion of the trial judge is worthy of note owing to the importance and weight placed upon these words by the Supreme Court of Canada. As to the right to immunity from taxation this right, it was held, was not extended throughout Canada by the Confederation Act and if intended in the Manitoba Act it should have been more clearly set out.

This decision, however was only the starting of the case. An appeal was immediately taken to the Manitoba Court of Appeal. It's judgment (Dubuc J. dissenting) upheld the judgment of Mr. Justice Killam. The headnote to the report (2) sets out concisely their judgment and reasons for same as follows;

(1) That the Public Schools Act was intra vires of the Legislature of the Province of Manitoba.

(2) That the Parliament of Canada intended by inserting the words "or practice" in the Manitoba Act, that whatever any class of persons was, at the time of union, with the assent of, or at least, without objection from, the other members of the community, in the habit or custom of doing in reference to denominational schools, should continue, and should not be affected by provincial legislation.

(3) That any right or privilege which the Roman Catholics had at the time of the union with respect to denominational schools, was not taken away or affected by the Act and can be exercised as fully now as before the Act.

(4) That the schools established by the Public Schools Act are not denominational schools but in the strictest sense public non-sectarian schools.

That is, they declared that the right which the Roman Catholics had possessed before the enactment of the Public Schools Act was to have their own schools and to pay for the upkeep of such schools themselves. This right they still possessed.

Dubuc J. in his dissenting judgment held that having regard to the history of the controversy regarding denominational schools in Canada and the legislation relating thereto, the Parliament of Canada in inserting the words "or practice" in ss 1 of section 22 of the Manitoba Act had only one manifest purpose, that is, to protect in their right and privilege as to denominational schools, the Catholics or Protestants, who might in the future find themselves in the minority in this Province and to give a legal status to such schools and therefore the Public Schools Act was ultra vires of the Provincial Legislature and the bylaw should be quashed".

It is unnecessary to go more fully into the judgment and the reasons for same of the majority of the full court. Essentially their conclusion was that the Roman Catholics' privilege of having their own schools was not affected by the Public Schools Act. The privilege was not taken away. They still retained the right to establish and maintain schools as they had done but they would have to support them as previously viz. by voluntary contribution. They had not the right to immunity from taxation and would therefore be liable for the payment of taxes in support of the schools established under the Public Schools Act.

(1) 7 Man Rep. 301.
(2) Man. Rep.

Though at the time of the union the Roman Catholics were not compelled to support Public Schools and not taxed for the support of them the reason was that at that time no law required any person in the country to contribute for school purposes. The Court refused to admit the appellants' contention that the schools were merely Protestant schools but declared them to be free and non-sectarian accessible to all who wished to attend.

The next hearing of the case was before the Supreme Court of Canada. (1) The unanimous decision of this tribunal allowed the appeal, declared the Manitoba Public Schools Act to be ultra vires of the Manitoba Legislature and quashed the bylaws complained of. The Chief Justice of the Supreme Court at the time of the hearing of the case was Sir W. J. Ritchie. He was the trial judge in the litigation as regards the validity of the New Brunswick act of 1871.

In the argument before the Supreme Court the appellants based their arguments chiefly upon the meaning to be applied to the words "or practice". The respondent, the Province of Manitoba, contended that the expression "BY LAW OR PRACTICE" as used in the act only applied to any binding rule or obligation to which the inhabitants of the province were committed at the time of the union. The judgment of the Supreme Court was based entirely upon the meaning to be attributed to these words. The Chief Justice held that the Dominion Parliament, in the Manitoba Act was fully aware of the conditions and that it had inserted the words "or practice" to protect the Roman Catholics. "We are now practically asked to reject the words "or practice" ...and to read this restrictive clause out of the statute as being inapplicable to the existing state of things in Manitoba at the union. Whereas on the contrary I think by the insertion of the words "or Practice" it was made practically applicable to the condition, at the time, of the educational institutions which were unquestionably and solely, as the evidence shows, of a denominational character". Fournier, Taschereau, and Patterson JJ. gave judgments in which they held that these vital words were to be interpreted as giving the Roman Catholics the right to have separate schools.

"Si l'on donne aux mots "or practice" leure véritable interprétation, les écoles des Catholiques seront reconnues par la loi. Ces mots "by practice" N'ont sans doute été introduit dans L'ACTE De Manitoba que pour assurer a ceux qui le desiraient le droit de maintenir leurs écoles separées et pour en consacrer l'existence légale". (2)

Mr Justice Patterson pointed out that the words "injuriously affect" would include any degree of interference with rights and privileges though it failed to extinguish the right or privilege in question. He further held that the increased difficulty of securing support for Roman Catholic Schools, by reason of the support for the other schools being compulsory, would be included in the meaning of these words.

Subsequent to the decision of the Supreme Court in the Barrett case but previous to the appeal to the Judicial Committee of the Privy Council a motion came before the Manitoba Courts on behhlf of the right of the Church of England to maintain denominational schools.(3) The Full Court of Manitoba found that the Church of England had a right or privilege with respect to denominational schools, which, according to the finding of the Supreme Court in the Barrett case, was prejudicially affected by the Public Schools Act 1890. It further held that acquiescence for a number of years in the system of schools did not operate as a waiver of the right and the case was indistinguishable from the Barrett case.

In the appeal taken to the Judicial Committee of the Privy Council the two judgments were combined and the two applications disposed of at the same time.

(1) 19 S.C.R. 374.
(2) FournierJ. ibid. 407
(3) Logan vs City of Winnipeg 8 Man Rep. 3.

The judgment of the Judicial Committee was delivered by Lord MacNaghten. (1) As the Roman Catholic claim was based upon the fact that the words "or practice" had been added to the Manitoba Act, thus differing from the corresponding provision in the 93rd section of the British North American Act, naturally the judgment turned entirely upon the meaning to be attributed to that phrase. Dealing with this point, it is set out "It is not perhaps very easy to precisely define the meaning of such an expression as "having a right or privilege by practice". But the object of the enactment is tolerably clear. Evidently the word "practice" is not to be construed as equivalent to "custom having the force of Law", (which was the Roman Catholic contention). Their lordships are convinced that it must have been the intention of the Legislature to preserve every legal right or privilege, and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools, which any class of persons practically enjoyed at the time of union". The judgment further contends that if the state of affairs, as described in the affidavit of Archbishop Taché as existing before the union, had been a system established by law, the only rights or privileges warranted on account of the existence of such a system, would have been the right to establish their own schools at their own expense, to maintain them by fees or voluntary contributions and to conduct them in accordance with their own religious tenets. Such a right would have belonged to every other religious body engaged in a similar work before the union.

The argument of prejudice due to double taxation was disposed of in these words "It would be going much too far to hold that the establishment of a national system of education upon an unsectarian basis is so inconsistent with the right to set up and maintain denominational schools that the two things cannot exist together, or that the existence of one necessarily implies or involves immunity from taxation for the purposes of the other".

The gist of the judgment is found on page 457 of the report. "Notwithstanding the Public Schools Act 1890, Roman Catholics and members of every other religious body are free to establish schools throughout the province; they are free to maintain their schools by school fees or voluntary subscription; they are free to conduct their schools according to their own religious tenets without molestation or interference ..... The fact that some people feel they cannot for conscientious reasons take advantage of the free schools merely places those persons in a disadvantageous position but it is not the law that is at fault."

Thus the judgment of the Supreme Court was reversed and that of the Queen's Bench in the Barrett case, restored. The judgment of the Full Court of Manitoba in the Logan application, as based on the decision of the Supreme Court in the earlier case, was reversed. In the first attack on the Public Schools Act, on the ground that it was ultra vires, the Act was sustained and a system of free, unsectarian education upheld by the judgment of the court of final resort after the final Canadian Appeal court had ruled unanimously to the contrary.

This judgment did not finally dispose of the difficulties in regard to the school system in Manitoba. The Act was almost immediately attacked on new grounds and the Judicial Committee were ultimately called upon to adjudicate upon the respective rights and claims of the parties. Having failed in their attempt to have the Act declared ultra vires for infringement of the first subsection of the 22nd section of the Manitoba Act, the Roman Catholics proceeded under the second subsection of section 22 of the Manitoba Act and upon subsection 3 of the 93rd section of the British North America Act 1867. (2). Basing their claims upon the protection purported to be extended to the separate schools by these subsections the Roman Catholics petitioned the Governor General in Council asking that remedial legislation be enacted by the Canadian Parliament. (3)

(1) 1892 L.R.A.C. 445.
(2) See supra pp 5 and 18.
(3) See footnote p. 25.

The petition alleged that the Public Schools Act of 1890 affected the rights and privileges in relation to education which the Roman Catholics had enjoyed under the Acts of 1871 and subsequent statutes. The petition was referred to a sub-committee of the Canadian Privy Council for it's consideration. In it's report the sub-committee placed itself on record as being of the opinion that the judgment of the Judicial Committee had disposed of the request in paragraph two of the petition. (See footnote) The sub-committee had been authorized to submit a case for the decision of the Supreme Court as to whether or not this was an instance in which the Governor General in Council should exercise the jurisdiction conferred upon him by section 93 ss 3 of the B.N.A. Act 1867 and section 22 of the Manitoba Act 1870. The following questions were submitted to the Supreme Court.

1. "Is the appeal referred to in the said memorials and petitions and asserted thereby, such an appeal as is admissible by ss 3 of section 93 B.N.A. Act 1867 or by ss2 of section 22 of the Manitoba Act 33 Vict. 1870 Cap. 3 Canada?"
2. "Are the grounds set forth in the petitions and memorials such as may be the subject of appeal under the authority of the subsections above referred to, or either of them?
3. "Does the decision of the Judicial Committee of the Privy Council in the cases of Barrett vs The City of Winnipeg and Logan vs the City of Winnipeg, dispose of or conclude the application for redress based on the contention that the rights of the Roman Catholic minority which accrued to them after the union,under the statutes of the Province, have been interfered with by the two statutes of 1890 complained of in the said petitions and memorials"?
4. "Does ss3 of section 93 of the B.N.A. Act 1867 apply to Manitoba?".
5. "Has His Excellency the Governor General in Council power to make the declarations or remedial orders which are asked for in the said memorials and petitions, <u>assuming the material facts to be as stated therin</u> or has His Excellency any other jurisdiction in the premises.
6. "Did the Acts of Manitoba relating to education passed prior to the session of 1890, confer on or continue to the minority a "right or privilege in relation to education" within the meaning of ss 2 of section 22 of the Manitoba Act, or establish a "System of separate or dissentient schools" within the meaning of ss 3 of section 93 of the B.N.A. Act 1867, if said section 93 be found to be applicable to Manitoba; and if so did the Acts of 1890 complained of, or either of them, affect any right or privilege of the minority in such a manner that an appeal will lie thereunder to the Governor General in Council?" (1)

(1) 22 S.C.R. 580.

Footnote: The petition asked;

1. That your Excellency might entertain the appeal and give directions for it's proper consideration.
2. That Your Excellency should declare that the two Acts of 1890 (Caps. 37 & 38) do prejudicially affect the rights and privileges of the minority with regard to denominational schools, which they had by law or practice in the province at the time of the union.
3. That it may be declared that the said Acts affect the rights and privileges of Roman Catholics in relation to education.
4. That the re-enactment may be ordered, by your Excellency of the statutes in force in Manitoba prior to these Acts of 1890, in so far at least, as may be necessary to secure for Roman Catholics in the province the right to build, maintain etc. their schools in the manner provided by such statutes: and to secure to them their proportionate share of any grant made out of Public funds of the Province for education or to relieve such members of the Roman Catholic Church as contribute to such Roman Catholic schools from payment or contribution to the support of any other schools; or that these Acts of 1890 should be so amended as to affect that purpose.

At the hearing of the argument on the questions in the case as stated the Government of Manitoba was represented by Mr Wade. He, however took no part in the argument appearing merely out of deference to the court. The Manitoba Government considered that the question before the court was in reference to the jurisdiction of the Governor General in Council and that it was therefore not directly concerned. Mr Ewart appeared on behalf of the petitioners. His argument was to the effect that the first two subsections of the Manitoba Act were each a limitation of the jurisdiction of the Province in reference to legislation in reference to schools and he argued that the second subsection was not intended only as a remedy in case of an infringement of the restriction enacted in the first subsection.. He pointed out the incongruity arising from any other meaning being attributed to the subsection. For, he argued, if any Act was ultra vires there would be no necessity for an appeal to the Governor General in Council. Then in addition there was a distinction between that purported to be protected by each subsection and such distinction was significant. He further contended that the right, of which an infringement was alleged, was one received after the union and therefore fell within ss 3 of section 93 of the B.N.A.Act 1867. In regard to the fourth question submitted to the Supreme Court as to whether or not the third subsection of the 93rd section of the last mentioned Act applied to Manitoba it was urged that it did and that the Manitoba Act merely varied it but could not repeal it.

Mr Robinson appeared, under the statute, at the direction of the Court and argued that as the Manitoba Act 1870 dealt with education therefore the B.N.A. Act 1867 was inapplicable in such a situation. As regards the argument that rights acquired under Acts subsequent to the union were protected by the provisions of the Manitoba Act, it was contended that it is contrary to all constitutional principles that the legislature creating a right cannot also destroy it. Further to alter such principle express and specific words would be required and mere implication would be insufficient. It was further argued that by the decision in the Barrett case the Roman Catholics were held to be practically in the same position under the Acts complained of as they were under the prior legislation.

In rebuttal, it was argued that the B.N.A. Act 1867 could prevent a Province from destroying, by legislation, that which it had created viz; those Provinces having separate schools established by law at the time of union could not alter the system subsequent to Confederation.

The Supreme Court was divided in it's opinion. The Chief Justice with Taschereau and Gwynne JJ., held that the Governor General had no power to make the order asked. Fournier and King JJ., held contra.

The Chief Justice supported his decision upon the following reasoning that the province had power of amending it's own laws. "I am of opinion that in construing the Manitoba Act we ought to proceed upon this principle and hold the Legislature of that Province to have absolute power over it's own legislation untrammelled by any appeal to federal authority unless we find some restriction of it's rights in this respect in express terms in the constitution act". And he held that the omission of the words "thereafter established by the legislature of the Province" from the Manitoba Act showed that there was no intention of binding th legislature in this regard. In support of this finding references is made to the Provinces of Ontario and Quebec in which separate schools had existed before the union. These the Provincial Legislatures of the respective Provinces could not destroy but rights granted subsequently they could withdraw. If, in New Brunswick or Nova Scotia, where there were no separate schools established by law at the union, subsequent legislation conferred rights upon any minority, then in that case an appeal would lie to the Governor General in Council from any infringement of such rights and privileges by an administrative authority but the Legislature would have power to repeal such legislation. He held

(1) 22 S.C.R. at p. 656.

that "the right of appeal to the Governor General in Council must be confined to Acts of the Legislature affecting such rights and privileges as are mentioned in the first subsection viz; those existing at the union when belonging to a minority either Protestant or Roman Catholic? (1) Then there would also be an appeal from any "Provincial Authority" such expression not including the Legislature. The epitome of his judgment is: "The words "rights and privileges in ss 2 of section 22(of the Manitoba Act) were not intended to include rights and privileges originating under Provincial Legislation since the union, and the Legislature of Manitoba is not debarred from exercising the common legislative right of abrogating laws which it has itself passed relating to denominational or separate schools or educational privileges, nor is such repealing legislation made subject to any appeal to the Governor General in Council". (2) For the reasons given he answered all the questions in the negative.

In concurring with the Chief Justice, Mr Justice Taschereau expressed doubt as to the jurisdiction of the Court to act as a court of first instance and regarded their judgment as ineffective in any event. His judgment is briefly: "That fact remains that; whatever may have been the reason for it, no appeal is given to the minority in Manitoba in relation to the rights and privileges conceded to them since the union as distinguished from those in existence at the union".

Gwynne J. considered that the petition asked the Governor General, in the face of the decision of the Judicial Committee of the Privy Council, to declare that the rights and privileges of the Roman Catholics were prejudicially affected by the Acts of 1890. That is; he was of the opinion that the Governor General was being asked to overrule the judgment of the Judicial Committee and reverse their finding, a jurisdiction he did not possess. His Honor further held that the two subsections, (2 and 3), of 22 Manitoba Act referred to the same rights an d privileges i.e. that ss 3 provided a remedy for infringements of such "rights and privileges".

The dissenting judges held that section 93 of the British North American Act applied to Manitoba. Mr Justice Fournier sets out in his judgment the histay of the admission of Manitoba to Confederation stating that two of the grounds upon which negotiations were based were:

1. That all properties, all rights and privileges possessed be respected and the establishing of usages and privileges be left for the sole decision of the local legislature.

2. "That the schools shall be separate and that the moneys for schools shall be divided between the several denominations pro rata of their respective populations".

As to the first of these it would seem that if this were admitted it would tend to destroy any claim of the Governor General to act in case of an appeal such as the one under discussion The second will be dealt with fully later, in the discussion of the proceedings before the Canadian Privy Council. Proceeding upon this basis he reasons that the framers of the Manitoba Act must have had these principles constantly before them. He accounts in this manner for the differences between the corresponding sections of the B.N.A. Act and the Manitoba Act. The power of the legislature he regarded as restricted. "In my opinion the words used in ss 2 (section 22 Man. Act)"an appeal shall lie from any act of the Legislature" means an appeal from any statute which the Legislature has power to pass in relation to educationif at the time of the passing of such statute there exists by law any right or privilege enjoyed by the minority and defines the extent of the meaning of the words "right or privilege". "in this subsection they refer to some right or privilege in relation to education to be created by the legislature which was being brought into existence and which once established might thereafter be interfered with at the hand of a local majority so as to affect the Protestant or Catholic minority in relation to education". (3)

(1) 22 S.C.R. p. 661.
(2) Ibid. 665
(3) Ibid, 670.

He held that the Governor General had power both under section 93 of the British North America Act 1867 and under section 22 of the Manitoba Act 1870 to pass remedial legislation.

Mr Justice King in dissenting held that time was essential in ss 1 of section 22 of the Manitoba Act i.e. "at the time of the union" but this being omitted from the following subsection, therefore any Act of the Legislature in relation to education was subject to review by the Federal authorities. He concurred with Fournier J. in holding that the provincial Legislature could not repeal any Act passed subsequent to the union, which conferred such rights or privileges.

Thus by a majority judgment the Supreme Court of Canada held that the Governor General in Council was precluded, from granting the relief asked, by the terms of the judgment in the Barrett case. The effect of their judgment was, that the appeal to the Governor General in Council provided for by the subsection in question, was a remedy in case of the breach of the rights or privileges preserved by subsection 1. The judgment upheld the autonomy of the provincial Legislature to enact legislation dealing with a matter of Provincial concern.

From this judgment just considered an appeal was taken to the Judicial Committee of the Privy Council. (1)

Owing to the fact that the Province of Manitoba was not regularly represented at the argument before the Supreme Court it would seem proper, at this juncture, to give a synopsis of the arguments advanced in support of and against the decision of the Supreme Court. The appellants contended that the appeal was admissible and that the Governor General could and ought to have given the appropriate relief. They distinguished the present appeal from the Barrett case in that in this instance the Act was assumed to be intra vires but relief of another nature was being sought. It was argued that the reliefs as set out in the Act were distinct and separate. In support of this argument they pointed out the distinctions between subsections 1 & 2 of section 22 of the Manitoba Act and subsections 1 & 3 of the B. N.A. Act1867. The contention being that ss 1 of the former referred to a right or privilege with respect to denominational schools of any class of persons, whether constituting a minority or not, existing by law or practice at the date of the union and to cases in which such right or privilege had been prejudicially affected. Further they contended that ss 2 of the same act referred to the right or privilege in relation to education of a particular class, namely, a Protestant or Roman Catholic minority, whether existing at the date of the union or created thereafter, and to cases in which such right had been affected in any way, including cases in which the relative status was altered, even though the actual position of the minority was not changed for the worse.

It was then contended that the Acts prior to 1890 continued to the minority a right or privilege in relation to educationwithin ss 2 and also established a system of separate or dissentient schools within the meaning of ss 3 of section 93 of the British North America Act 1867.

Against these arguments it was contended on behalf of the respondents that section 93 of the British North American Act 1867 did not alter, limit or extend the powers contained in the 22nd section of the Manitoba Act. If ss 3 of section 93 of the B.N.A. Act 1867 was applicable, it was argued, that no appeal would lie thereunder as the words "Provincial Authority" did not refer to or include the Legislature. Further it was claimed that ss 2 of section 22 of the Manitoba Act should be read as consistent with the said ss 1 and not as restricting or cutting down the latter. If the right of appeal to the Governor General in Council, from Acts passed subsequent to 1890, existed then the powers of the Provincial Legislature and it's authority were seriously curtailed and, in fact, reduced to a nullity. The argument of Provincial autonomy in relation to those subjects specifically granted to it was emphasized in support of the judgment of the Supreme Court of Canada.

(1) Brophy vs Attorney General of Manitoba 1895 A.C. 202.

The Chancellor rendered the judgment of the Judicial Committee the salient points of which are as follows;

1. that by section 2 of the Manitoba Act (not previously referred to) which enacts:

"On and after the said day on which the order of the Queen in Council shall take effect as aforesaid, the provisions of the British North American Act 1867 shall, except those parts which are in terms made, or by reasonable intendment may be held to be specially applicable to or only to affect one or more but not the whole of the provinces now composing the Dominion, and except in so far as the same may be varied by this Act, be applicable to the Province of Manitoba in the same way and to the same extent as they apply to the several provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act";

section 93 of the B.N.A. Act is with certain exceptions made applicable to Manitoba. This disposed of much of the argument.

After pointing out hte similarities and differences between section 93 of the B.N.A. Act and section 22 of the Manitoba Act the judgment proceeds, "In view of this comparison it appears to their Lordships impossible to come to any other conclusion than that the 22nd section of the Manitoba Act was intended to be a substitute for the 93rd section of the B.N.A.Act; obviously all that was intended to be identical had been repeated; and in so far as the provisions of the Manitoba Act differ from those of the earlier statute they must be regarded as indicating the variations from those provisions intended to be introduced in the Province of Manitoba". It was then pointed out that the judgment in the Barrett case merely decided that the Acts of 1890 did not prejudicially affect any right or privilege which the Roman Catholics, by law or practice, had in the Province "at the union" and that therefore the decision in the former case had in no manner precluded the present appeal.

His Lordship directs his attention to the argument that the purpose of the 2nd and 3rd subsections of section 22 of the Manitoba Act was merely to enforce the prohibition contained in the first subsection. The argument is set aside and the incongruity of the double remedy is adopted in support of this ruling, the difference in the wording of the two subsections being adopted as a further support. "It would do violence to sound canons of construction if the same meaning were attributed to the very different language employed in the two subsections". It was held that the 2nd se was a substantive enactment. The argument of the respondents that the Act had no application to the Acts passed since the union was not upheld, "Their Lordships see no justification for putting a limit on language thus unlimited".

The argument which had great weight before the Supreme Court namely, that a Legislature should have power to repeal it's own Acts, was rejected by the Judicial Committee. It was pointed out that the Provincial Governments are subject to Dominion where it is specified and therefore they are not independent.

The judgment contrasts the respective positions of the Roman Catholics before and after the passing of the Acts of 1890 in order to show whether any rights and privileges of the Roman Catholics minority within the meaning of ss 2 of section 22 of the Manitoba Act, acquired by legislation enacted after the union, had been affected by the Acts of 1890. Prior to the passing of the Acts in question the Roman Catholics had controlled their own schools and selected the textbooks for use therein. They received a portion of the general taxation for the support of their schools only. After the adoption of the Acts complained of they received no state aid for their schools but were required to pay towards the support of the Public Schools. Owing to their being precluded by conscientious reasons from sending their children to the Public Schools they thus had to contribute to the support of two school systems.

The gist of the judgment is; "Their Lordships are of the opinion that the second subsection of the Manitoba Act is the governing enactment and that the appeal to the Governor General was admissible by virtue of that enactment on the grounds set forth in the memorials and petitions, in as much as the Acts of 1890 affected rights or privileges of the Roman Catholic minor-

ity in relation to education within the meaning of the subsection .... The Governor General has jurisdiction and the appeal is well founded but the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute." (1)

Thus the appeal was successful and the question of importance to the Province of Manitoba was "What, if any would be the nature of the remedial legislation?" Thus far the strife had been chiefly a question of the settlement of legal points. The next phases of the question involve it in politics, which tends to obscure the issues.

Upon receipt of the judgment of the Judicial Committee, the Canadian Privy Council gave notice that the case, as commenced by Mr Swart, would be heard and a date was set for the hearing. The argument was heard on the 26th February and 5th to 7th of March inclusive in 1895. (2)

During the hearing before the Canadian Privy Council the Manitoba Legislature was in session. It is worthy of note to regard the remarks in the speech from the Throne in reference to the "School Question". The attitude of the Manitoba Government as expressed in the speech is very similar to that of the Executive Council in the New Brunswick case.

"By the judgment of the Judicial Committee of the Privy Council, recently pronounced, on appeal from the Supreme Court of Canada, it has been held that an appeal lies to the Governor General in Council on behalf of the minority of this Province, in as much as certain rights and privileges given by prior Provincial legislation, to that minority, in educational matters had been affected by the Public Schools Act and that therefore the Governor General in Council has power to make remedial orders in respect thereto, whether or not a demand will be made by the Federal Government that that Act shall be modified is not yet known to my government but it is not the intention of my Government to recede from it's determination to uphold the present Public School System, which, if left to it's own operation would in all probability soon become universal throughout the Province."

Thus in no uncertain terms, the policy of the Provincial Government to oppose Dominion interference, was stated.

At the hearing before the Canadian Privy Council Mr Swart on behalf of the Roman Catholics based the claims upon the following grounds:

1. Upon promises alleged to have been made to the settlers before union and which, he alleged, were instrumental in the inducement of the settlers to join confederation.

On this ground the greatest stress was laid upon a clause claimed to have formed one of the settlers' demands in the Bill of Rights, clause 7 which it was said declared "That the schools shall be separate and that the moneys for the schools shall be divided between the several denominations pro rata of their respective populations". (3)

In regard to this point at the introductory outline of the events leading to Manitoba's entry into confederation the history with regard to the Bill of Rights was dealt with. It was shown that the Bill of Rights as approved by Thos Dunn had no reference to separate schools. It was further shown that the delegates left for Ottawa the day following the date the said Bill was approved so that there would have been no time in which to formulate another bill. It was also shown that the copy of the Bill of Rights as taken from the delegates upon their arrest in Ottawa was a copy of the Bill as approved and contained no reference to separate schools. It would therefore appear that the claim of the Protestants that the 4th Bill was fictitious was well grounded. McCarthy, counsel for Manitoba on the hearing declared that the first that was heard of the 4th Bill was in 1890 in a letter published in the Free Press of Winnipeg by Archbishop Taché. This, he said, was immediately followed by a letter from a Mr Taylor controverting the statements made by the Archbishop.

(1) 1895 A.C. p.238
(2) 1895 Sess. Papers Vol. 28 No. 10.
(3) Begg's Hist. of North West 393.

Begge in his History of The North West has a chapter entitled; "Catholic Schools in Manitoba" in which he claims that separate schools were recognised by the Council of Assiniboia in it's grants. He also gives some credence to the claim based upon the alleged clause in the Bill of Rights. His attitude seems somewhat inconsistent with that which he took in his history of Manitoba.

2. The second ground upon which the Roman Catholics' claim was based was: Promises of the Protestants that "the rights of the minority would never be trampled upon in the Province". The reason for referring to this as a Protestant promise is not shown.

3. Promises of the Liberal party was alleged as the third ground of the Catholic claim. It was contended that the Liberal party had secured the overthrow of a Conservative government and had themselves come into power by promises of protection for the separate schools. Thus we find a question vitally involving the interests of the entire population of the Province becomes an eagerly seized opportunity for political mud-slinging. It was further alleged that the Liberal party had obtained the entry of a French-Canadian into the Cabinet by reasons of promises made to the said member and the Archbishop of St. Boniface to the effect that the system of separate schools would not be interfered with. Affidavits were filed by the petitioners in support of these allegations. Owing to the doubtful nature of the proceedings as carried on the Manitoba Government had not filed affidavits in reply for it was unaware of the Procedure. When counsel for the Province asked for an adjournment in order to file affidavits in refutation, Mr Ewart, rather than to delay the hearing agreed to withdraw his affidavits. In spite of this fact the affidavits were copied and printed in the reports of the proceedings, a rather unfair situation in which to place the Province.

4. The final basis of the Roman Catholic claims was that of "individual liberty".

Counsel for Manitoba opposed strenuously this attempt on the part of the Canadian Privy Council to usurp unto itself the judicial powers of a court of justice. Undoubtedly on this occasion the Canadian Privy Council did regard itself as sitting in a judicial capacity but the origin of it's authority to act as such has yet to be produced. Mr McCarthy, counsel for Manitoba, stressed the fact that Manitoba did not recognize the councillors a judicial body but merely as advisers to Her Majesty.

By way of argument it was contended that, even that Dominion Parliament had power to pass remedial legislation, hesitation in the exercise of such power should be made, for, was argued there was no power of repeal of such legislation. The power of enacting such legislation in the first place was not disputed but the contention was that once having enacted such legislation, the Federal authorities would have exhausted their jurisdiction and would be powerless to alter, repeal or amend such enactment.

It was further urged that the Dominion authorities would not be justified in passing such legislation as asked. The reason of this argument was that the Judicial Committee of the Privy Council had arrived at the conclusion given by an assumption that the facts alleged by the petitioners were correct. The argument and all proceedings had been carried on upon that assumption. No attempt had been made by the council to investigate and ascertain to what extent the allegations were true. Once the Privy Council judgment became known the Canadian Privy Council had proceeded to discuss the nature of the remedial legislation to be enacted.

The dangers and indiscreetness of Dominion interference in Provincial affairs was also pressed upon the Council by counsel but this received little weight.

On May 10th 1895 a remedial Order in Council was issued which read in part as follows;

"The committee having heard and considered what was alleged by counsel on both sides as well as the judgment of Their Lordships of the Judicial Committee of the Privy Council, is of the opinion that effect should be given to the said appeal and that the

said appeal should be allowed in so far as it relates to rights acquired by the said Roman Catholic minority under legislation of the Province of Manitoba passed subsequently to the union of the Province with the Dominion of Canada".

After reciting the passage of the Acts the proclamation continues:

"And His Excellency the Governor General in Council is further pleased to declare and decide and it is hereby declared that it seems requisite that the system of education embodied in the two Acts of 1890 aforesaid, shall be supplemented by a Provincial Act or Acts which will restore to the Roman Catholic minority the said rights and privileges of which such minority has been so deprived as aforesaid and which will modify the said Acts of 1890, so far and so far only as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs a, b, and c."

"Whereof the Lieutenant Governor of the Province of Manitoba for the time being and the Legislature of said Province and all persons whom it may concern are to take notice and govern themselves accordingly".

The privileges ordered to be restored were:

a. The right to build, maintain, equip, manage, conduct and support Roman Catholic schools in the manner provided for by the said statutes which were repealed by the two Acts of 1890.

b. The right to share proportionately in any grant made out of the public funds for the support of education.

c. The right of exemption of such Roman Catholics as contribute to Roman Catholic schools from all payments or contribution to the support of any other schools.

During the period that the argument was being carried on before the Council the breach between the Dominion and Provincial authorities widened. The extent of the divergence and the impending danger of a very serious nature can be judged from the resolution passed by the Manitoba Legislature as follows:

"This House loyally submits itself to the provisions of the constitution as interpreted by the Judicial Committee of the Privy Council. It is hereby resolved that the exercise of appellate jurisdiction by the Governor General in Council in such a way as to lead hereafter to the alteration of the principles upon which the Public School System of Manitoba is founded will be viewed with grave apprehension. That any interference by the federal authorities with the educational policy of the Province is contrary to the recognized principles of political autonomy.

That this House will, by all constitutional means, and to the utmost extent of it's power resist any steps which may be taken to attack the school system established by the Public Schools Act of 1890 which is believed to be conceived and administered in the highest and best interests of the whole population of Manitoba."

This was the form of the ultimatum served upon the Dominion government by the Provincial Legislature of Manitoba. In these words did it convey to the federal authorities it's intention to resist any encroachment upon what the Province regarded as it's rights.

The question began to assume a more serious aspect. The Provincial Government refused to comply with the terms of the Order in Council. The terms of the refusal bring to mind a similar resolution passed by the Executive of New Brunswick. (1) Thus for the second time confederation itself was threatened by the attempted interference of the Dominion Government in the matter of the educational policy of the province.

Upon receipt of the Order in Council the Province replied, pointing out the difficulties incident to the restoration of the separate schools. This would involve the right to levy school taxes and the right to participate in the legislative grant. It was contended that as the right to collect taxes

(1) See supra p. 6.

falls under section 93 of the British North America Act 1867, there was therefore no jurisdiction in the Governor General. It was further stated that the Dominion was acting without investigating the truth of the claims made by the Roman Catholics. The Province asserted that an impartial investigation would reveal the inefficiency of the separate schools. Statistics were quoted shewing that the illiteracy was greater in the districts where there were separate schools than in those in which the public schools were in operation. The reply closed in these terms: "We are therefore compelled to respectfully state to Your Excellency in Council that we cannot accept the responsibility of carrying into effect the terms of the order". (1) In these polite but forceful words the Manitoba Government refused to obey the dictates of the Dominion Authorities. The latter were willing to accept the authority and they did and with it they also accepted the penalty. The latter was not received immediately but was not long delayed.

Upon receipt of the refusal from the Manitoba Government, the Dominion regarded itself as vested with authority by such refusal and proceeded to prepare the remedial legislation which it considered necessary. This definitely turned the question into a political issue beyond any doubt. The Dominion Government in March 1896 introduced a bill providing for the establishment of separate schools in Manitoba. (2) The bill as introduced was patterned upon one suggested by Mr Ewart at the hearing before the Canadian Privy Council.

The salient provisions of the bill were:

#1. The Lieutenant Governor was to appoint and constitute a Separate School Board of Education for Manitoba of not more than 9 persons, all being Roman Catholics. If this not done within three months the Governor General was to appoint them.

#4 Sets out the duties of the Board:

(a) To control the separate schools.

(b) Control as to teachers but a standard in secular matters to be the same as for teachers in the public schools.

(c) To select school books and maps, such books were required to be recognized and authorized in separate schools in Ontario.

#7 Provided for the appointment by the Lieutenant Governor in Council of one of the members of the Board as Superintendent of separate schools.

#10. Provided for the establishment of School Districts by the municipalities and upon their refusal or neglect, upon petition of the heads of 5 families, then the Board could establish a District.

#23. Required the municipalities to levy and collect taxes for the support of separate schools to the amount of $20. per month for each month during which the school was kept open. Provision was made for the raising of supplementary funds by the Board's collector after a rate and levy had been made. By this section the school tax is made a special charge on property.

#27 Provided for Protestant children attending separate schools, requiring the Board to make arrangements for their comfort and permitting their absence during religious instruction.

#28. By this the Roman Catholics who paid taxes for separate schools were exempted from other school taxes and provided that if a Roman Catholic paid taxes for the support of Public schools he was to be exempted from separate school taxation.

#53. Provided for the establishment in cities and towns of collegiate institutes by the Separate School Boards.

#74. Declares the right of separate schools to share proportionately in any Legislative grant made out of the Public funds for purposes of education and any schools not conducted according to the Act were by #79 declared not to be separate schools and to have no right to share in the educational fund or Legislative grants.

(1) June 19, 1895 Dom. & Prov. Legislation 1867-95 p. 986.
(2) See appendix for full context.

#83 Provided for the registration with the secretary-treasurers of the Municipalities of a statement of the amount of unpaid school taxes whereupon such became a lien against the property.

Provision is made for borrowing by debentures with the consent of the Lieutenant Governor and when the latter fails or refuses to consent #90 empowers the Governor General to act.

#110 Empowered the Board of Education to establish at Saint Boniface a Normal Schools for the training of teachers of Separate schools and to make regulations and rules governing same.

#112. Reserves to the Dominion Parliament power to make further remedial laws as the provisions of section 22 of the Manitoba Act requires.

It is of interest and value tocompare the rights granted by this enactment with those which the Roman Catholics actually had under the Acts of 1871, 1890 and subsequent amendments. (1)

1. There had been no reference in the earlier Acts to the establishment of collegiate institutes.

2. The Roman Catholics had never had a separate Normal School.

3. There had never been a public school system before and the exemption which the Roman Catholics had enjoyed in reference to taxation was exemption from paying for the support of Protestant schools. It is difficult to see the foundation for the exemption made in the remedial bill in view of the statement in the judgment of Mr Justice Killiam, approved by the Judicial Committee to the effect that any school not of their faith was not to be regarded by those of that faith as a school of the other faith. This had bben assumed in the provision of the remedial bill.

In addition to the above points of interest there are some provisions in the bill concerning which it is questionable as to whether the Dominion Parliament had jurisdiction to enact. For instance by section 112 it reserves to itself the power to make further remedial legislation as necessary. The Act by which they obtained power was an Imperial Act it is therefore inconsistent to claim that the Dominion Parliament could confer upon itself an enlargement of such power.

There is also another moot point, worthy of notice, that is the power of the Dominion Parliament to enact that the Separate Schools share proportionately in any legislative grant for school purposes. Such a provision is carrying Dominion interference in Provincial matters to a dangerous degree. It is indeed a serious admission to make to allow the Dominion to legislate as to in what manner grants of Provincial funds are to be distributed. If this principle is accepted what has become of Provincial powers?

The presentation of the bill in the Dominion House was the commencement of a violent political battle. The bill was introduced by Sir Chas. Tupper the Attorney General and virtual leader of the Conservative Government. It was attacked by the opposition who contended that the Government was endeavoring to coerce the Province of Manitoba. Sir Wilfred Laurier, leader of the opposition moved a six months hoist of the bill. The government was severely criticized for it's failure to accept the proposal of the Manitoba Government for a fair and impartial investigation of conditions in the Province. As a result a commission was sent to discuss the situation with the Manitoba Government. The personnel of the Commission was The Hon. Minister of Justice, M.R. Dickey; the Minister of Militia, Hon. Alphonse Desjardins; and Sir Donald Smith. The Provincial Government appointed Hon. J. D. Cameron and Hon. Clifford Sifton to confer with the representatives of the Dominion. The attitude of the Province to the question is stated by Hon. Clifford Sifton in a statement to the Lieutenant Governor December 20, 1895. This being one of the reasons prompting the report of the sub-committee of the Privy Council which ultimately brought about the appointment of the Commission. In the said statement the attitude of the Manitoba Government to the judgment of the Judicial Committee was stated to be that "It's entire scope and effect so far as the Parliament or Government of Manitoba is concerned is to declare and define the powers of the Governor General in the exercise of appell ate functions...It is therefore recommended that so far as the govern

(1) See supra p.19 ff.

ment of Manitoba is concerned the proposal to establish a system of separate schools, in any form, be positively and definitely rejected and that the principle of a uniform non-sectarian Public Schools System be adhered to". This statement left no possibility of doubt as th where the Province stood on the matter.

When the representatives of the Dominion and the Province met, those of the Dominion submitted, as a basis of settlement, the following terms. (1)

1. In towns or villages where there were 25 or more Roman Catholic children; or in cities where there were 50, Separate schools or separate rooms were to be provided for the Roman Catholic children under the supervision of a Roman Catholic teacher.

2. In schools where the Roman Catholics were in the majority there should be exemption from the regulations regarding religious exercises.

3. The text books used by Roman Catholics were not to offend their religious views.

4. The Roman Catholics were to have representation on the Advisory Board and the Board of Examiners of teachers.

5. Roman Catholic Normal Schools were to be established with state aid.

6. Roman Catholic unqualified teachers actually teaching were to be allowed to continue for two years.

In reply to these propositions the Provincial representatives pointed out that the acceptance of the first would result in inability to properly grade the schools. Further the organization of separate schools would be compulsory wherever there were the necessary number of children regardless of parental wishes. Altogether the proposition as to separate schools and separate rooms was rejected as intolerable.

As regards the second point it was rejected as it would result in the loss by the Legislature of it's control over the religious education.

In reference to the third and fourth demands the belief was expressed that they could be satisfactorily arranged. At the same time it was pointed out that none of the members of the Board held their office as Protestants or as representing the Protestants, but that they were there in the interests of education.

An unqualified refusal was the reply in reference to the demand for the establishment of a separate Normal school, not only on the grounds that it was contrary to the avowed non-sectarian policy in relation to education but also that it was a demand for something which the Roman Catholics had never enjoyed.

The reply to the proposition submitted by the Dominion authorities was accompanied by an alternative offer on the part of the Province. It offered either (a) the complete secularization of the schools by the elimination of all religious exercises or (b) The enactment of the following new regulations with reference to religious exercises:

1. No religious exercises to take place in any public school except as provided in the Act. Such exercise or teaching, when held, to be between 3.30 and 4.00 in the afternoon.

2. Such exercises to be conducted by any Christian Clergyman whose charge included any portion of the school district or by any person satisfactory to the majority of the trustees if authorized by said clergyman to act in his place.

3. Trustees to allot the period fixed for religious exercises for the different days of the week to the different religious denominations to which the pupils belonged, as nearly as possible in proportion to the number of pupils of the respective denominations.

4. If no duly authorized representative of the denomination attended school work was to continue until four o'clock.

5. Any pupil, whose parents objected to his staying for religious exercise was to be dismissed at 3.30.

(1) 1896 Sess. Papers Vol. 29 No.11 Paper 39c.

C. Where there was sufficient accomodation the Roman Catholics would be permitted to be separated for religious instruction.

The Dominion representatives in reply to this offer refused to consider either proposition. "Neither of the propositions which you make, would, as it appears to us, remove the sense of unjust treatment existing amongst the minority, nor would they possess the elements of permanency and freedom from friction in administration which are certainly necessary for a final and peaceable solution of existing difficulties". (1)

The conference was thus abhortive. The Dominion Government claimed that Manitoba would not give the minority the rights to which it was entitled. And the Province on the other hand contended that the Dominion authorities were misinterpreting the judgment of the Privy Council. They contended that the Dominion was proceeding on the interpretation that the facts alleged were true. This was incorrect for the judgment referred to was based on an assumption of the truth of the facts alleged. The allegations were not proven.

The Dominion Government was in no small measure to blame for the failure of the negotiations in that it did not act fairly with the Province. At the time that the Commissioners were in conference the remedial bill was before the Dominion House. Instead of holding any further action on the bill in abeyance, until the result of the negotiations were known, the Government advanced the bill one stage. This action created a feeling of distrust of the Dominion Parliament by the Provincial authorities as well as placing the representatives of the Federal House in an embarrassing situation.

When it was seen that the attempted negotiations were of no avail, the bill was proceeded with in the Dominion House. There, however, it met with violent and unrelentless opposition. Sir Wilfred Laurier was the leader of the Opposition forces and though he was himself a Roman Catholic and great pressure was brought to bear on him in certain quarters, he refused to assist in passing what he regarded as coercive legislation. He opposed the bill on the grounds that the enactment of legislation of that character endangered the political autonomy of the Provinces and imperilled the very existence of confederation itself. The Government was charged with having blundered by failing to accept the offer of the Manitoba Government for an impartial investigation. The opposition also scathingly flayed the Government for the breach of faith in the publication of the affidavits filed by Mr Ewart, before the Council, but which he later withdrew. The Province had no opportunity of refuting the statements contained in such affidavits or of filing other affidavits. The policy of the opposition was that remedial legislation would be enacted if the Manitoba Schools could be shewn to be Protestant Schools. If, on the other hand the schools were non-sectarian, then the Act was good but a compromise could be arranged if sought in the proper manner.

The remedial bill finally reached the committee stage but it ended it's career in committee. The policy of blocking was adopted by the opponents of the measure and it was successful in accomplishment of their object. Every clause of the bill had to pass seperately and upon every one lengthy speeches were delivered. When Sir Chas. Tupper saw the tactics of the opposition he determined to force the bill through committee and to this end day and night session were held. Parliament sat almost incessantly. The deadlock continued, only ten clauses of the bill had been passed when the Government realized that it was a forlorn hope to have the bill passed before the life of Parliament would expire through efflux of time. In order to have the necessary items of supply passed the bill was dropped. It became the vital issue upon which the election of 1896 was fought. The Conservative party was driven out of power and Sir Wilfred Laurier became Premier of the Dominion. In this way the people of the Dominion demonstrated their attitude to Dominion interference in Provincial questions.

(1) 1896 Sess. Papers Vol 29 No 11 Paper 30c p.9.

The Laurier Government shortly after coming into power entered into negotiations with the Manitoba Government of Mr Greenway for a settlement of the question which had assumed Dominion-wide importance and interest. These negotiations culminated in a settlement upon the following terms. The Manitoba Government was to introduce legislation providing for religious instruction in the schools under the following conditions:

1. If authorized by a resolution of a majority of the school trustees.

2. Upon petition of parents of 10 children in rural Districts or 25 in cities, towns or villages.

3. Religious instruction was to be between 3.30 and 4.00 in the afternoon, conducted by any Christian clergyman whose charge included any portion of the School District or by the teacher or other person authorized by such clergyman.

4. The resolution or petition could require religious teaching on specified days only.

5. In Cities and Towns were the average attendance of Roman Catholic children was 40 and in rural districts where it was 25 a duly certificated Roman Catholic teacher could be employed on petition of parents or guardians of such number of Roman Catholic children and a similar provision protected the interests of Protestants.

6. Where there was no accomodation for separate religious instruction Roman Catholics were to have periods in 1/2 of the teaching days and non-catholics on the other half.

7. The Department of Education was empowered to make regulations not inconsistent with the principles of this Act for the carrying into effect of the provisions.

8. No separation of pupils according to denominations was to be made for secular work.

9. If there was sufficient accomodation separate rooms could be allotted to different denominations for religious instruction instead of different days.

10. Where ten of the pupils speak French (or any language other than English), as their mother tongue, the teaching of such pupil shall be conducted in French (or such other language) and English under the Bi-lingual system.

11. No pupil was to be permitted to be present at religious teaching unless the parents or guardians desired it. In case the parents or guardians do not desire such attendance then the pupil was to be dismissed or remain inother room. (1)

Legislation enacting the terms of this settlement was introduced into the Manitoba Legislature and passed being R.S.M. 1897 60 Victoria Chap. 26.

This settlement was not accepted very gracefully in many quarters. Resolutions both protesting and congratulatory were received by Sir Wilfred Laurier. (2)

It is to be noted that the terms of the settlement are practically those offered on behalf of the Province at the conference but which were refused by the Dominion representatives. The essential difference is the clause providing for the establishment of bi-lingual schools. The reason for the intriduction of that stipulation is not clear. Certainly there was no such privilege prior to the Acts of 1890. Furthermore the clause as enacted granted rights to other than the French.

This new concession was not accepted in certain quarters and soon it came under fire. The Conservative party in Manitoba endeavored to emulate the example of the Dominion party and took an active interest in the rights of the French Canadians in relation to education. And the Coldwell amendments were proposed to grant further concessions. However the fate of the Conservatives Government was the same as that of the Dominion Government. It was defeated at the polls and in 1916 the Norris Government repealed the bi-linguak provisions by chapter 68 of that year.

(1) Sess Papers 1897 Vol. 30 No. 13 Paper 35.
(2) Resolution from Ste Anne "We tell the Hon. Mr Laurier that all the diplomacy in the world can never find a basis on which Protestants and Roman Catholics can agree in the matter of education and especially primary education. We will be persecuted but we will not abdicate our rights". Sess Papers 1897 Vol 31 No. 13 Paper 35.

The repeal of this concession was opposed during the election campaign but no legal action was taken to have the enactment declared ultra vires nor was any petition made to the Governor General.

In the same session in which the provision re bi-lingual schools was repealed, compulsory attendance was brought into operation by the School Attendance Act Cap. 97. It is significant to note that this Act provides that attendance at an accredited private school satisfies the requirements of the Act. The reason for this is quite obvious. By the Barrett judgment it was declared that the rights of the Roman Catholics had not been affected prejudicially by the Acts of 1890 because they still retained the right to maintain their own schools at their own expense. To require attendance at the public schools would be an infringement of the rights they had enjoyed prior to the union.

Another enactment of the same session required that the minutes of the meetings of school boards should be kept in English. This provision was Cap. 87.

The system in force in Manitoba is that as established by the terms of the settlement of 1897 with the amendments as referred to.

Though the terms of the settlement of 1897 have been in force for some time the "School Question" in the Province of Manitoba is not settled. The spirit as expressed in the resolution from Ste Anne (1) is the spirit which actuates the French Catholics of Manitoba at the present time. There is still organized opposition to the school system in force. "Resistons et Esperons", this explains fully the attitude towards the present system. This was the keynote of a speech given November 4, 1923 before L'Association d'Education in St. Boniface by M. L'abbe J. Ad. Sabourin. (2) The speech reasserts the Divine right and the constitutional right of the Catholics to separate schools. The right to the French language being taught in the schools is also asserted and the right to the use of that language in the House and in Judicial proceedings. Their claim to this is based on section 23 of the Manitoba Act. The Manitoba Legislature, as far as it's jurisdiction permitted, amended the provisions referred to and no action was taken to have the repealing statute declared ultra vires although the bill was bitterly opposed in the House. It should be of interest to regard briefly some of the statements made by J. Ad. Sabourin, visiteur des écoles.

"Nous Croyons que l'éducation franchement catholique est indispensable au plein épanouissement de notre religion". This goes to show the extent to which education is involved in religion and the difficulty of making any alteration in an educational system. For, if a large part of the population believes that education must be combined with religious instruction of a particular creed then we have the churches involved in the controversy.

"Les Canadiens français ont conscience qu'ils ont ici le droit de faire donner à leur enfants une éducation franchument catholique. C'est un droit divin pour eux".

"Comme les écoles séparées confessionelles existaient en pratique dans la province depuis l'arrivée de Mgr Provencher en 1818, il est donc clair que maintenant, comme de 1870 à 1890 de par la constitution de notre pays, nous avons droit aux écoles confessionelles".

"Les Canadiens français ont encore conscience qu'ils ont le droit en notre province de faire apprendre leur langue à leur enfants par cela seul qu'ils ont le droit de parler et d'écrire cette langue".

Thus it is quit evident that the "School Question" is ever with us.

(1) See supra p. 37 footnote.
(2) La Liberte Vol XI No. 23, November 13, 1923.

The form of the fulfillment of the policy of resistance can be judged from one paragraph of the speech referred to as follows:

"Depuis nos grandes académies qui comptent leurs élèves par centaines jusqu'aux humbles écoles de campagne avec leur demi-douzaines de bambins et fillettes, nos maîtres et nos maîtresses d'école à peu d'exceptions près, sans aucun encouragement du monde officiel représentant le Département de L'Instruction Publique, à l'encontre même parfois des directions de certains inspecteurs à vues étroites et intéressées, s'obligent, à la demande des parents, sans aucune rémunération spéciale, à double travail en faisant observer un programme d'études catholiques et françaises en marge du programme officiel déjà surchargé."

The entire theme of the speech is one of exhortation lest the apparent defeat cause any to lose confidence and give up the struggle. There is an apparent settlement of the "School Question to the casual observer. But to the person who investigates the true situation is revealed. Litigation and politics have both failed to reconcile irreconcilable attitudes. The Public School system of the Province continues to exist and the number of schools is continually on the increase.

Before proceeding to discuss the "School Question" as it affected other provinces it would perhaps be of value, to briefly review and sum up the events and refults, of and in the struggle in Manitoba, and the part and influence of the judgments of the Judicial Committee of the Privy Council. The judgment of the Judicial Committee upheld, in the Barrett case, the validity of the Public Schools Act and the Act creating as a department of the Government, the Department of Education. By that judgment it was established that those Acts did not prejudicially affect the rights or privileges which the Roman Catholics had by law or practice at the union. Their only right at that time being to establish and maintain their own schools at their own expense. The decision in the Brophy case established that there was a right of appeal to the Governor General in Council from any Act or decision of a Provincial authority affecting the rights of the minority in relation to education. It established that this was a distinct course and not an alternative means of obtaining a remedy for an infringement of the protection granted to them by the first subsection of section 22 of the Manitoba Act, as was the generally accepted idea up to the time of this judgment. The two judgments are consistent if properly regarded. The error commonly made is that the later judgment is regarded as a judgment upon the facts. Such is not the case. The matter first went for adjudication as a stated case, the allegations being assumed to be true, and the allegations as assumed formed the basis for a hypothetical judgment.

Possibly no Province has been so rent by strife in the determination of it's school policy as Manitoba. Naturally a continuous struggle during seven years caused estrangements and dissension which time alone, if anything, will heal. A provincial problem became one of Dominion interest and importance. Provincial autonomy was involved. The very base and bulwark of confederation was shaken. Governments, provincial and federal were made and defeated on the issue. This gives us some idea of the magnitude of the issue and what it involved. The importance of any judgment having a bearing on an issue of this magnitude can then be appreciated and the exact position of the Judicial Committee better understood. It was called upon to play an important part on two occasions in an effort to arrive at the rights of the respective parties. It's responsibility cannot be underestimated.

In the discussion of "the School Question" as it effected Manitoba we have endeavored to refrain from becoming involved in any argument as to the respective merits of public or separate school systems. The endeavor and object has been to accurately record the history, cause and outcome, of events in Manitoba. On disputed points that which appears to be the truth has been pointed out, we trust fairly. We will now leave the question as it involved Manitoba and deal with Ontario.

CHAPTER III.

ONTARIO.

Ontario has been the scene of a very bitterly fought and long drawn out battle in regard to the system of education that was to prevail in the province. As in the other provinces, to a great extent the strife has been one of legal rights. That is, the courts have been frequently resorted to by the disputants in an effort to have their respective rights declared and recognized. On more than one occasion the legal battle was carried to the court of final resort and the Judicial Committee of the Privy Council called upon to adjudicate upon the issues involved. This litigation has arisen notwithstanding the fact that by the terms of the British North American Act 1867 the right to have separate schools was recognized and established by law, and even though no attempt to abolish the said separate schools has been made. Evidently, therefore, it is no guarantee of absence of dissension, that the schools are separate by law. For even after the establishment of a system of the dual type, a multiplicity of disputes arise concerning the interpretation and operation of the Act establishing the system.

The difficulties and disputes can best be understood if a knowledge of the situation existing, in reference to schools, at the time of the union, is obtained. To this end we will regard briefly the situation.

By the Union Act of 1840 the Provinces of Upper and Lower Canada were united. This union was effected as a result of the report of Lord Durham. Upper Canada, or Ontario, as it was later known, was almost entirely English-speaking and Protestant. Lower Canada, i.e. Quebec, on the other hand was essentially French-speaking and Roman Catholic. As we have seen the Roman Catholics maintain that religious instruction is a necessary adjunct of education and the school has been in the past, and still is, the medium through which the dogma and doctrines of that religion have been inculcated in the minds of the youth. This was the state of affairs existing in Quebec. In Ontario, on the other hand, while the advantage of religious instruction to youth was recognized, the schools were not used for the propagation of any particular religious beliefs.

In Lower Canada the schools were regulated by the Act C.S.L.C. Cap. 15 and amendments. That statute enacted that in cases where the rules and regulations for the government of a Common School were not satisfactory to a number of the inhabitants of a municipality, professing a different religious belief to that of the majority; these inhabitants might establish dissentient schools under their own trustees and were granted immunity from any other taxation for school purposes.

The system in operation in Quebec at the present time, provides for a superintendent of education and a council of Public instruction. This latter is divided into Protestant and Roman Catholic sections. The Roman Catholic section is composed of Bishops, Ordinaries, and high Church dignitaries as ex-officio members; an equal number of lay members appointed by the Lieutenant Governor, and four others, and the two priests, principals of Normal Schools. The Protestant section of the Board is appointed by the Lieutenant Governor and is numerically equal to the lay members of the Roman Catholic section. School questions are decided by the whole council but those affecting one section only are dealt with by that section. Each section has the following powers:

(1) The organization, administration and discipline of Public schools.
(2) Division into Inspection Districts and establishment of the boundaries of same.
(3) Government of Normal Schools.
(4) Government of Local Boards of Examiners.

(5) Examination of candidates for positions as School Inspectors.
(6) Holidays.
(7) Approval of Text books.
(8) Granting and cancellation of teacher's certificates.
The Act provided for separate boards of examiners of teachers.

In Quebec the schools are known as Majority Schools or Minority Schools. Any number of ratepayers may dissent from the Majority school, give notice as provided in the Act, and establish a new school. The Majority schools are controlled by 5 commissioners, those of the minority by 3 trustees. The teachers of Roman Catholic schools include prayer, catechism, sacred history and manners in their curriculum.

In Upper Canada prior to the Union Act only three enactments had been passed for the establishment and operation of primary schools, these being in 1816, 1820, and 1824. Grants of funds for educational purposes were made but no specific enactments for the regulation or management of the schools were made. As an indication of the attitude towards education existing at the time, in 1837 the Legislative Council refused a bill passed by the House of Assembly on the grounds that it provided for a tax of 1 1/2d.(3¢) in the pound ($4.) and there was already taxation for Goals, Court-houses and roads. (1) All of which were evidently considered of more importance than education.

The Act of 1816 made no direct provision for religious instruction, though the trustees were required to inquire into the moral character of the teacher.

The 1824 enactment provided for the annual distribution of 150 Pounds to the Boards of Education of the Province for the purchase of books and tracts designed to afford moral and religious instruction.

At the first session of the Assembly of the United Canadas the school policy came up for discussion. Thirty-nine petitions were presented asking for the use of the Bible in the schools. During the session a measure was enacted for the whole province which made provision for the establishment of separate school. By merely dissenting from the regulations, arrangements and proceedings of the Common School Commissioners any number of persons could establish a separate school. This was the introduction into Ontario of the principle of Separate Schools.

The Act of 1841 was soon found to give too much latitude. In 1843 a new Act was passed repealing the former statute. The new measure was the work of Hon. Francis Hincks. Sections 55 and 56 contained the provisions in reference to separate schools. By these sections it was enacted that in cases in which the teacher of a Common School was a Roman Catholic, upon application of ten or more resident freeholders the Protestants would be permitted to establish a school with a Protestant teacher. A similar privilege was extended by the Act to the Roman Catholics. The application was required to be in writing and made to the Township, town or city, the Superintendent etc. Upon compliance with the requirements of the Act the taxes were to be apportioned. This Act applied to Upper Canada only.

In 1850 a new enactment was passed providing in section 19 that: "Municipal Councils, upon the application in writing, of twelve resident heads of families, should authorize a separate school for Protestants, Roman Catholics or colored people. Even this Act failed to satisfy all parties and in the ensuing years a continual strife was carried on with resultant amendments and grants of further concessions which seemed only to elicit further demands. In 1855 the three Roman Catholic Bishops of Kingston, Toronto and Bytown submitted to the Legislature a draft bill known as the Taché bill. This bill later became law. It enacted that any number of persons, not less than 5, heads of families, being Roman Catholics could convene a meeting for the purpose of organizing a separate school district. The majority

(1) Hodgins"Legislation & Hist. of Sep. Schools in U.C. p.10.

of those present at such meeting, not less than ten, were to elect three trustees. The supporters of schools thus established were exempted from Common School taxation upon securing a certificate from the Municipal clerk. The trustees of separate schools were given power to grant certificates of qualification to teachers and also had the right to levy and collect taxes. In addition the Act declared the right of separate schools to participate in government grants.

This bill did not, however definitely settle the school system for Upper Canada. In 1856 a new bill known as the "Bowes bill" was presented to the House but it failed to pass. Agitations still continued and with them charges were made that the Roman Catholics were endeavoring to make the separate schools mere agencies of their church. It was also alleged that they were endeavoring to have the Legislative grant apportioned according to the number of church population rather than according to the number of children or according to the number desiring such schools. The years 1859 to 1861 inclusive were devoid of legislation although there was considerable strife and controversy. In the following year the Scott bill was introduced but was abhortive. The provisions of that bill were certainly of a nature to justify the charge that the Roman Catholics were endeavoring to make the schools agencies of their church. Amongst other provisions was one creating Roman Catholic priests trustees ex-officio with power of levying taxation. In addition the bill conferred upon the separate school supporters, exemption regardless of where there property was situated. That is, their property in other school sections was exempted if they were separate school supporters in any section. The bill further provided for separate boards of examiners of teachers and the right of local government in school matters was established. Further concessions provided for in the bill were that the holidays and vacations prescribed by the Council of Public Instruction were not binding on the Roman Catholics, but the trustees of such schools could prescribe holidays if a minimum number of school days were put in. In addition all books and regulations were required to be approved by the trustees before they could be used or placed in operation. Some of these provisions were deleted and new clauses substituted but the bill never became law.

In 1863 the final separate school act was passed and supposedly a finality of this type of legislation reached. The bill had been given it's second reading the year before but owing to the defeat of the Government had not become law. When the bill was voted upon, although it was a measure affecting Upper Canada only, it was passed by the votes of the members from Lower Canada. The votes of the members representing Upper Canada in the House recorded a majority of 10 against the bill. The members from Lower Canada voted unanimously in favor of the bill and it was passed. Thus did the Lower Canada representatives foist on the people of Upper Canada a measure to which they were opposed.

"The main features of Mr Scott's bill were the extending of the facilities for establishing separate schools in rural districts, permitting Roman Catholics to give notice of their intention to become separate school supporters once for all, instead of annually as under the former Act; relieving trustees from certifying the average attendance of pupils under oath; providing for the inspection of separate schools and for their general administration through the Council of Public Instruction". (1)

In 1866 an abhortive attempt was made to provide for the establishment of Roman Catholic state colleges, a separate Superintendent of Education and separate councils. This movement did not accomplish it's object. At the time it was attacked as a breach of faith on the part of the Roman Catholics the claim being made that the Act of 1863 had been accepted by the Catholics as a finality. The Act of 1863 was in force at the time of Confederation.

(1) Hodgins P. 170 (Buckingham & Ross "Life of Hon. Alex. Mackenzie" quoted)

The Acts now in force provide for separate schools for (a) Roman Catholics (b) Protestants (c) Colored People. Not less than 5 heads of families, resident within a school section may convene a public meeting for the establishment of a separate school, such meeting electing the trustees. Separate school supporters are relieved from other school taxation and separate schools share in the legislative grants. In the Roman Catholic separate schools distinctive religious instruction, in accordance with the doctrines of that church, is given. Secular education is, however, subject to the ordinary school law under the administration of the Department of Education. Roman Catholic teachers are subject to the same examinations and receive the same certificates as Protestants. (1)

At Confederation the framers of the British North American Act 1867 regarded the existing state of affairs as satisfactory and provided for it's continuation. Section 93 (2) dealt with the jurisdiction in regard to education. Subsection 2 extended to Quebec the Ontario provision. "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 extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec".

This traces briefly the rise and development of the separate school system in the Province of Ontario. As we are interested primarily in the part the Judicial Committee has had in the development and determination of that system, it is necessary to proceed and deal with that phase of the subject.

The first point upon which the Judicial Committee was required to adjudicate was in reference to the qualification of teachers. It appears sub. nom. "Brothers of Christian Schools et al vs Minister of Education for Ontario et al. (3) This was an appeal from a judgment of the Ontario Court of Appeal on a reference to it, by the Lieutenant Governor, of a question which arose originally in the case of Grattan vs Ottawa Separate School Trustees (4). The question for determination was the meaning of section 36 of the Ontario Separate School Act, R.S.O. 1897 chap. 294, which read as follows:

"The teachers of a separate school under this Act shall be subject to the same examination and receive their certificates of qualification in the same manner as Public school teachers generally; but persons qualified by law as teachers, either in the Province of Ontario, or at the time of the passing of the B.N.A. Act 1867, in the Province of Quebec shall be considered qualified teachers for the purpose of this Act".

In the Grattan case an application was made to the Court for an injunction restraining the defendant trustees from entering into a contract with the Brothers of Christian Schools as religious body, involving a ten years teaching contract and other consideration. One of the grounds urged in support of the application was that the Brothers of Christian Schools were not qualified to teach in the separate schools of Ontario. This ground was held to be sufficient and established and the injunction was granted. This gave rise to a case being stated by the Lieutenant Governor and referred to the Ontario Court of Appeal

The stated case sets out that (5) the Brothers of Christian Schools and several religious communities of females including the General Hospital Alms House and Grey Nuns, were, in 1860 and prior thereto engaged in teaching in Quebec and were exempt from examination as teachers. The question submitted read: "Having regard to the various pre-confederation Provincial enactments relating to the subject of education in the late Provinces of Upper and Lower Canada, and to the terms of the B.N.A. Act, and to enactments of the Province of Ontario since

(1) Canada Year Book 1916-17.
(2) See supra p.5.
(3) 1907 A.C. 69.
(4) 8 O.L.R. 135, on appeal 9 O.L.R. 433.
(5) 7 O.W.R. 141.

confederation and especially to the provisions contained in the following statutes viz: C.S.L.C. cap.15 #110 ss10 para. 5; 26 Vict. cap.5 #15 (c); B.N.A. Act 1867 #93 ss 1; R.S.O. 1877 cap. 206 #30; 49 Vict. cap. 46 #62 (c); R.S.O. 1887 cap. 294 #36. Are the members of the above-mentioned communities, who became members of such communities since the passing of the B.N.A. Act 1867, to be considered qualified teachers for the purposes of The Separate Schools Act, and therefore eligible for employment as teachers in the Roman Catholic Separate Schools within the Province of Ontario, when such members have not received certificates of qualification to teach in the Public Schools of the Province?"

The Court of Appeal answered this question unanimously in the negative. The judgment of the court was delivered by Moss C.J.O. After setting out section 36, referred to above, he made reference to the requirements of the Public Schools Act R.S.O. 1897 cap. 292 as regards teachers' qualifications as enacted by sections 77 and 78. These required that teachers must pass the prescribed examinations and receive the certificates of standing. Every teacher engaged to teach was required to hold such certificate. The course of legislation in reference to this subject was pointed out. By section 13 of 26 Vict. 5 teachers of separate schools were required to pass the same examinations as other teachers except "persons qualified by law as teachers either in Upper or Lower Canada shall be considered qualified teachers for the purposes of this Act". In 1877 this provision was altered to the following form "but the persons qualified by law as teachers shall be considered qualified teachers for the purposes of this Act." The difference created by the omission of the words "in Upper or Lower Canada" operated to exclude the standing of the teachers from Lower Canada, in the view of the court. The appellants had argued that as the Brothers had taught under the authority conferred by section 36 therefore the members of the Brotherhood could still continue to teach without a certificate. The judgment, however, held that the word "persons" referred to individuals and that only those members of the Brotherhood who were members at the time of the passing of the Act of 1863 were granted standing and that the Act did not operate to confer standing upon all who might at any time become members of the Community. That is, the claim was, that the right of exemption fro examination for teachers' certificates had been conferred on the Brotherhood in perpetuity.

This judgment was appealed to the Judicial Committee of the Privy Council. (1) At the argument before the Judicial Committee the appellants argued that the exemption, conferred upon members of the Community by the Act in question, vested in all members and that, as the Act had not been repealed and could not then be repealed, therefore they claimed it was still in operation and force. Against this the respondents argued that "persons qualified by law" referred to those holding certificates of qualification and those who before confederation were exempted from the necessity of obtaining such certificates of qualification. It was further contended that such exemption was conferred upon individuals. The importance of this distinction is quite clear. If the viewpoint of the appellants had been upheld it would have meant that there would be no standard qualification for teachers for mere membership in the Brotherhood, regardless of the academic standing of the individual, would confer upon such member all the rights and privileges of a qualified, certificated teacher.

Lord Macnaghten delivered the judgment of the Judicial Committee, after setting out the facts of the case the judgment reads;

"Their Lordships agree in the conclusion at which the Court of Appeal arrived and are satisfied to adopt the reasons on which that conclusion is founded".

The effect of this judgment was to lend uniformity to teaching standards. Had the opposite viewpoint been supported an injustice would have been perpetrated upon teachers of Public schools who were required to attain to a certain standard before the teachers' certificate would be granted to them.

(1) 1907 A.C. 60.

The interpretation of section 93 of the British North American Act 1867 became once again the substance of an appeal to the Judicial Committee of the Privy Council in the case of Mackell vs Ottawa Separate School Trustees. (1) The section has been referred to so frequently and set out at length so often that it is unnecessary to set it out again. This was an action brought by Mackell and other ratepayers and supporters of the Separate Schools of the City of Ottawa, some of whom were members of the Board of Trustees, for an injunction restraining the defendants from,

(a) Retaining in employ or paying out of the Board funds teachers not holding legal qualifications to teach or authorized to teach by Act of Legislature or Regulations of the Department of Education, and

(b) Passing or enacting bylaws authorizing the borrowing of moneys by debentures, mortgage or otherwise while the regulations were not complied with.

And for a mandatory order requiring the defendants to conform and enforce the regulations. An interim injunction was granted which was continued until the trial of the action. The defendants, during an adjournment, discharged all the teachers and closed all the schools. Thus putting between seven and eight thousand children out of school. This was an act of pure spite. The party responsible for it, a Mr. Genest, frankly admitted that his object was to compel the Department of Education to consent to the employment of members of a Christian Brotherhood as teachers, though the said members were without the legal qualifications. This action aroused public indignation and naturally the proceedings were closely followed by the general public throughout the entire Dominion. The trouble arose from the issue of a "Circular of Instructions" by the, (2) Department of Education relating to English-French schools and Separate schools. The circular regulated the use of the French language in the said schools. "English-French Schools" was the term applied to the schools attended by French-speaking scholars.

The defendants alleged that the provisions were invalid. The 17th provision was the chief cause of complaint. The trial judge held that the provisions were intra vires. In order to shew them to be ultra vires they must offend against the protection granted by the 1st subsection of §93 of the B.N.A. Act 1867. That is, they must prejudicially affect any right or privilege with respect to denominational schools which a class of persons had by law in the Province at the union. The remedy for a breach of this proviso was provided by the 3rd ss of the same Act, where a right or privilege of a Roman Catholic or Protestant minority was affected.

The trial judge held that the defendants were a class of persons within the meaning of the Act but that the rights claimed were not recognized by law and that the decision in the Barrett case precluded their attempt to have the regulations declared ultra vires. The regulations, he found, were within the jurisdiction of the authorities issuing them and must therefore be obeyed. An order was made accordingly, declaring the regulations intra vires and ordering the defendants to comply with them.

An appeal was taken from this order. On appeal the appellants attacked the judgment on two grounds. 1. that the regulation 17 was ultra vires of the Department of Education; and 2. that the legislation itself was invalid as beyond the jurisdiction. On the first of these grounds they were estopped by an Act passed by the Provincial Legislature, 5 Geo. V. cap. 45, which validated the passing of the regulations in question, by the responsible Department.

In his judgment Meredith C.J.O. shews that the rights of the Roman Catholics, perpetuated by the B.N.A. Act 1867, were those obtained by 26 Vict. Cap. 5 and gave the right to separate schools on religious grounds only not as to language.

(1) 32 O.L.R. 245, on appeal 34 O.L.R., 1917 A.C. 62.
(2) See footnote page 46.

And adds (1) "I am unable to find anything which supports the contention of the learned counsel for the appellants that the right to use the French language in the separate schools of the Province was guaranteed by treaty or otherwise to the French-speaking people."

Garrow J. says, "In other words the "right or privilege" protected by law is not one concerning language, but to have what the general community has'nt, namely, religious instruction imparted in such schools". (2)

The Judicial Committee were next referred to in an appeal from the judgment of the Ontario Court of Appeal. On behalf of the appellants it was argued that the trustees had power, under ₰79 of the Common Schools Act 1859, to determine the "kind and description" of schools to be established and that the words "kind and description" included the right to determine whether English or French should be the language of instruction in any particular school.

Against this it was contended that ₰93 of the B.N.A. Act 1867 by subsection 1 protected rights and privileges which any class of persons had (a) by law (b) at the union (c) in relation to denominational schools. This subsection, it was argued, granted no rights on the grounds of language.

(1) 34 O.L.R. at p. 341.
(2) Ibid. at p. 345.

Footnote- The Circular of Instructions, issued by the Ontario Department of Education August, 1913.

1. There are only two classes of primary schools in Ontario- public schools and separate schools; but, for convenience of reference, the term Englis-French is applied to those schools of each class annually designated by the Minister for inspection as provided in 5 below and in which French is a language of instruction and communication as limited in 3 (1) below.

2. The regulations and courses of study prescribed for the Public Schools, which are not inconsistent with the provisions of this circular, shall hereafter be in force in the English-French schools-public and separate-- and with the following modifications; the provisions for religious instruction and exercises shall not apply to separate schools as in public schools and separate school boards may substitute the Canadian Catholic Readers for the Ontario Public school readers.

3. Subject, in the case of each school , to the direction and approval of the chief inspector, the following modifications shall also be made in the course of study of the public and separate schools:-

(1) Where necessary in the case of French-speaking pupils, French may be used as the language of instruction and communication; but such use of French shall not be continued beyond Form 1, excepting that, on the approval of the chief Inspector, it may also be used as the language of instruction and communication in the case of pupils beyond Form 1 who are unable to speak and understand the English language.

(2) In the case of French-speaking pupils who are unable to speak and understand the English language well enough for the purposes of instruction and communication, the following provision is hereby made:-

(a) as soon as the pupil enters the school he shall begin the study and the use of the English language.

Note- A manual of method for use in teaching English to French-speaking pupils had been distributed amongst the schools by the Department of Education. This manual should be used in all schools. Where necessary, copies may be procured on application to the Deputy-Minister.

(b) As soon as the pupil has acquired sufficient facility in the use of the English language, he shall take up in that language the course of study as prescribed for the Public and separate schools.

Judgment was given by Buckmaster L.C. and affirmed the decision of the Court of Appeal. Dealing with the question as to the meaning to be given to the words "kind and description" he said "Their Lordships are unable to agree with this view. (the view contended for by the appellants) The "kind" of school referred to in ss 8 of #70 is in their opinion the grade or character of the school for example "a Girls' school". ..... and a "kind of school" within the meaning of that subsection is not a school where any special language is in common use. "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 the regulations, the power of directing in what language education is to be given".(1

(1) 1917 A.C. at p.71.

Footnote continued from previous page.

4. In schools where French has hitherto been a subject of study, the public or the separate school board, as the case may be, may provide, under the following conditions, for instruction in French reading, grammar and composition in Forms I to IV.(see also provision for Form V. in public school regulation 14 (5)) in addition to the subjects prescribed for the public and separate schools:

(1) Such instruction in French may be taken only by pupils whose parents or guardians direct that they shall do so, and may, notwithstanding 3 (1) above, be given in the French language.

(2) Such instruction in French shall not interfere with the adequacy of the instruction in English, and the provision for such instruction in French in the time-table of the school shall be subject to the approval and direction of the chief inspector, and shall not in any day exceed one hour in each class-room, except where the time is increased upon the order of the chief inspector.

(3) Where, as permitted above, French is a subject of study in a public or separate school, the text-books in use during the school year of 1911-1912, in French reading, grammar and composition, remain authorized for use during the school year 1913-14.

5.For the purpose of inspection the English-French schools shall be organized into divisions, each division being under the charge of two inspectors.

6.(1) In conducting the work of inspection, the inspectors of a division shall alternately visit each school therein, unless otherwise directed by the chief inspector.

(2) Each inspector shall pay at least 220 half-day visits during the year in accordance with the provisions of Public School regulation 20 (2) and it shall be the duty of each inspector to pay as many more visits than the minimum as the circumstances may demand.

7. Each two inspectors of a division shall reside at such centre or centres as may be designated by the Minister.

8. Frequently during the year the two inspectors of a division shall meet together to discuss questions that may arise in their work and to standardize the system of inspection. For the same purposes all the inspectors shall meet at such times and places as may be designated by the Minister.

9. Each inspector shall report upon the general condition of all the classes, on the form prescribed by the Minister. This report shall be subject to the approval of the Minister upon the report of the chief inspector.

10. If either of the inspectors of a division finds that any regulation or instruction of the Department is not being properly carried out, he shall forthwith report specially on such cases to the Minister.

11. Each inspector shall forward a copy of his ordinary inspectional report on the prescribed official form to the minister within one week after the visit.

12. The chief inspector of Public and separate schools shall be the supervising inspector of the French-English schools.

The contention that the Circular interfered with the right to manage which the trustees possessed and that it infringed a right on the part of the trustees to appoint teachers whose certificates were provided by a Board of which the trustees could appoint one member is answered thus:- "In their Lordships' view there is no substance in either of these contentions. The right to manage does not involve the right to determine the language to be used in the schools".....and so far as the teachers are concerned, the words of ss 8 of #79 empower the trustees to determine the teacher or teachers; but this merely means that they are to be determined out of the number who are duly qualified, and it is for the Board of Education to impose what conditions it thinks fit as to the necessary qualification of such a teacher".

Thus the legal question as to the right to have French the language of instruction and communication in the schools was disposed of. Had the views of the appellants been maintained by the Judicial Committee it would have extended the privileges granted in relation to denominational schools. The appellants endeavored to not only have schools separate on the grounds of religious differences but also on account of differences of language. This, the tribunals held, was not a right with reference to denominational schools and therefore not within the special privileges protected by section 93 of the British North American Act 1867. The view of the appellants, if it had been upheld, by the Judicial Committee, would have meant that the trustees would have almost absolute control of the schools and would be able to disregard any instructions of the Department of Education. That is, the trustees would determine just what kind of a school they would have. Further they would have control of the type of education given in such school. It would have meant that every board of trustees was a law unto itself.

This judgment of the Judicial Committee did not settle or terminate the strife in Ottawa. It broke out anew almost immediately. This time the Act 5 George V. chap. 45, which had been passed to validate the actions of the Department of Education, was attacked as being unconstitutional. An action was brought to have the Act declared ultra vires, void and of no effect.

Footnote continued from previous page.

13. No teacher shall be granted a certificate to teach in English-French schools who does not possess a knowledge of the English language sufficient to teach the public and separate school course.

(2) No teacher shall remain in office or be appointed in any of said schools, who does not possess a knowledge of the English language sufficient to teach the public and separate school course of study.

14. The legislative grants to the English-French schools shall be made on the same conditions as are the grants to the other public and separate schools.

15. On due application from the school board and on the report of all the inspectors approved by the chief inspector, an English-French school which is unable to provide the salary necessary to secure a teacher with the aforesaid qualifications, shall receive a special grant in order to assist it in doing so.

Department of Education, August 1913.

This circular thus restricted the English-French schools in two ways, namely: The right to the use of the French language as a language of instruction and communication was restricted to up to Form I , with exceptions. Secondly the right to select teachers was restricted to the selection of such as were qualified to teach English. These were the restrictions complained of which led to the appeal to the Judicial tribunals.

The Act, as well as affording protection to the Department and removing doubts as to the jurisdiction of the Department in issuing such regulations, at the same time suspended the powers of the Ottawa Roman Catholic Separate School Board and conferred the powers upon a commission. The Commission was appointed by the Lieutenant Governor in Council July 20th 1915. On July 23rd the Commission attempted to take possession of the properties and assets formerly controlled by the Roman Catholic Separate School Board. An action was commenced for an injunction restraining the corporation of the City of Ottawa from handing over any monies, levied or collected, to the Commission. An injunction was also sought against the Quebec Bank to prevent it from paying over money deposited at the bank to the credit of the Board and to restrain the Ottawa Separate School Commission from drawing or receiving sums so deposited. This action serves to shew to what lengths opposition to school legislation will be carried. In the Ottawa troubles the schools were closed. Every means of resistance was attempted. The teachers were instructed to cease teaching when the inspectors arrived. The legal tribunals were resorted to. Evidently the intent was that if the judgment so obtained was favorable then, it would be binding, if unfavorable, it did not bind them. The action came on for hearing before Meredith C.J.C.P. (1)

The Act, the subject matter of the action, provided that if, in the opinion of the Minister of Education, the Ottawa Roman Catholic Separate School Board failed to comply with any of the provisions of the Act, he should have power, with the approval of the Lieutenant Governor in Council:

(a) To appoint a commission

(b) "To vest in and confer upon any commission so appointed, all or any of the powers possessed by the Board under statute or otherwise, including the right to deal with and administer the rights, properties and assets of the Board and all such other powers as he may think proper and expedient to carry out the object and intent of this Act."

(c) "To suspend or withdraw all or any part of the rights, powers and privileges of the Board, and whenever he may think advisable to restore the whole or any part of the same and to revest the same in the Board."

(d) "To make such use.....of any legislative grant... as the Minister may in writing direct".

The validity of the Act was questioned on the ground that it interfered with the provisions of ss 1 of 93 of the British North America Act 1867, in that it prejudicially affected a right or privilege with respect to denominational schools, which the Roman Catholics had enjoyed at the time of the passing of the said B.N.A. Act. The prejudicial effect alleged was that it deprived Roman Catholic Separate School supporters of:

1. Their elective public school franchise.
2. Their own school moneys.

The trial judge held that the Acts were intra vires and that no evidence of any prejudicial effect had been given. "The public purposes of the schools are of paramount importance and all schools are subject to inspection and control of languages."

This judgment was appealed to the Ontario Court of Appeal. The judgment of that tribunal affirmed that of the trial judge. (2)

Meredith C.J.O., in his judgment says: (3) "Having regard to these facts and the course of legislation, it is clear, I think, that the only right or privilege with respect to denominational schools which the Roman Catholics had by law in this Province at the union was the right or privilege.... to establish, manage and maintain separate schools for the education of their children and to be exempt from contributing to the support and maintenance of the Common Schools while they continued to be supporters of the separate schools".

(1) 34 O.L.R. 624.
(2) 36 O.L.R. 486.
(3) Ibid. at 493.

He further states (1) "The right or privilege which that class, as a class, had at the union, is not prejudicially affected by the legislation or even interfered with. All that is done is to suspend the right of a particular body of persons of the class to manage it's schools, because it persistently refuses to obey the law and insists upon managing them contrary to the law and in open defiance to it". He pointed out that the right conferred was to manage their schools, not according to their own wishes but according to Law.

As in most cases involving school rights the case was taken to the Judicial Committee of the Privy Council. The judgment of that body reversed the judgments of the courts below. (2) The Lord Chancellor delivered judgment. Referring to #93 of the B.N.A. Act 1867 his Lordship said (3) "The effect of the section and of the sections 91 and 92 is to give an exclusive jurisdiction to the Legislature of each Province to make laws in reference to education subject to the specified provisions..... The rights or privileges reserved in provision 1 cannot be prejudicially affected without an Act of the Imperial Legislature. There is no question that the impeached section of the Act of 1915 does authorize the Minister of Education to suspend or withdraw legal rights and privileges with respect to denominational schools". As regard the contention that the Board was only representative of a minority of a class and not of the larger class and that it therefore did not come within the words "class of persons" his Lordship pointed out that the Board was elected by the supporters of the Roman Catholic schools and added "Their Lordships can find neither limiting words nor anything in the context which would imply that they are excluded from the benefit of the provision.....To give authority to withdraw a right or privilege under these conditions necessarily operates to the prejudice of the class of persons affected by the withdrawal". (4)

Upon the result of this finding being known the Commission ceased to control the schools. However litigation was not as yet completed. The Board immediately brought action against the Quebec Bank, the Bank of Ottawa, and the three individuals who had comprised the Commission namely Thos. D'Arcy McGee, Arthur Charbonneau and Dennis Murphy, to recover moneys paid by the banks to the Commission and moneys paid by the corporation of the City of Ottawa to the commission and for the recovery from the Commissioners of the money paid out by them during their period of control of the schools.

Mr. Justice Clute was the trial judge. (5) In his judgment the previous actions are discussed and reviewed at length. Particular attention is drawn to the fact that the clause of the regulations, which regulated the use of French as the language of instruction and communication did not deal with religious education, according to the judgment rendered by the Judicial Committee. As a defence to the action the defendants pleaded the statute 7 Geo. V. ch 60., which Act, after setting out the fact of the failure of the trustees to operate the schools, the subsequent and consequent appointment of the Commission, and the fact of the spending of money by the Commission, declares that the moneys were properly expended and that the Commissioners were entitled to indemnity from the Board. It further provided for payment out of the consolidated revenue fund, with a right of action against the Board. The Act also enacted that it might be pleaded as a defence in any action brought against the Commissioners for the recovery of such sums of money.

(1) 36 O.L.R. 493.
(2) 1917 A.C. 76.
(3) Ibid. p. 80.
(4) Ibid. p. 82.
(5) 41 O.L.R. 594.

Clute J. held that the Act was invalid as interfering with rights and privileges in respect of denominational schools, being in contravention of section 93 of the British North America Act 1867. As regards the manner of the interference of the statute he says:(1) "The deprivation of the school Board of their school funds and property, including their school-houses and control of teachers, denude them of all rights and privileges under the Act (of 1863), and the Act deprives them of the right of recovery and re-instatement in respect of their funds and property and is a continuation of such deprivation, and cannot, in my opinion, but prejudicially affect any such right or privilege"......"In my opinion this Act is also ultra vires. He next turned his attention to the Act 7 Geo. V. ch.59 which Act had been passed after the 5 Geo. V. had been declar- ultra vires. This later Act had been held, upon reference to the Supreme Court of Ontario, to be valid. (2) The judgment in that case holding that the later Act contained the sections of the former but that all objectionable sections had been replaced by new ones. The Act of 1917 gave power to appoint a Commission only where there was neglect or refusal on the part of the Board to conduct the schools under it's control, according to Law. The Act provided that questions as to the justification of the appointment of such a commission were to be settled by the Supreme Court at Toronto. Mr Justice Clute held that such Act did not justify acts done under the Act of 1915. After holding that the Commission was not trustee for the Board he gave judgment for the plaintiffs.

In October of 1918 an appeal from the judgment of Clute J. was heard before the Appellate Division of the Supreme Court of Ontario. On October 24th judgment was given reversing the judgment of the trial judge. (3)

Meredith C.J.O. delivered the judgment of the Court. After reviewing the history of the dispute and the judgment of the lower court he proceeds and declares that the legislation 7 Geo. V. ch 60 is valid unless it violates the provisions of section 93 of the B.N.A. Act 1867 and adds, "In my view, the legislation does not violate the provisions of s93". He pointed out that the school board, while being a separate entity, still represented the supporters of the separate schools and these latter had received the benefits of any money spent by the Commission. The appeal was therefore allowed.

Again an appeal was taken to the Judicial Committee of the Privy Council. (4) The appellants argued before the Judicial Committee that the Commission, being illegal, as declared by the prior judgment of that tribunal, therefore it's acts could not be validated.

The judgement was delivered by Lord Dunedin. His Lordship briefly reviewed prior legislation before entering upon the facts of the case. The action, it was said, would be good at Common Law. The question is therfore "What is the effect of the statute 7 Geo. V. ch. 60?" Does that statute give a complete defence? Does that statute violate the provisions of the B.N.A. Act 1867 by affecting prejudicially the rights and privileges in relation to education? That is, was the statute ultra vires? The judgment points out that in order for the Act to be ultra vires it must be shewn to be a contravention of the provisions of the said section 93 of the B.N.A. Act for in all other regards and respects it was a measure dealing with civil rights within the province and therefore within the ambit of provincial jurisdiction. The point therefore, was, whether the said statute prejudicially affected rights or privileges protected by the B.N.A. Act. In this regard it is said: "Their Lordships fail to see that the right of the appellants has been in any way prejudicially affected by the statute". (5) Therefore the statute was declared to be intra vires. The judgment points out that rights and privileges may be affected by a statute without rendering such statute ultra vires. It is only when such rights or privileges are prejudicially affected that the statute is invalid.

(1) 41 O.L.R. at p.614.
(2) 41 O.L.R. 259.
(3) 43 O.L.R. 637.
(4) 1920 A.C. 230
(5) Ibid 238.

This was the last case in regard to the "School Question" which was appealed to the Judicial Committee from Ontario. There have been a great number of cases and a great deal of litigation but it has been confined chiefly to the provincial courts and therefore does not come within the scope of this study any farther than is necessary for an understanding of the causes and phases of the disputes.

In summing up the effect of the judgments of the Judicial Committee in relation to education in the Province of Ontario, we can say that two principles were established by these judgments:

1. That the teachers of separate schools must be qualified, in secular matters, according to the same standard as that required from the teachers of public schools.

This is a very important principle as it renders possible a uniformity of educational standards by placing in the hands of proper authorities the power to determine what are to constitute the qualifications of teachers. It is fair to all the teachers in that no greater degree of intellectual attainment is demanded from the teachers of the public than from the teachers of the separate schools. The standard of Education, as well, is thus capable of determination. Otherwise the standard of every individual school would vary according to the intellectual attainment of the teacher, such variations ranging from almost illiteracy to high standards. The Roman Catholics are permitted to satisfy their consciences, by having religious instruction given as part of the education, yet, at the same time the state retained the right to determine the standard of the secular education imparted.

2. The second principle established was that the rights and privileges conferred and assures as to continuance by the 93rd section of the B.N.A. Act 1867 as regards the right to have separate schools were granted upon religious grounds and not upon the basis of difference of language. That is, the restriction on the provincial power of legislation in relation to education, was only that no legislation should affect prejudicially rights in relation to denominational schools. This provision, it was held, conferred no rights as to the language of instruction and communication in the schools. The effect of the establishment of this principle is to declare English the national language. It operates to render nugatory the efforts to have other languages than English the official language of instruction in the schools of Ontario.

The history of the school troubles in Ottawa is one of the disgraceful episodes of the history of education in Ontario. It was not strictly a division of the population into Roman Catholics and Protestants. The schools supposedly Roman Catholic had come under the control of a number of Roman Catholics who endeavored to operate them according to their own ideas and desires regardless of the law and actually in open defiance of the law. The action first commenced was brought by another Roman Catholic against them. The extent to which the controlling faction carried their opposition to the Act has been commented upon elsewhere. It went so far as to instruct the teachers to refuse to teach during the visit of the inspectors. Not only this, but in order to force the Department to permit it to disregard the law, all teachers were dismissed and the schools closed. This type of conduct naturally aroused public indignation. The litigation in reference to the Ottawa school difficulties can therefore be termed to a large extent "spite litigation". The fight was very bitter and any excuse "to law" was readily seized. Thus a great deal of the litigation is constitutionally of little importance and therefore cannot demand much time in this work.

Before leaving the school situation in Ontario it is of interest to note that the Truancy and Compulsory Attendance Act requires the attendance at school of children between the ages of 8 and 14. "School" is defined as including Public, Separate, or private schools in which instruction is given regularly in reading, writing, spelling, grammar, geography and arithmetic. Thus the inference is that if the stipulated studies are given the religious instruction is left in the hands of those controlling the schools.

CHAPTER IV.

SASKATCHEWAN.

The Province of Saskatchewan has furnished one appeal to the Judicial Committee in relation to the subject education. Such appeal did not involve any great constitutional point and therefore need not occupy our attention for very long. As fundamentally this is a discussion of the influence of the Judicial Committee in the determination of the educational systems of Canadian Provinces, it becomes necessary to depart somewhat from the chronological order of events. Problems in relation to this much discussed subject arose prior to the appeal we are now to regard these also will secure our attention at a later stage.

Saskatchewan was created a province of the Dominion of Canada by the Saskatchewan Act, in 1905 being cap. 42 of 4 & 5 Edw. VII. The Act of creation, in reference to education enacted by section 17 as follows:

"Section 93 of the British North America Act 1867 shall apply to the said Province with the substitution for paragraph (1) of the said 93rd section of the following paragraph.

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-West Territories passed in the year 1901 or with respect to religious instruction in any public or private school as provided for in the said ordinances.

(2) In the appropriation by the Legislature or distribution by the government of the Province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereto or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

(3) Where the expression "by law" is employed in paragraph (3) of the said section 93 it shall be held to mean the law as set out in the said chapters 29 & 30; and where the expression "at the union" is employed in the said paragraph (3) it shall be held to mean the date at which this act comes into force.

Thus it will be seen that the framres of the Act endeavored to profit by the judgments given in relation to the legislation dealing with education in reference to the other Provinces. In the Saskatchewan Act an attempt was made to express clearly in words incapable of ambiguity, the intention of the Act. This was a direct result of the litigation from the other provinces. So we again see the influence of the judicial committee.

The Ordinances referred to by sections 41-45 enacted that a minority of the ratepayers, Roman Catholic or Protestant, in a district, might establish a separate school and upon so doing were liable only for the rates which they imposed upon themselves for the support of such school. To form a school district a petition, signed by three resident ratepayers of the religious faith, Roman Catholic or Protestant, was required. Schools, by section 136 were to be taught in English, but a primary education in French was permitted. Religious instruction was dealt with by sections 137-139 which provided for such instruction one-half hour immediately preceding the closing of the school. It was not compulsory for children to attend whose parents did not desire them to do so. It was also permissible for the session to be opened in the mornings by the repetition of the Lord's Prayer.

These provisions in reference to religious instruction were re-enacted verbatim in the Schools Act of 1909 cap. 100 and again in 1915 when the 1909 Act was repealed. They were again re-enacted in the same form in 1920 R.S.S. cap 110 and remain in that form at the present time.

The case which went to the Judicial Committee for adjudication was that of the City of Regina vs McCarthy known as the Bartz case. (1) The facts of the case are as follows. Bartz was a Roman Catholic residing in the City of Regina. In 1916 at his written request, he was assessed as a Public School supporter, whereas in the previous year, 1915, he had been assessed as a Separate School Supporter. McCarthy, a ratepayer of Regina appealled against the assessment of Bartz as a Public School supporter. From the Local Government Board the case came before the Supreme Court of Saskatchewan in 1917 and at the same time a converse case known as the "Heida case" was heard.

On behalf of Bartz it was argued that, as the establishment of a separate school was a matter of conscience, it should therefore be a matter of individual choice as to the school which each individual helped to support. Against this it was contended that a minority having once decided to establish a school all members of such minority must be bound by the decision of the majority of the minority and contribute to the support of a school so established.

Haultain C.J. in his judgment, pointed out that this appeal was brought under the provisions of section 394 of the City Act which gave a right of appeal to the Court of Revision to any ratepayer "who thinks that any person who should be assessed as a separate school supporter has been assessed as a Public school supporter"and vice-versa. In his opinion reading the provisions of the City Act, the School Act and the School Assessment Act together, there was majority rule in the minority.

An attack was also made upon the constitutionality of the Saskatchewan Act. "The Saskatchewan Act.....in so far as it purports to give to the Legislature of the Province of Saskatchewan jurisdiction to enact legislation depriving any ratepayer whose lands are situate within a public school district within which a separate school has been established, of the right to support with his taxes such public school, regardless of what his religious faith may be, or, in so far as it purports to place it beyond the competence of the Saskatchewan Legislature to enact laws requiring all ratepayers to be taxed for the support of the public school, is beyond the competence of the Parliament of the Dominion of Canada". (2) The appellants claimed that it was beyond the jurisdiction of the Dominion Parliament to vary the terms of the British North America Act 1867 as had been done by the Saskatchewan Act in section 17 thereof set out above.

In dealing with the question of the constitutionality of the Act, the Chief Justice points out that assuming the Act to be ultra vires, then, the British North America Act 1867 would govern. If such were the case, then, as there was no law in reference to the subject of education in the Territories in 1870 the decision in the Barrett case would apply and the Saskatchewan Legislature would have a free hand. In pursuance of this argument, then, the rights granted in respect of Separate schools by the School Act of 1915 could not be taken away by the Legislature. On the other hand, His Honor pointed out that the rights and privileges conferred by the Ordinances of the Territories and confirmed by the Saskatchewan Act were the right of the minority of the ratepayers in a school district, whether Roman Catholic or Protestant, to establish a separate school and to be liable only to taxation in respect thereof. He drew particular attention to the fact that "the right to pay taxes to the public schools instead of to the separate school is not a right or privilege reserved to the minority.....it might have been a right enjoyed at the time by individual members of the minority but they are not a class of persons within the meaning of the Saskatchewan Act or sec. 93 of the B.N.A. Act 1867." (3)

(1) 52 D.L.R. 742.
(2) Ibid. 744.
(3) " 746.

The argument of ultra vires was not pressed so that the opinions of the Justices given in the case are not binding, the judgment turning upon the rights of minorities within minorities.

The Naida case was decided similarly, it being held that a person not belonging to a minority could not, by requesting, be assessed as a separate school supporter. Naida was not a Roman Catholic so therefore was liable to assessment for the support of the public schools. (1)

From these judgments of the Supreme Court appeals were taken to the Judicial Committee. (2)

Judgment was given by Lord Dunedin, who, after setting out the facts of the case, disposed of it upon two grounds as follows: "It seems to their Lordships that in this arrangement there are two guiding principles: the first is that after a vote the majority bind the minority" (That is as to whether there will be a separate school district or not)-"The second is that it is the criterion of religious faith which forms that may be called the subordinate constituency, and here again the majority compels the minority, either establishing or refusing to establish a separate school. If the school is established all must be rated". (3)

The contention as to the constitutionality of the Act was not pressed and following it's usual custom the Judicial Committee did not deal with any point unnecessary and expressed no opinion. Consequently this case does not involve any point of such public concern outside of the Province as some of the others we have discussed. It is of particular interest to note that in the decision of the Supreme Court of Saskatchewan in these cases reference was made to the Barrett case and to the Ottawa Separate School Trustees vs Mackell both of which cases were Judicial Committee judgments as we have already seen. This merely goes to further demonstrate the extent of the influence of the said tribunal upon Canadian Educational systems.

From Saskatchewan there has been only the one action in which the Judicial Committee were called upon to adjudicate so that we have disposed of the "School Question" as far as it relates to this subject.

CHAPTER V.

NORTH-WEST TERRITORIES.

A discussion of the "School Question" would be incomplete without reference to the North-West Territories. The case we have dealt with, in reference to the Province of Saskatchewan was not of as great importance as those originating in other Provinces largely for the reason that the school system had been a topic of discussion in the Territories previous to the formation of the Provinces of Alberta and Saskatchewan. The determination of the school system to be put in operation in the Territories was not directly resultent from a judgment of the Judicial Committee of the Privy Council. That is, the highest tribunal was not called upon in connection with the fixing of the educational system of the Territories. However it was a problem involving considerable feeling in the settlement thereof.

The North-West Territory and Rupert's Land were admitted into the Dominion of Canada from and after the 15th day of July 1870. The Order in council admitting them was dated June 23rd 1870 and was passed upon petition of both Houses of Parliament.

The North West Territories Act R.S.C. 1892 cap. 50 by section 14 enacted that "the Lieutenant Governor by and with the consent of the Legislative Assembly of the Territories shall pass all necessary ordinances in respect to education but it shall always be provided that a majority of ratepayers of any district or portion of the Territories or of any less portion or subdivision thereof, by whatever name the same is known, may establish such schools therein as they think fit and make the necessary assessment and collection of rates therefor; and also that the minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein and in such cases the ratepayers shall be liable to assessment of such rates as they impose upon themselves in respect thereof".

The school problem in the North West came to the fore in 1892 when the Ordinances of that year were passed. In order to understand the situation it would be advisable to regard briefly the provisions and effect of previous legislation on the subject. A resume has been made by Mr. A.E. Forget who was at one time a member of the Roman Catholic section of the Board of Education for the Territories. (1) This resume we can regard as correct.

In 1884 the first ordinance in relation to education was passed. It provided for a Board of Education of twelve members, six being Protestants and six Roman Catholics. The board was divided into two sections on a religious basis and to each section was awarded the following powers:

1. Control and direction of it's own schools.
2. Examination and classification of teachers including the granting and cancellation of certificates.
3. Choosing of text-books.
4. Appointment of Inspectors.

Clause 28 of the ordinance in question provided that "any number of ratepayers domiciled in the territory could be created into a school district and it was further provided that in no case was a Roman Catholic to be required to pay for a Protestant school or a Protestant to pay for a Catholic school".

In the following year the membership of the Board was reduced to consist of the Lieutenant Governor together withtwo Catholics ahd two Protestants. This ordinance conferred upon the Board as a whole the right to appoint inspectors and examiners of teachers.

(1) 1894 Sess. Papers Vol. 28 No. 17 Paper 40c

The year 1886 witnessed additional amendments to the existing system. The sections of the Board were given the power of appointing the inspectors and examiners of teachers. A provision was enacted to the effect that separate schools could be established only in the limits of public school districts previously established by the minority. This, the Roman Catholics claimed, seriously affected their rights by preventing members of a minority uniting with members of the same faith in an adjacent school district.

This was a transition period and every year the legislation was altered by amendment. In 1887 it was enacted that the board was to consist of 5 Protestants and 3 Roman Catholics. Each section of the Board had power to administer the ordinances in respect of it's own schools. This included the choice of text-books, the appointment of inspectors and jurisdiction in regard to teacher's certificates. In 1891 the appointment of inspectors was taken from the sections and vested in the Board.

Although the system had been materially altered by these frequent amendments it remained substantially the same. However in 1892 a new ordinance was passed effecting changes of such a nature that immediate opposition to it's becoming law was registered. The new ordinance abolished the Board of Education and for it substituted a superintendent of Education and a Council of Public Instruction. The Council consisted of the Executive Committee together with four other members, two Roman Catholics and two Protestants. None of the latter had the right to vote.

The opposition to the ordinance took the form of petitions to the Governor General asking that the ordinance be disallowed or that the Legislative Assembly of the Territories be required to amend or repeal it. The petitions alleged that the ordinance in question prejudicially affected the rights and privileges of the Roman Catholics in relation to education and that therefore it was ultra vires and that it should be disallowed. The manner in which the Catholics claimed to be prejudicially effected was that under the new ordinance all teachers had to be certificated. This would eliminate teaching by members of Roman Catholic religious Orders. Further they complained that there was no provision for separate Normal schools. As their rights, which they demanded, the following were set out: Management and control of Roman Catholic schools as regards the general government and discipline, selection and prescribing of texts, inspection of schools, granting and cancellation of teachers' certificates. A great deal was made of a charge that the new system forced a uniform system of texts upon all schools, separate and public.

Upon receipt of the various petitions sent in by the Catholics, copies were sent to the Lieutenant Governor of the Territories for the advice and information of the government. In reply Mr F.W.G. Haultain, chairman of the Executive Committee of the North-West Territories gave a written statement of the attitude of the Executive Committee. (1)

Dealing with the training and licensing of teachers it was pointed out that by the ordinances of 1888 jurisdiction in this regard had been vested in the Board as a whole so that the Roman Catholics had not exercised such right for five years. It was further contended that the alterations in text-books for those qualifying for teachers' certificates had been made with the approval of the Roman Catholic priest who was a member of the Board. As to Normal training it was alleged that training by qualified schools would be recognized. And further that the Roman Catholics were asking a new concession in regard to separate Normal schools. He pointed out that the ordinance permitted teaching without certificate if evidence of scholarship and professional skill was given.

As to inspection it was pointed out that the provision for the appointment of inspectors by the Lieutenant Governor was a re-enactment. Further, one out of the four inspectors was a Roman Catholic, though there were 44 Roman Catholic schools and 286 Protestant schools.

(1) 1894 Sess. Papers Vol. 26 No. 17 Paper 40a.

In reference to the complaint of the petitioners that a uniform system of text-books was being forced upon them and that they no longer had the right to choose their own text-books, Mr Haultain contended that there had been no alterations since the new ordinance had been enacted except such as had been approved by the Roman Catholic representative and the new books introduced were in use in the Roman Catholic separate schools in other provinces.

In conclusion it was pointed out that the local trustees chose the teacher and determined the amount of religious instruction to be given. If the demand of the petitioners were acceded to it would mean two courses of study, two standards for teachers, two sets of inspectors, two sets of text-books, two superintendents and two standards upon which government grants were based. If, as the petitioners claimed, everything not distinctly Catholic was to be considered Protestant, then, a Roman Catholic Assembly would be required, a Roman Catholic Executive Committee and Lieutenant Governor to carry into effect the rights of the Catholics.

The constitutional aspect of the question was not discussed at length in the reply on behalf of the Executive Committee, it being contended that this was unnecessary owing to the petitioners having offered no proof of the unconstitutionality of the ordinance. It is pointed out that the alternative demand of the petitioners, namely that the Legislative Assembly of the Territories be ordered to amend or repeal the ordinance complained of, was asking the Federal Government to do something beyond it's power. As for disallowance, it was contended that such a procedure would not give the Catholics their demands for, in such a case the previous ordinances would be in force and they did not enjoy, under the previous legislation, the rights which they demanded in the petition.

The report of the Privy Council in reference to the petition, the charges therein and the reply thereto referred to, upheld the ordinances. (1)

The different claims, together with the statement of the Executive Committee as to each, were dealt with separately. As to the effect of the abolition of the Board of Education, it was said: "Altho the formation of the Board of Examiners is different under the present law, the committee of the Privy Council are unable to ascertain that the Board of Public Instruction has in any way altered or restricted the mode and manner of examining teachers". (2) This disposed of the claim as regards the examination and qualification of teachers, but the committee went farther and said "It appears, therefore, to the committee, that prior to the ordinance of 1892, Normal schools had been sanctioned by the Board of Education without objection, and that a uniform training of teachers had been adopted by and with the approval of both sections of the Board". (3)

As to the claim that the text-books for those qualifying for teachers' certificates had been altered to the prejudice of the petitioners, it was found: "The committee are not aware that the substitutions have been prejudicial to any class of schools". (4) The claim in reference to the text-books in the other grades was also dismissed by the following statement, "The statement of the petitioners, therefore, that the Council of Public Instruction imposes a uniform course of instruction and a uniform selection of text-books alike for all schools, whether public, Protestant or Roman Catholic, seems not to be made good. (5)

(1) 1894 Sess. Papers Vol. 26 No. 17 Paper 40a p.21.
(2) Ibid. p. 21.
(3) Ibid. p.22.
(4) Ibid. p. 24.
(5) Ibid. p. 25.

The committee held that the exceptions in the sections of the ordinance dealing with the certification of teachers covered the grievances complained of by the petitioners. It also regarded the provision in reference to religious education as substantially the same as that previously in force.

After pointing out that disallowance would merely dispose of the Council of Public Instruction but that the laws would remain the same, the committee reported that, "The Committee of the Privy Council have not ascertained that any act done or regulation made by the Council of Public Instruction under the ordinance of 1892 is contrary to the rights and interests of the minority in the Territories". (1) Thus disallowance was refused, but inquiry into the complaints of the petitioners, by the Executive Committee, was suggested. The committee recommended "that the Lieutenant Governor be ordered to review the ordinances and amend these or pass regulations in order to meet any grievances". (2) The report of the committee, as outlined, was approved of February 5th 1894.

The Roman Catholics were dissatisfied with the report and a further memorial was addressed to the Governor General by Archbishop Taché. Protest was made against the report, His Grace contending that the statement given by Mr Haultain had been accepted as final by the committee and that no investigation had been undertaken by the committee. He contended that an investigation would disclose the extent to which the Roman Catholics had been deprived of their rights. Thus for a second time in the history of school legislation in Western Canada the Canadian Privy Council was charged with having given a decision without taking the trouble to investigate the charges in a proper manner. Previously the protest was made by the supporters of public schools in reference to the decision of the Canadian Privy Council which resulted in the intriduction of remedial legislation to affect the Province of Manitoba. This second occasion it is the supporters of the separate schools who complain similarly.

In his memorial the Archbishop compares the Acts of 1888 and 1892 and contrasts the rights and privileges enjoyed by the Roman Catholics under the former and under the latter. The later act is alleged to be ultra vires. In the memorial it is charged that the report of the committee was founded upon incomplete and erroneous data. The perturbation in Manitoba and the North-West was a result of three causes namely: violation of Royal promise, it being alleged that the promise to respect rights and privileges had particular reference to seperate schools; sacrifice of Federal autonomy, under this heading it was contended that the federal autonomy was being sacrificed to provincial autonomy and that the Dominion authorities were withholding unwarrantedly their powers of disallowance; and thirdly the abandonment of the minority to the unjust vexation of the majority. The claims made in the memorial are almost the same as those made before the Canadian Privy Council in reference to the Manitoba School Act. The claim was made that separate schools had been stipulated for in the settlers' Bill of Rights. This subject has been fully discussed in relation to the Manitoba School Act. Reference was also made to the Bill of Rights submitted to Donald A. Smith which, by the 9th article asked for a grant of $26,000.00 for school purposes.

The memorial failed to secure the repeal or amendment of the ordinance which remained in force until 1901. At which time a new ordinance was enacted.

(1) 1894 Sess. Papers Vol.26 No.17 Paper 40c at p.26.
(2) Ibid. p.27.

The effect of the ordinance of 1901 was to create a Department of Education. An educational council was formed composed of five persons at least two of whom were to be Roman Catholics. The members of the Council were appointed by the Lieutenant Governor. The jurisdiction conferred upon the council included; (a) Inspection of schools, (b) Examination, training, licensing and grading of teachers, (c) courses of study; (d) Teachers' Institutes; (e) texts and reference books. The English language remained the official language of the schools though the right to a primary education in French was recognized. No alteration was effected in regard to religious instruction. That is, religious instruction was not to be compulsory for pupils whose parents did not desire them to receive it. Such instruction was limited to one-half an hour immediately preceding the closing of school. It also provided that school could be opened by the repition of the Lord's Prayer.

The system established by the ordinance referred to remained in force and was in active operation at the time when the Provinces of Alberta and Saskatchewan were formed from part of what was then termed, the North- West Territories. The formation of these provinces transfers any further discussion of school legislation to the provincial realm. As has been pointed out Saskatchewan furnished one appeal to the Judicial Committee of the Privy Council but there have been none from Alberta.

In the discussion of the "School Question" in relation to the North-West Territories the effect of the situation in Manitoba cannot be overlooked. At the time of the difficulties in the North-West the Manitoba School question was a very live issue. The claims made in connection with the question, both in Manitoba and the North-West are practically identical. The basis of the claim are the same to a great extent and the appeal to the Governor General showed the same method of attack on the new legislation. Possibly the failure in the Barrett case, of the Roman Catholics, to gain their object, prompted in the Territories, the appeal to the Governor General without an attack being first made upon the constitutionality of the Act, through the courts. It is interesting to note the extent of the contests between Roman Catholics and Protestants in reference to education. It would, perhaps, be better to refer to the struggles as a contest by the Roman Catholics in an effort to obtain control of the education secular as well as religious, of their children. Thus in the North-West when as yet it was sparsely settled and a part of the Dominion, only as a territory, the question arose and required the Dominion authority to determine the respective rights of the parties to the contest. There can be no doubt of the importance attached to the subject and therefore we can further appreciate the momentousness of the problem with which the judicial committee had to deal. In cases in which the legal rights are different to what some consider are at least moral rights, it involves a great amount of tact and judiciousness to compromise the opposing parties and keep peace. Possibly no struggle is so bitterly fought as one involving religion. To be a religious martyr, or to pose as such, has a particular appeal to some classes of people.

CHAPTER VI.

PRINCE EDWARD ISLAND.

Although there have been no references to the Judicial committee of the Privy Council from the Island province, in regard to school legislation, yet, Prince Edward Island has not been immune from the strife and discord and consequent divisions and bitternesses arising out of the determination of the educational system to be used in the province. In order to make this discussion more national in it's scope and because of the force and effect of decisions of the Judicial Committee with reference to school legislation in other provinces, upon the Prince Edward Island legislation, we are justified in devoting our attention to that province for a time, at least.

Prince Edward Island, unlike the other Maritime provinces, did not enter confederation until 1873. The British North American Act 1867, by section 146, made provision for the admission of other colonies into the confederation upon addresses from the Houses of Parliament of Canada and the Legislature of the uniting colony, upon such terms and conditions as expressed in such addresses. By proclamation of June 26, 1873 Prince Edward Island was admitted as a province in the new Dominion to take effect on and after July 1, 1873. The addresses setting ou the terms and conditions of entry made no specific reference to the subject of education. It was stipulated therein that "the provisions of the British North American Act 1867, shall, except those parts thereof which are in terms made or by reasonable intendment, may be held to be especially applicable to, and only to affect one and not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by these resolutions, be applicable to Prince Edward Island in the same way and to the same extent as they apply to the other provinces of the Dominion, and as if the colony of Prince Edward Island had been one of the provinces originally united by the said Act".

In Prince Edward Island the passage of an Act in 1877 repealing the then existing school act, 31 Vict. cap. 6, precipitated the trouble which was to cause a great deal of anxiety and strife before a settlement was reached. Upon the passage of the Act of 1877 a petition was presented by the Roman Catholic Bishop of Charlottetown, to the Lieutenant Governor of the Province asking him to withhold his assent to the bill. The Lieutenant Governor declined to accede to the petitioners request. So the Governor General of the Dominion was petitioned, upon the authority of the 3rd subsection of the 93rd section of The British North American Act.

The petition to the Governor General asked that the Act be disallowed, it being claimed that sections 15 and 16 of the Act discriminated against the Roman Catholics. The second basis of the claim was that the right to separate schools had been recognized by section 17 of the School Act of 1868, and that the new Act could not deprive them of rights which they had enjoyed at the time of their entry into confederation.

Sections 15 and 16 of the new Act, to which opposition was made, enacted; that unless there was an attendance at the schools, established by the Act, of 50% of the eligible school children, there should be a reduction in the grant and the deficit so resulting, section 16 enacted, was to be made up by the parents of the children failing to attend.

The section upon which the right to separate schools was claimed read as follows:

"Any teacher, male or female, who shall in addition to the qualifications required by this Act, be qualified to teach the French language and who shall have taught in his school, French to a class of not less than 10 pupils, shall, on producing from the Board of Education, a certificate of his competency to teach the French language, be entitled to receive 8 pounds over and above the salary which such teacher may be entitled to under this Act provided further that the

number of teachers receiving the aforesaid increase of salary shall not amount to more than twenty".

The petition also asserted that there existed in the province a system of separate denominational schools recognized as such by law and known as Anglo-Rustico schools.

Before proceeding to narrate the events it will be best to regard briefly the school system established by the Act of 1868 and also that established by the Act of 1877. Under 31 Vict. cap.6 a system was established under the control of a Board of Education consisting of eleven members. This Board was empowered to license teachers, upon examination, define school districts, allotting visitors for such districts. Each district was entitled to have five trustees to operate the school. The Act contained a provision for a bonus of five pounds to a teacher who, in addition to the orther requirements, was able to teach French. This Act contained provisions for what are known as Anglo-Rustico schools. That is, in large districts two schools might be established for the sake of convenience, rather than one in each district, as the Act provided for. Teachers of such schools were required to have licenses and comply with the provisions of the Act.

The Act of 1877 provided for a Board of Education consisting of the Executive Council, a chief superintendent, (appointed by the Lieutenant Governor), and the principal of the provincial college. The Act was administered chiefly through the superintendent assisted by a secretary and three inspectors. Inter alia the Board had the following powers: To frame regulations in reference to the organization, government and discipline of the schools; to establish Normal schools; appoint three inspectors and settle their qualifications; divide the province into school districts; classify schools and teachers; grant and cancel teachers' licenses and prescribe text-books and apparatus. The schools were to be supported by local assessment together with assistance from the provincial treasury. Teachers' salaries were according to their qualifications. Section 92 of the Act provided that the schools were to be non-sectarian. Section 15 and 16 have already been set out.

Section 104 of the Act of 1868 gave the Board of Education power to establish schools similar to the Anglo-Rustico schools. The Roman Catholics claimed that under the authority of that section 31 schools had been established. They further asserted that in those schools books were used similar to those in use in the separate schools of Quebec. Likewise it was claimed that "it had been the custom and legally recognized right "in operation" in 1868 for the Roman Catholic priest, in whose parish the school was situated to attend as frequently as he deemed necessary and instruct them in the verities of the Roman Catholic faith".

Upon receipt by the Governor General of the petition, notice thereof was sent to the Lieutenant Governor of Prince Edward Island. Following this notification an Executive Council Meeting was called and a resolution passed and forwarded to the Governor General. (1) In part the resolution read "The Council in committee emphatically deny the statements in these memorials in so far as they assert or imply the existence of any separate denominational schools in this province recognized by law or supported at the public expense. They arrert without hesitation that no such schools exist or have existed for many years, and that the law does not and did not at the time confederation took place recognize or sanction them". (2) The resolution submitted that any books of dogma used were not authorized and that sections 15 and 16 of the Act were merely re-enactments of previous acts. The Roman Catholic claims were further denied in unqualified language in the following words:

(1) 1894 Sess. Papers Vol. 27 No. 17 Paper 40b.
(2) Ibid. at p. 9

"These documents assert in very positive and distinct terms that there has existed in this island for years past a class of separate denominational schools recognized as such by law and known as the Anglo-Rustico schools" - to this statement the Council in Committee give a most unqualified denial - they assert in distinct and unequivocal language that, if such denominational schools do exist, they exist in defiance of the law and without the knowledge of the government or of the educational authorities". (1)

In the resolution the council explained the term "Anglo-Rustico" as having been the name of one particular school district, which, being overpopulous was allowed two schools and for convenience the French attended one school and the English the other. But both of the schools were under the control of the educational authorities. By a special provision the above arrangement was made applicable to other large districts. The resolution reviewed the legislation of the province in regard to education. The Act of 1852 recognized the French-Acadian schools by permitting a French-Acadian teacher, producing a certificate from the priest that he was a member of his congregation and was capable of teaching certain branches and had taught them, to receive a certain salary. It did not sanction, however, the use of any but the prescribed books and by section 51 provided that the Board might withhold the allowance from any school not observing the books, regulations and system of education prescribed by it. An Act of 1854 provided for a five pound increase to French-Acadian teachers provided they opened English classes. In 1860 French-Acadian teachers were required to pass the same qualifying examinations as other teachers or receive a reduced salary. In 1861 this latter provision was re-enacted together with a proviso for the withholding of the grant from schools not following the prescribed course. In 1863 these enactments were repealed and French-Acadian teachers no longer recognized.

In addition to the resolution the Attorney General of the Province gave reasons for the passing of the Act of 1877.(2) In these he sets out the system of education in force in the Province and traces the legislation. "Our system of education has, from it's first introduction in 1852, been free and non-sectarian". It is pointed out that the Board of Education, comprising the Executive Council, the superintendent of Education and the Principal of the Provincial college, were responsible for the administration of the Act. As regards the Roman Catholic claims based upon the enactment of the 72nd section of 31 Viet. cap. 6 the Attorney General refutes the statements of the Bishop saying: "The Roman Catholics of this province are virtually marked out by exceptional legislation for heavy taxation, far over and above what must fall upon other religious denominations" in these words "To this serious charge I must submit respectfully my most positive denial". He proceeded to deal with the claim that the Roman Catholics had exercised the right of having separate schools for many years and said that evasion of law carried on successfully gave no prescriptive rights. "No member of the Legislature would have dared publicly to state that any such schools existed with the sanction of law". (3) He further pointed out that the identical rights which the Roman Catholics asserted in 1877 that they had enjoyed for many years, they had petitioned for in 1875.

The Minister of Justice, Hon. Mr Laflamme investigated and reported. His report held that the Act was not ultra vires. He was of the opinion that there was no right in the Roman Catholics to have separate schools for such schools had not existed previous to confederation. The report did suggest and advise that the Act be altered in regard to the provision for special taxation upon the parents of children failing to attend the schools. It is pointed out that at the best the Roman Catholic claim amounted to nothing more than that there had been toleration of a system not protected by law.

(1) Ibid. p. 11.
(2) "
(3) " p. 10.

After receipt of the report of the Minister of Justice in reference to the Act complained of, the Lieutenant Governor of Prince Edward Island was notified to the following effect:

Ottawa 12 Nov. 1877

"The committee of the Privy Council have had under consideration the report hereto annexed from the Hon. the Minister of Justice, on the Act passed by the Legislature of the Province of Prince Edward Island, at it's last session entitled the "Public Schools Act 1877" and for the reasons therein given they respectfully advise that the said Act be left to it's operation, and that a copy of the said report and of this minute be transmitted for the information of the Lieutenant Governor of Prince Edward Island."

As regards the religious instruction question it is interesting to note the provisions of the Act which was attacked. By section 92 it enacted: "All schools conducted under the provisions of this Act shall be non-sectarian and the bible may be read in all such schools and is hereby authorized and the teachers are hereby required to open school on each school day with the reading of the sacred scriptures by those children whose parents or guardians desire it, without comment, explanation or remark thereupon by the teachers, but no children shall be required to attend during such reading, as aforesaid, unless desired by their parents or guardians."

This provision is very similar to that in the New Brunswick school law from which the Prince Edward Island system was adopted. The Act at present in force in the Island is essentially a re-enactment of the act referred to as regards religious education. The schools are non-sectarian. The Bible is authorized to be read but without comment, explanation or remark by the teacher. It is usual to open the school with the Lord's Prayer. (1)

Thus was the school legislation of Prince Edward Island upheld and left to it's operation. According to the judgment of the Canadian Privy Council, if such a decision can be called a judgment, the Roman Catholics endeavored to have acts, done in violation or evasion of the act, but successfully done, declared to be rights recognized by law. In this they failed and the jurisdiction of the local Legislature to make laws in relation to education was upheld. In one more province of the Dominion it had become necessary to determine the rights of the local Legislature and of certain classes in relation to this troublesome question of education. In this instance the courts of law were not referred to. However, the effect and force of the decision of the Judicial Committee of the Privy Council in the New Brunswick case must be regarded. It is to be noted that the Attorney General of the Province in his reasons for the passing of the Act says: "The construction to be placed upon the 93rd section of the British North America Act has already been determined by the Privy Council in "ex parte Renaud", an appeal arising out of the New Brunswick education law, and the council will cheerfully submit to any construction which the application of the rules and principles laid down in that case may lead His Excellency the Governor General to put upon the Public Schools Act 1877". (2)

Our immediate object is to discover the effect of Privy Council judgments upon the school systems of the Dominion. It is evident that the decision in "Ex parte Renaud" had great bearing upon the Prince Edward Island case, as one of the parties sets out the willingness to be bound by the decision and interpretation of the Act dealing with the jurisdiction of the provinces in relation to education. Certainly in investigating the complaints, the Minister of Justice did not overlook the decision mentioned and was prepared to recognize it and be governed by it. Thus we can say that the Judicial Committee of the Privy Council played an important part in the determination of the educational system of Prince Edward Island.

(1) Canada Year Book 1916-17
(2) 1894 Sess. Papers Vol. 27 No. 17 Paper 40b p. 15.

CHAPTER VII.

The "School Question"in the other Provinces.

While the purpose of this work is the discussion of the effect of judgments of the Judicial Committee of the Privy Council upon the school laws of the different provinces comprising the Dominion of Canada, yet so many of the provinces have furnished appeals to that tribunal or have been so directly concerned or effected by appeals from other provinces that it is justifiable to regard briefly the systems of Education in operation in the provinces from which no appeals have been made. Thus our view of the educational systems of the Dominion will be rounded out.

For these reasons we will turn our attention to the Province of Nova Scotia. There was no reference to the Judicial Committee from that province but the Nova Scotia Act was the basis of the New Brunswick "Common Schools Act of 1871 which was the subject of litigation in the case "Ex parte Renaud" which has been fully discussed in reference to New Brunswick. The judgment in that case upheld the constitutionality of the act. As to the system then in force in Nova Scotia: "It is a public non-sectarian system of schools established by Sir Charles Tupper in 1864. Under it there is a common fund, common inspection, common text-books, common certification of teachers and common rights and privileges. In the City of Halifax one of the public schools is attended by Roman Catholic children. The school commissioners or trustees have made a practise of assigning to this school such of their certificated teachers as are Roman Catholics and after school hours the Parish Priest is at liberty, by practise, to go to the school and give the children of his flock religious instruction. Protestant children also attend this school but as the religious instruction is after school hours it does not interfere with them". (1)

In Nova Scotia the question of devotional exercises is left to the local board of trustees; subject to the conscience clause, but such exercises are in fact, usually held". (2)

Thus we see that there was a system in Nova Scotia analagous to that in New Brunswick. That is, the Roman Catholics enjoyed certain privileges but these were not rights guaranteed to them by legislation. Certain practises had developed but these were indulgences and an action to prevent them being deprived of them would not be sustained in the courts for Nova Scotia was one of the Provinces which first united to form the Dominion of Canada and in reference to it the 93rd section of the B.N.A. Act 1867 applies and confirms those rights and privileges recognized by law and only such rights and peivileges.

The Province of British Columbia was admitted into the Dominion of Canada by order in council passed upon addresses of the Parliament of Canada and the legislative Assembly of British Columbia. The union dated from the 20th day of July 1871. The terms upon which the Pacific province entered were set out in the schedule attached to the order in council and had been agreed upon by Dominion and Provincial authorities. No distinct reference was made to the question of legislation with reference to schools. This would therefore come within the provision to the effect that the provisions of the British North American Act 1867 applicable to all of the provinces originally uniting in so far as they were applicable should apply to the province as if it had been one of the provinces originally uniting.

(1) The Globe, Toronto Sat. April 4, 1896.
(2) Canada Year Book 1916-17 reprinted in "Education in Canada" Pubd. by the Dept. of Trade & Commerce.

The system of education existing in the Pacific provinces is carried on under a Council of Public Instruction which is composed of the Members of the Executive Council. The Provincial Secretary acts as Minister of Education. A superintendent of education has the supervision and direction of inspectors and schools. For educational purposes the province is divided into municipal and rural school districts and there are a third class known as assisted schools. The municipal schools are sub-divided into four classes according to the amount of the grant. The local management of the schools is in the hands of trustees. The schools are supported partially by grant and partially by assessment. In British Columbia the public schools are conducted on strictly secular and non-sectarian principles. The school law provides that: "Highest morality shall be inculcated but no religious dogma or creed shall be taught". It is permissible to open or close the schools by the recitation of the Lord's Prayer. (1) Thus we see that no religious denomination has the right to use the schools of British Columbia as a theological seminary for the propagation of it's creeds or dogmas.

Very little need be said in reference to the school system of the Province of Alberta. The two Provinces of Alberta and Saskatchewan were created at the same time by identical acts. The provisions in the "Alberta Act" in reference to legislation affecting education are identical with those in the Saskatchewan Act. Both Provinces were carved out of the North-West Territories so that the school systems at the entry of the Provinces into confederation were identical. Naturally the present systems are very similar. In Alberta the administrative unit in educational matters is the school district. A school district may be formed when there are eight resident children of school age and four resident ratepayers within the district which usually comprises about four square miles. The schools are supported by government grants and by local assessment. The local rates are collected by the municipalities. The system is organized under the Department of Education with a cabinet minister at the head and a deputy who, being a permanent officer, is largely responsible for the operation of the system.

"Separate schools may be established by the minority, whether Protestant or Roman Catholic, subject however to identical regulations as to courses, certificates, inspection etc." (2)

As regards the religious instruction to be imparted in the schools, the local boards of trustees have power to prescribe it's extent but such instruction may only be given during the half-hour immediately preceding the close of school in the afternoon, though it is permissible to open school by the recitation of the Lord's Prayer. (3) These provisions, it will be noticed, are practically those of the ordinance of the North-West Territories which was petitioned against but allowed.

Thus we have very briefly regarded the systems of education in operation in the various provinces of the Dominion. The effect of the judgments of the Judicial Committee of the Privy Council are obvious. That such decisions have had an effect outside of the Province from which the appeals originated is also manifest. The greater study and attention given to the subject gives a higher conception of the influence of the highest tribunal for the trial of colonial causes.

(1) Canada Year Book 1920 p. 126.
(2) Ibid. p. 126.
(3) Canada Year Book 1916-17 p. 139ff.

CHAPTER VIII.

CONCLUSION.

Before writing "finis" to this study it would be fitting and proper to briefly review and summarize the results and effects of the decisions of the Judicial Committee of the Privy Council upon the educational systems of the Dominion of Canada. In dealing with the subject in the preceding chapters, necessarily, to establish historical continuity, many incidents were narrated in which the Judicial Committee had no part. This had the tendency to relegate to the background the immediate objects of this work. In order therefore, to epitomize, the direct results will be studied. Possibly the most satisfactory method of doing this is to sum up the results in each province.

In New Brunswick we find that the judgment of the court of final resort upheld the constitutionality of "The Common Schools Act" which established a system of public non-sectarian schools maintained by public assessment. The judgment in this case affirmed that of the highest court of New Brunswick. In effect the judgment in this case declared that the right to establish and control the system of education for the Province of New Brunswick rested in the government of the province. The opponents of the Act endeavored to have it declared that practices carried on without sanction of law, without regard for the law, and in no manner recognized by the law, were practices recognized and protected by law. Practices carried on in the absence of law, they claimed, entitled them to continue with such, after the establishment of law dealing with the subject matter. Had their contention been sustained the right to legislate in reference to education, by the B.N.A. Act vested in the provincial Legislatures, would have been reduced to practically a non-entity. The various religious denominations would have possessed practically complete control over education and the imparting of secular knowledge would have been secondary to the inculcation of religious creeds and dogmas. The judgment in declaring that no religious denomination possessed such control enabled education to be given without the propagation of creeds or dogmas though without divesting it of an accompaniment of instruction as to moral and Christian principles. The judgment declared that no religious denomination had by law a right to separate schools but that all parties were liable to assessment for the maintenance of the public schools.

In effect the judgment in the case "ex parte Renaud" upheld the principle of provincial autonomy. The extent to which the opposition to the Act was carried has been referred to already at length. A direct clash between Federal and provincial authorities became imminent with the possibility and probability of results disastrous to confederation. The province refused the demands or rather commands of the Dominion. The Act was declared to be intra vires. The Dominion interference had been premature and unwarranted but this experience was not profited by, by the Dominion. The rights of the province to legislate in reference to matters of provincial concern was upheld.

Attention has already been directed to the effect of this judgment upon the school legislation of the other provinces in the Maritimes.

In Manitoba the public school system owes it's existence to the judicial committee of the Privy Council. This statement is true of Manitoba moreso than of New Brunswick in this respect, that the decision declaring the Manitoba legislation in reference to public schools to be intra vires reversed a unanimous decision to the contrary of the Supreme Court of Canada. Thus this judgment made possible the establishment of a public school system conducted under a governmental department with a cabinet minister at it's head. That is, the government could control the standards of the system to which it made grants. It is not the intention to enter upon a discussion of the respective merits of public and separate schools but there are

some advantages of the former that are worthy of note. Under a public system of schools definite standards of teaching and of grading can be maintained. This is a great advantage for a system to have. If denominational schools exist under the control of the various denominations the standards of teaching and of grading are as varied as the number of such denominational schools, and more so. For the standard of teaching varying would also alter the standard attained by the pupils. Under the public system there is one central authority to maintain the standards.

Further, as admitted by the Roman Catholics in their attack on the Act, separate schools could not compete with the better equipped public schools. Then, if such denominational schools were maintained the standard of equipment would be that much lower, because the different denominations could not afford to get the equipment. Whereas, it would not mean so much distributed over a greater number and there would be no unnecessary duplication. Thus we can say that the opportunity of a better and wider education for the children of Manitoba is resultant from the judgment of the Judicial Committee in the Barrett case.

By many the decision in the other Manitoba appeal is regarded as over-ruling, in effect, the first decision. Such is not the case and any apparent inconsistency disappears when the two are regarded in their proper light. The Brophy case decided that there was a right of appeal to the Governor General in council from the acts of the Legislature affecting the rights and privileges of the minority in relation to education. Basing their opinion upon a statement of facts alleged to exist, by one side to the action, but of which no opportunity of contradiction was given to the other, the Judicial Committee gave, what may be regarded as obiter dicta, an opinion that certain rights were affected. The judgment itself can only be regarded as establishing that what was formerly regarded as a remedy conferred rights.

The decision in the Brophy case is of constitutional importance for the reason that it established a further restraint upon the power of the provincial legislature to legislate with reference to education. This was, that such legislation might be subject to appeal to the Governor General.

A further outcome of this judgment leads to a proposition which has not been settled. That is, as an outcome of the judgment referred to, the Canadian Privy Council endeavored to usurp judicial powers. Upon the report of the Judicial Committee being received a mock sitting was held. Counsel for the Province of Manitoba strenuously objected to the assumption of any judicial powers by the council and stated that he was instructed to in no manner recognize such a sitting as a legal tribunal. This was the first and only time when a mockery of this kind was carried on. No attempt has since been made to exercise any appellate jurisdiction of this nature but the attempt is worthy of note.

In Ontario the judgments of the Judicial Committee established the rights of the provincial Legislature to control the standard and qualification of teachers. In Ontario separate schools exist by law. An attempt was made to increase the power of the trustees to such an extent that the schools would have become mere agencies of the church. The Roman Catholics endeavored to have it established that mere membership in a religious order granted such member the right to teach in the separate schools, regardless of intellectual attainments. This attempt failed and thus a uniform standard for teachers was established.

The rights of the Department of Education to issue regulations governing and regulating the schools was established and the attempt to have the trustees declared a law unto themselves , thus having power to operate the schools according to their own ideas, regardless of the law, also failed.

It was further established that the principle and grounds upon which separate schools were granted was the difference in religion and not the difference in language.

The importance of this judgment is obvious. To admit of the contention to the contrary would be to further reduce the provincial control of education and place it in private hands. It would further increase the diversity of teaching standards and enhance the difficulty of attaining anything like a uniform system throughout the province.

As a whole the result of the judgments of the Judicial committee has been to protect the authority of the provincial governments in reference to education. This has been done in two ways. First by upholding provincial autonomy when Dominion interference seriously threatened it. And secondly to uphold the authority of the provincial governments against the attempts of private bodies to assume complete control of education. In the majority of the cases the province was held to have the power, when the Dominion government was endeavoring to dictate the policy to be adopted. Thus had provincial autonomy been maintained. Likewise education has been freed from being a mere school or agency for the inculcation of dogma. And the youthful mind can gain knowledge untrammelled with creeds and doctrines.

In the "School Question", probably more than in any other, the advantage of appealing to the judicial committee is obvious. This is not a reflection upon the Canadian judiciary. An analysis of the decisions of the Judicial Committee shows, that in the majority of the cases the judgments of the provincial courts have been affirmed. As regards Manitoba this is true the judgment in the Barrett case was restoedd. The decision of the Supreme Court of Canada in both of the Manitoba cases was overruled by the judicial committee. There is no doubt, however, that the decisions of the Privy Council have more weight and prestige due to the fact that the members of that tribunal are persons of greater experience in law and more conversant with the fundamental and basic principles of law. While such right of appeal to that body remains we are enabled to avail ourselves of this advantage.

There is another distinct advantage in the appeal to the judicial committee in questions of the nature of those in reference to education. As has been pointed out, no phase of legislation so vitally interests every citizen as the educational enactments. In the discussion of such questions we find religion almost inextricably intermingled. We find that here religious passions are given vent to. The difficulties are further increased when a division also exists on the basis of nationality. When a question is complicated by the entry of these two considerations it assumes a serious aspect. Under such circumstances as these, it is often fairest to all parties that a disinterested tribunal adjudicate upon the rights of the respective parties to the dispute. Such is the advantage gained by the reference of appeals in educational problems to the judicial committee. The Canadian Judiciary being interested parties or holding distinct views, in spite of the effort to judge of a dispute as impartially as possible, would be superhuman if unswayed by natural prejudices. This is especially true in matters directly involving diametrically opposite religious viewpoints. When a member of the judiciary is placed in such a position the endeavor is to find sufficient law to support the personal opinion and not to discover the respective rights of the parties. In being privileged to appeal to the judicial committee access is obtained to an impartial tribunal. The persons who adjudicate upon the matter in dispute are so far removed from the vicinity of the strife that they are uninfluenced by the passions or prejudices aroused in respect thereof. The mind is clear of any extraneous matter with the result that a judgment can be given based upon the legal situation entirely. The courts are established to judge according to the law and certainly under such circumstances the fairest judgments are obtainable.

Naturally, in many quarters the judgments of the judicial committee are regarded as unsatisfactory. Such is always the case, the losing party still unwilling to admit being in the wrong. Much is argued on the basis that the unfamiliarity of the judicial committee with conditions in this country renders it unfitted to judge Canadian appeals. Certainly that condition is an advantage in the settlement of questions in which passions play so prominent a part. The influence of the judicial committee of the Privy Council in the determination of the educational systems of Canada has been great and far-reaching in extent. Those who favor government control of education undoubtedly regard the judgments of that body as satisfactory. The opponents of that system will possibly hold a different opinion. But to the unprejudiced mind it will appear that the decisions have been for the greatest good of the greatest number. In the past a great influence has been wielded upon education. In fact the system has almost been determined by the judicial committee. What the future may hold in store we are only able to guess at.

FINIS.

A P P E N D I X . I.

No 58 Bill 1896.

The Remedial Act (Manitoba).

Preamble Whereas the Roman Catholic minority of Her Majesty's subjects in the Province of Manitoba, appealed to His Excellency the Governor General in Council under the provi-
1870 C.3 sions of §22 of Chapter three of the statutes of 1870 intituled "An Act to amend and continue the Act 32 & 33 Vict., Chapter three and to establish and provide for the government of the Province of Manitoba" from certain Acts of the Province of Manitoba, passed in the 53rd year of
Man. 1890 Her Majesty's reign, chaptered 37 & 38, affecting the ri-
CC. 37 & ghts and privileges of the said Roman Catholic minority
38. in relation to eduantion namely: "An Act respecting the Department of Education" and an "Act respecting Public Schools" and whereas appeal having been duly heard and decided by His Excellency the Governor General in Council, such provincial law as seems to the Governor General in Council requisite for the due execution of the provisions of the said section twenty-two of the said first mentioned Act has not been made and the circumstances of the case require that the Parliament of Canada should make a remedial law as hereinafter enacted for the due execution of the provisions of the aforesaid section twenty-two: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows.

Lt-Gov. to appoint s.s. Board of Educat^n 1. The Lieutenant Governor in Council of the Province of Manitoba shall appoint, to form and constitute the Separate School Board of Education for the Province of Manitoba, a certain number of persons not exceeding nine all of whom shall be Roman Catholics.

Tenure of office. (2) Three of such members recorded at the foot of the list of the members of the Board as entered in the minute book of the Executive Council of the Province of Manitoba shall retire and cease to hold office at the end of each year, which for the purpose of this Act shall be held and taken to be the second day of October annually, and the names of the members appointed in their stead shall be placed at the head of the list and the three members so retiring in rotation and annually may be eligible for reappointment.

2. If the Lieutenant Governor in Council does not within three months after the coming into force of this Act make appointments to the Separate School Board, or if the Lieutenant Governor in Council does not fill any vacancy that may from any cause occur in the Separate School Board within three months after the occurence of such vacancy; then in such cases His Excellency the Governor General shall make any appointment not made by the Lieutenant Governor, in council.

3. The Department of Education may, for the observance of the Separate Schools make regulations for the registering and reporting of daily attendance at all the separate schools in the province, subject to the approval of the Lieutenant Governor in Council.

Dept. of Educat. may make certain regulations (2) The Department of Education may also make from time to time such regulations as they may think fit for the general organization of the separate schools.

Duties of Board Control of Schools 4. It shall be the duty of the Board of Education. (a) To have under it's control and management the separate schools and to make from time to time such regulations as may be deemed fit for their general government and discipline and the carrying out of the provisions of this Act.

(b) To arrange for the proper examination, grading and licensing of it's teachers, and for the withdrawing of licenses, upon sufficient cause; provided that the

standard of qualification for teachers shall be in secular matters the same as that at any time prescribed for teachers of other schools of a public character established under the statutes of the Province of Manitoba provided further that all teachers' certificates issued by or under the authority of the Department of Education shall be recognized by the Board of Education;

School-books, etc. (c) To select all the books, maps and globes to be used in the schools under it's control; provided however that no book, map or globe shall be selected unless such book, map or globe has been authorized for use either in the High or Public Schools of the Province of Manitoba or in the separate schools of the Province of Ontario;

Plans of school-houses. (d) To approve of the plans for the construction of school-houses.

School sites etc. (e) To make regulations regarding the selection of school sites, the size of school grounds, and the formation and alteration of all school districts under it's care;

Special Depts. (f) To make and enforce regulations for the establishment and operation of departments in such of it's schools as it may deem suitable for the preparation of candidates for the annual examination of teachers and for matriculating at the University of Manitoba, and for the doing of general literary work corresponding to the standard required for those examinations, and to

Grants to Schools. give special aid to such schools from the funds at it's disposal, not exceeding in the aggregate one-twentieth of it's appropriation; provided that no school shall be entitled to receive such special aid that does not comply fully with the regulations made by the Board for it's operation; provided further that each department shall be established only with the consent of the local board of school trustees.

Meetings of Board. 5. The Board may, whenever they shall see fit, appoint and hold a meeting of such Board, in any part of the Province, and such meeting shall be as valid as if held in the City of Winnipeg which shall be the usual place of meeting of such board or section.

Vacancies. 6. Any member of the Board absenting himself from the meetings of the Board for six months unless from sickness or absence from the Province, shall be considered to have ipso facto resigned his position, and the superintendent of the Board shall notify the Provincial Secretary of the vacancy so caused, and the member appointed to replace him shall hold office only for the unexpired term of the member whom he replaces.

S U P E R I N T E N D E N T S .

Appointment of Supt. 7. The Lieutenant Governor in Council shall appoint one of the members of the Board to be the superintendent of the separate schools, and the superintendent shall be the secretary of the Board if no appointment shall be so made the Board shall appoint one of it's members to be the superintendent.

His Duties 8. In addition to the duties specified in other clause of this Act, it shall be the duty of the superintendent, and he is hereby empowered;

To call meetings. (a) To call all meetings of the Board, and also to call any school meeting required to be held under this Act when the parties who are otherwise invested with the power to do so either neglect or refuse to exercise it;

As Executive officer. (b) To have as the executive officer of the Board, the general supervision and direction of the schools and of the inspectors that may from time to time be appointed; and to have authority to take measures to enforce and carry into effect all the provisions of this Act and the regulations issued under it's authority that relate to the schools within their respective jurisdictions.

To explain and enforce laws and regulations.

(c) To give such explanations of the provisions of this or any other school act, and of the regulations and decisions of the Board, as may be required, and to enforce the same; and

Annual report

(d) To prepare during the first term of the school year a report to the Lieutenant Governor in council upon all the schools under his supervision for the previous school year, accompanied with full statistical tables, shewing among other things the number of children of school age in each district as shewn by the census returns for that year, the number who have attended school and the average attendance as shewn by the semi-annual returns of the different teachers, and such report shall also contain a statement of the receipts and expenditures of all government money furnished to the Board for school purposes. a copy of such tables, statements and returns to be presented to the Board and to be retained of record by the Board.

Supt. pro.tem.

9. In case of the temporary absence of the superintendent he may, with the sanction of the Lieutenant Governor in Council or of the Board appoint a member of the Board to act for him.

S. D.s to be formed by municipalities.

10. For the purposes of this Act the Council of each Municipality may establish and alter when necessary the school districts within it's own bounds, and in case any school district or proposed district should be included in more than one municipality, it's formation or alteration may be made by the Reeves and Mayors of the municipalities and the local inspector or inspectors of schools; provided that the formation or alteration of school districts by by municipal councils or by the Reeves and Mayors of municipalities, and the local inspector or inspectors shall be made under regulations that may from time to time be issued for that purpose by the Board of Education, and all by-laws and resolutions for forming or altering school districts shall be submitted to the Board and receive it's sanction before they can be carried into effect; provided also that upon the refusal or neglect of any council, or of the Reeves and Mayors and local inspectors of the municipalities concerned to establish or alter any school district, when petitioned to do so by at least five heads of families resident therein, or upon an appeal against the action of such body forming or altering any school district, the Board shall be empowered to confirm or annul the action appealed against; or to form or alter such school district as they may think fit within three months after their receipt of such appeal or petition; provided further that no school district shall be organized under this Act unless there shall be at least ten Roman Catholic children of shool age living within the same, and situated not over three miles from a point that may in any wise be fixed as the first school site.

sanction of Board

No. of R.C. children required

Re-adjustments of S. D. after issue of debentures.

11. In case of the re-adjustment of any school district subsequently to an issue of debentures by such district, and before the said debentures have been fully paid, all lands added to the school district by such re-adjustment shall thereafter be liable to taxation in common with the remaining portion of the school district for the purpose of meeting payments on such debentures as they become due; and all persons assessed for lands detached from any school district after an issue of debentures in such district and before the said debentures have been fully paid, shall in case of their assessment for the payment of debentures in any other school district be entitled to receive back all sums for which they may hereafter be assessed for payments on debentures in any school district except that in which they reside.

Arbitrators in cases of re-adjustments.

12. In all cases of re-adjustment, the inspector of schools for the district, jointly with one competent person to be appointed by each Board of Trustees, whose district the readjustment may affect, who shall be non-residents of the said district shall form a board of arbitration

whose duty it shall be to value the existing school-ho uses, school sites and other school property or assets within the territories re-adjusted, and ascertain the respective debts and liabilities thereof, and the said Board or a majority of it's members shall thereupon adjust and settle in such manner as they may deem just and equitable the respective rights, claims and demands of the parties interested; and their award in writing, including their own reasonable costs and charges may be enforced in the County Courts of the province, and which said award shall in all respects be subject to appeal to the Court of Queen's Bench the same as awards in civil matters.

Their pay.

2. The said arbitrators shall be entitled to receive for their attendance at the said arbitration the same remuneration with travelling expenses as paid to municipal councillors for their attendance at meetings of their respective councils, and such payments shall be paid equally by the school districts represented in the arbitration.

School districts in cities and towns.

13. The school district of any incorporate city or town, shall be the same as the territorial limits of said city or town, except as hereinafter provided; but nothing herein shall prevent the union of a portion of the adjoining municipality or municipalities to a city or town or a portion of a city or town for school purposes as provided in section 10 of this Act; and the first school meeting in any city or town or school district, including a city or town after it's incorporation, shall be called by the city or town clerk within two weeks after the holding of municipal elections, or in case of his failure to do so by the superintendent as soon afterwards as convenient.

Calling of first school meeting.

School wards in cities and towns.

(2) It shall be lawful for the Board to form or subdivide any city or town or any school district which includes or is included in a city or town, into wards for the election of school trustees, such number of wards not to exceed six in any one case and to determine the number of trustees not exceeding two to represent each ward when the number of such wards is more than one, and to fix the date of the first election of trustees after such formation or subdivision; which election shall take place in each ward at the call of the superintendent and in such cases the trustees that may then be in office will so remain in office only until such election takes place irrespective of the date of their appointment; provided that the existing wards for municipal purposes in any city or town until such formation or subdivision is effected by the Board; provided further that the Board shall have power to maintain it's districts as it existed before the incorporation of said city or town, or so to extend it's district as to include Roman Catholics residing in the vicinity where no separate school is in operation, but in such cases the children of the residents within the city or town limits only shall be computed in the division of school taxes levied on the incorporated bodies within the city or town.

Proviso.

School districts where there is no municipal organization.

(3) In portions of the province not organized into municipalities the Board of Education shall have authority to form and alter school districts under it's authority and the trustees of such school districts are hereby empowered to assess the same and to levy and collect taxes therein for the support of their schools.

SCHOOL MEETINGS.

Calling of all meetings after the first.

14. All school meetings after the first shall be called by the respective boards of trustees in accordance with the form of notice furnished by the Board of Education.

Proceedings at school meetings.

15. At every school meeting as authorized and required to be held under this present Act, the Roman Catholic ratepayers who are supporters of the separate schools within the district, or if it is a first meeting in a new district then the Roman Catholic freeholders and householders present at such meeting or a majority of them;

Chairman.

(a) Shall select a chairman; and the chairman of the meeting shall decide all questions of order subject to an appeal to the meeting, and in the case of equality of votes he shall give the casting vote but he shall have no vote as chairman, and the chairman shall take the votes in the manner desired by a majority of the electors present, unless a poll be demanded by any elector present when he shall be the returning officer.

Secretary.

(b) Shall elect a secretary; and the secretary shall record the proceedings of the meeting in a book kept for that purpose; and if a poll be held he shall record the names of the voters, and the candidate or candidates for whom each elector votes; and such poll shall be held on the day of such meeting and shall be kept open until four o'clock in the afternoon, unless at any time one hour shall have elapsed without a vote being recorded.

(c) A copy of the minutes of all school meetings shall be transmitted to the superintendent within ten days after the holding of such meeting.

FIRST ELECTION OF TRUSTEES.

First election of trustees

16. At the first meeting in any new school district such meeting being duly organized by the election of a chairman and secretary, the majority of the Roman Catholic resident freeholders, and householders present, of the full age of twenty-one years shall elect three persons to be school trustees for such district; and

Tenure of office.

(a) The first person elected shall continue in office for two years to be reckoned from the annual meeting next after his election and until his successor has been appointed.

(b) The second person elected shall continue in office for one year to be reckoned from the annual meeting next after his election and until his successor has been appointed; and

(c) The third and last person elected shall continue in office until the next ensuing annual school meeting, and until his successor has been appointed.

First election in cities and towns.

17. In all school districts which include or may hereafter include a city or town not divided into wards for school purposes, there shall be elected three trustees at the first school meeting therein, whose term of office shall be the same as that of trustees elected at the first meeting in rural school districts, and in all school districts divided or hereafter to be divided into wards for school purposes, there shall be two trustees elected for each ward, at the first meeting, one of whom shall hold office one year from the next annual school meeting thereafter and the other until thenext annual school meeting and in each case until a successor has been appointed; the trustee to hold office for the longer term shall be the first nominated if no poll be held and in case a poll is held, the person obtaining the highest number of votes and in case there be an equality of votes, the returning officer by his vote shall designate the person to serve the longer term, and afterwards there shall be elected at each annual meeting a number of trustees equal to the number of those whose term of office has expired and these newly elected trustees shall remain in office three years in towns and cities not divided into wards for school purposes, and two years if such are so divided, and in each case until a successor has been appointed.

Annual meeting of separate school supporters in rural districts.

18. On the first Monday in February in each year a meeting of the Roman Catholic ratepayers of each rural school district, of the age of twenty-one years and upwards, who are supporters of the separate schools within the district, shall be called by the Board of trustees by notice posted by them on the school-house if there be one or in three public places in the district at least two weeks in advance; and the majority of the electors present shall choose one or more persons (as the case may be) to be school trustees for the district, and two auditors, and shall receive and decide upon the annual report of the trustees and the report of the auditors, and transact such other business as may have been set forth in the notice calling the meeting.

Notice of meeting.

(2) All special meetings of the ratepayers in a school district shall be called by the trustees or the superintendent by posting up notices in at least three public places within the school district at least two weeks previous to such meeting; the business to be considered at such meeting shall be plainly set forth in the notice calling the same, and no other business may be legally transacted at a special meeting but such as may be held in accordance with these provisions.

action in case of failure to hold meeting.

19. When in a district from any cause the annual meeting has not been held on the first Monday in February, the trustees shall appoint another day for the holding of such meeting; provided that if the trustees fail to call such meeting the superintendent shall call it.

Investigations.

(2) If within thirty days after the holding of a school meeting a complaint be made in writing to the superintendent regarding the legality or regularity of the proceedings at such meeting he may cause an investigation to be held, and in his discretion declare the proceedings void and cause another meeting for the same purpose to be called or may ratify and confirm such proceedings and any decision so rendered by such superintendent shall be final.

Annual meetings in cities and towns

20. In incorporated cities and towns all annual meetings in each ward shall be held in the first Monday in February in every year commencing at ten o'clock in the forenoon and shall be called by the chairman of the board of school trustees. It shall be the duty of the said board to furnish the chairman of every such meeting with a copy of the list of persons entitled to vote in such ward and in all cases of cities and towns not divided into wards for school purposes, there shall be but one voting place in such city or town.

Election of chairman secretary and trustees.

(2) The ratepayers present at the said meeting shall elect a chairman and secretary and shall proceed to nominate a trustee or trustees to take the place of those whose term of office has expired.

In case the number of nominations does not exceed the number of vacancies to be filled before the hour of eleven o'clock the chairman shall declare the persons so nominated to be elected; but should the number of persons nominated exceed the number of vacancies to be filled a show of hands shall be taken and the person or persons having the majority of the votes shall be declared elected should no ratepayer present demand a poll.

If a poll be demanded the chairman shall be the Returning officer and shall record the votes given, and at four O'Clock the poll shall be closed and the person or persons having the majority of the votes shall be declared elected provided that if one hour elapses during such poll without a vote being recorded, the chairman shall then declare the poll closed.

Meeting of trustees

(3) The first meeting of the Board of trustees in a city or town shall be held on the day following the annual meeting.

Who may vote at school elections.

21. Except as provided for in the first election of trustees and in the case of any person or persons who have been included in a school district after the last preceding assessment and levy of taxes within the same, no person shall be entitled to vote at any school meeting whatever unless he shall have been assessed in respect of property within the district and shall be a Roman Catholic and a separate school supporter within the district and in case an objection be made to the right of any person to vote in a district, the chairman shall at the request of any elector present require the person whose right of voting is objected to, to make the following declaration (or affirmation)

Declaration to be made by person objected to

"I, A.B. do declare (or affirm) that I am entered on the assessment roll of the Municipality of in respect of property within the school district that I am of the full age of twenty-one years and that I am legally qualified to vote at this election".

thereupon the person making such declaration shall be permitted to vote and not otherwise.

Who may vote at school meetings in cities and towns.

22. In incorporated cities or towns no person shall be entitled to vote at any school meeting for the election of school trustees, or on any school question whatsoever, except in the district to which he belongs, and unless his name be upon the list for the ward in which he offers to vote; and in case any objection be made to the right of any person to vote in a ward, the chairman or Returning Officer of the election shall at the request of any elector present, require the person whose right of voting is objected to, to make the declaration set forth in section 21 of this Act.

Thereupon the person making such declaration shall be permitted to vote.

SCHOOL ASSESSMENT.

Annual School assessment.

It shall be the duty of the council of each municipality to levy and collect each year by assessment upon the whole of the real and personal property of Roman Catholics other than that of those who have given the notice prior to assessment referred to in section 28 of this Act, within the municipality (as the case may be) that is liable to taxation under the Municipal Act, a sum equal to twenty dollars for each month that the trustees of each school district wholly included within the municipality, may declare as hereinafter provided that they have kept and will keep a teacher under engagement at a salary, in each of their schools during the current school year; and for each school district partially included within the municipality, they shall levy and collect in like manner a proportionate part of twenty dollars per month, as fixed by the local inspector in the manner hereinafter provided, for each of their schools, and the said council may in their discretion levy and collect in like manner an additional sum not exceeding twenty per cent of the amount hereinbefore required to be levied. The improper inclusion in any such levy of any person or property not liable thereto shall not vitiate the whole levy.

It's amount

(2) From the moneys so levied and collected the council shall upon the first day of December following, pay over to the trustees of each school district wholly or partially included in the municipality one half the sum of twenty dollars per month or the proportion thereof alloted to each district as hereinbefore provided, and upon the thirty-first day of January following shall pay over the whole of the balance due to the said trustees. Provided that no board of trustees shall be entitled to receive a larger total amount for the school year than twenty dollars for each month within the same that they have actually had a teacher engaged at a

salary in each of their schools, and in case of doubt or dispute as to the number of months, the certificate of the superintendent shall decide.

Provided further that all rural schools kept in operation over seven months of the school year which have not secured an average attendance of resident pupils of the period of operation equal to forty per cent of the enrolment for the same period shall be subject, in the discretion of the council or councils concerned, with the consent of the superintendent of separate schools and not otherwise, to a reduction not exceeding one half of the amount otherwise payable for each month it was kept in operation over seven months; and this percentage of attendance may be obtained on the application of any council from the superintendent after the close of the last half of the school year.

Statement by trustees as to employment of teacher.

(3) It shall be the duty of the trustees of each school district wholly situated in a municipality to lay before the council at it's first meeting after the 31st day of July in each year a statement of the number of months in the current school year during which they have kept and will keep a teacher engaged at a salary in each of their schools, and before the 31st day of January following shall notify the clerk of the municipality if they have failed to keep a teacher engaged as so stated by them, and in such case give the actual number of months they have had such teacher engaged.

If district is not wholly in one municipality.

(4) It shall be the duty of the trustees of each school district that extends within the bounds of two or more municipalities or of a city or town and rural municipality to obtain from the last assessment roll of each municipality concerned a copy of that part of the said roll relating to the school district as included within the three mile limit as defined in this Act, and forward the said copies or other assessment roll before the 1st of July to the local inspector, with a statement of the number of months in the current school year during which they have kept and will keep a teacher under engagement at a salary in each of their schools, and the amounts of their estimates exclusive of the legislative grant required for the use of their schools, and the said inspector shall equalize the rate of assessment of the portion of each municipality included within the school district as hereinbefore described and shall allot to each municipality it's due proportion of the sum of twenty dollars per month of the current year that the said trustees have declared their school had been and will be kept in operation, and shall send notice thereof by mail to the clerk of each municipality concerned before the 15th day of July, and the said inspector shall in like manner allot the remainder of the trustees' estimates and return the copies of the rolls with his equalization and an allotment duly made out thereon to the trustees, and the said trustees if they fail to keep a teacher under engagement during the school year for the full time stated by them shall before the 31st day of January following notify the local inspector of the actual time and he shall make an allotment based upon such time, and notify each council concerned, and the said trustees and the said inspector shall be entitled to receive from the trustees for each allotment made as hereinbefore required the sum of five dollars and the said inspector shall be empowered, if he deem the amount of the trustees' estimate, over and above the municipal levy to be excessive or improper, to demand an explanation thereof from the trustees, and in his discretion to reduce the said amount with the consent of the superintendent and not otherwise.

Neglect or false statement by trustees.

(5) Any Board of school trustees that fails to notify their council or the local inspector (as the case may be) in due time of the number of months their school is to be kept in operation during any school year as hereinbefore required, shall not be entitled to receive a larger amount in such year from the municipal levy than the council or the local inspector (as the case may be) may in their discretion fix for them, and any board of trustees failing to keep a teacher under engagement the full time stated by them shall not be entitled to receive their second instalment of school moneys due on January 31st until they have satisfied the clerk of the Municipality of the actual time such teacher has been under engagement and any board of trustees wilfully making a false statement in regard to such time shall forfeit their second instalment.

Unpaid balances.

(6) Any moneys collected by a council from a general levy for school purposes that remain over in any year after all due payments therefrom have been made to the school districts entitled to the same, shall be deposited in some chartered bank by the said council and afterwards used only to pay or advance moneys to school districts within the municipality in the year or years following, unless the Board of Education shall require the same moneys or any portion of them to be paid over at any time to any school district or school districts wholly or partly included in the municipality that the said board may consider in especial need of such assistance.

Action of Bd of Education if Municipality fails to collect tax.

(7) If any municipal council shall at any time refuse or neglect to levy and collect the amount required by this section to be levied and collected then the Board of Education shall itself make such levy and collection and for that purpose shall obtain a copy of the last assessment roll of the municipality; and the Board of Education shall strike and levy a rate for raising the amount of tax to be collected and place the amount of tax to be collected from each person or property opposite his name or the description of his property and place the roll in a collector's hands for collection and such roll handed to him shall be his warrant for the collection of the taxes entered upon the same and in collecting he shall possess and be vested with the same power and authority and be subject to similar obligations and penalties as a collector employed by the Municipality under the statutes of the province and the Board of Education may in it's own name bring a suit in any court of competent jurisdiction for the collection of any such tax, and shall have power to sell and convey the said land for the said levy and shall proceed (as nearly as may be) in the manner prescribed by the Municipal and Assessment Acts of said province regulating the levy and collection of taxes and the sale of land therefore. The improper inclusion in such levy and subsequent proceedings of any person or property not liable thereto shall not vitiate the whole levy or proceedings.

special tax by order of the trustees.

24. For the purpose of supplementing the Municipal levy it shall be the duty of the Board of trustees of each school district wholly or partially included in a municipality before the first day of July in each year at a meeting of the said Board, to make an estimate of the sum over and above the amount of the municipal levy and the legislative grant, if there be any such grant, that they shall require for school purposes during the current school year, and resolve whether the amount of the said estimate shall be collected by the municipal council or councils concerned or by a collector or collectors appointed by the said board.

Mode of collection.

(2) In case the board of trustees resolve to levy and collect by their own authority the amount of their estimate, it shall be the duty of the said board, if their school district be wholly included in a single municipality, to obtain a copy of the last assessment roll of that portion of the municipality that includes all the lands liable for taxation for their school within their school district, and these lands shall be such within the district as are wholly included within a distance of three miles in a direct line from the school-house or site, and each quarter section or parish lot partially included within the same, except such as may contain a residence, the occupant of which must travel four miles or over by the public road from it to reach the school-house, and the said board of trustees shall strike and levy a rate for raising the amount of the said estimate and place the amount of tax to be collected from the whole of the property real and personal, of Roman Catholics (other than that of Roman Catholics who have given the notice prior to assessment referred to in section 28 of this act) included within the aforesaid limits opposite his name or the description of his property, and place the roll in their collector's hands for collection, and such roll handed to him shall be his warrant for the collection of the taxes entered upon the same, and in collecting he shall possess and be vested with the same powers and authority and be subject to similar obligations and penalties as a collector employed by the municipality under the statutes of said province. The said collector may be the secretary-treasurer of the trustees or some other person not a trustee, and his remuneration shall in no case exceed five per cent of the amount collected; and if the secretary-treasurer act as collector his remuneration for both offices shall not exceed the amount fixed for the office of secretary-treasurer by this Act. The said collector shall give security to the satisfaction of the trustees for the faithful performance of his duties to the amount of the trustees' estimates, and if such security be not given the trustees shall, ipso facto, be his sureties. The improper inclusion in any such levy of any person or property not liable thereto shall not vitiate the whole levy.

Pay of collectors

Security to be given by him

Return by collector.

(3) The said collector shall pay over the taxes as collected to the secretary-treasurer and shall return his roll to the trustees on or before the 31st day of January following his appointment.

If District is not wholly in one municipality.

(4) In case the school district is included within the limits of two or more municipalities, whether city, town or rural municipalities, the trustees shall levy and collect the amount of their estimates according to the allotment made for them upon the equalized assessment rolls returned to them by the local inspector in the same manner, under the same conditions and with the same powers given by this act to the trustees of school districts wholly included within the limits of a single municipality for the collection of their estimates. The improper inclusion in any such levy of any person or property not liable thereto shall not vitiate the whole levy.

If Municipality is required to collect the tax.

(5) In case the board of trustees resolve to have their estimates levied and collected by the council or councils of the municipality or municipalities in which their school district is wholly or partially included, they shall transmit a copy of such resolution with the amount of their estimate, or in case of school districts included within the limits of two or more municipalities the proportion of their estimate alloted by the local inspector to the council of the municipality concerned, at or before it's

first meeting after the 31st day of July of the year in which such estimate is made, and it shall be the duty of the council of such municipality, employing their own lawful authorities to levy and collect such estimate or proportion thereof upon the real and personal property aforesaid and pay the whole amount so collected to the trustees at the dates upon which they are required to pay them the amounts due from the municipal levy. Provided that in case of any school district wholly situated within a municipality the council shall be empowered if it deem the estimate of the trustees for a special rate excessive or improper, to demand an explanation thereof from the trustees and in it's discretion to reduce the said estimate with the consent of the superintendent, and not otherwise.

Collection of arrears.

(6) For the purpose of collecting the arrears of school taxes for any year the trustees of any school district wholly or partially included in a city, town or rural municipality may in any year transmit a list of such arrears to the council of the municipality concerned with the estimate of the taxes to be collected for them; for the current school year, and thereupon the said council shall levy and collect the said arrears and pay them over to the trustees on the same dates as they are required to pay over the taxes collected for the current year. The trustees may, if employing their own lawful authority bring a suit in a court of competent jurisdiction for the collection of such arrears whether they have been assessed by the said trustees or by the council of the municipality.

Definition of personal property.

(7) In all cases where the assessment of personal property is mentioned in this act it shall be held to mean such classes of personal property as may be liable to assessment for school purposes under any of the statutes of the said province or under the Municipal and Assessment Acts.

Sale of land for arrears.

(8) When the whole or any portion of the school tax levied upon any land has been due and unpaid for more than one year after the 31st day of December of the year when the rate for the same was struck such land shall be liable to be sold for taxes in the manner provided by the Municipal and Assessment Acts of the Province of Manitoba for the sale of lands for taxes; and it shall be the duty of each municipal collector or treasurer or other officer, as the case may be, to include such lands in all lists of lands submitted by him to the mayor or reeve for authentication and in all other lists of lands to be sold for taxes; provided that in cases where school trustees levy the school taxes by their own authority, it shall be the duty of the secretary-treasurer to supply the council with a certified list of lands liable to sale for arrears of school taxes from time to time, and it shall be the duty of each council , upon receiving the proceeds of any sale of lands for school taxes, forthwith to hand the said proceeds over to the school trustees entitled to the same, less the costs of such sale, interest and the excess over the amount of the school tax.

If any municipal council shall neglect or refuse to take the proceedings provided by this subsection for the sale of lands for taxes then the trustees shall have power to sell and convey the said land for the said taxes and shall proceed (as nearly as may be) in the Manner prescribed by the Municipal and Assessment Acts of the said province regulating the sale of lands for taxes.

Liability of Municipal Council

(9) All the general school and special school taxes actually collected remaining unpaid to the trustees by the council after the date fixed by this Act

for taxes collected by it.

for payment of the same shall be a debt due by such council to the trustees, except arrears of taxes levied by the authority of the trustees themselves.

School Tax to be a special charge on property.

25. The school assessment shall be paid equally according to valuation upon ratable real and personal property of Roman Catholics (other than those who have given the notice prior to assessment referred to in section 22 of this Act) in the school district and shall be payable by and recoverable from the owner, occupier or possessor of the property liable to be rated, and shall, if not paid, be a special mortgage and not requiring registration to preserve it, on all real estate and a special charge and lien upon all personal property liable to assessment to the value of five hundred dollars belonging to bona fide owners of real estate of at least forty acres.

Assessment of corporations where there are both public and separate schools.

26. The corporations situated in a locality where there are both public and separate school districts established, shall be assessed only for the school district of the majority; yet, out of such assessment, the council of the local municipality, city or town shall give to the school district of the minority a part of such assessment in proportion to the number of catholic or non-catholic children of school age, as the case may be, according to the census.

Exemptions from taxation.

27. The following real and personal property shall be exempt from taxation under this act:

(a) Real estate held in trust for Her Majesty or for the public uses of the Province.

(b) Real estate vested in or held in trust for the municipality and used for municipal purposes.

(c) Real estate held in trust for any tribe or body of Indians.

(d) Every place of worship, church-yard, burying grounds, educational or charitable institution, public roadway, square, jail, hospital, agricultural and horticultural societies, with the land requisite for the due enjoyment thereof.

(e) Lands allotted by the Dominion Lands Act to half-breed children of heads of families under the age of eighteen years not disposed of by them.

Who shall be assessed.

28. The Roman Catholic ratepayers of a school district, including religious, benevolent and educational corporations, shall be liable to be assessed for the support of the separate schools in the district.

If for sep. schools not for others

(2) No Roman Catholic who is assessed for the support of a separate school shall be liable to be assessed, taxed or required in any way to contribute for the erection, maintenance or support of any other school whether by provincial law or otherwise; nor shall any of his property in respect of which he shall have been so assessed be liable.

Option of ratepayer in certain cases.

(3) But any Roman Catholic who is possessed of property liable to assessment within a separate school district, which is also within the limits of some public school district, established by or under the provisions of the Legislature of the Province of Manitoba, may at his option require that such property shall not be levied upon for the support of separate schools by giving to the secretary-treasurer of the separate school district and the clerk of the municipality a written notice to that effect at any time prior to the completion of the assessment roll, and thereafter such property shall be liable to be assessed for the support of the said public school until such option be withdrawn which may be done by written notice of such withdrawal given by said Roman Catholic owner to the officials before mentioned.

Notice of option.

No such notice whether of an option to support public schools or of withdrawal of such support shall in any way affect the liability of the person giving the notice or of the property for any amount assessed or levied thereupon previously to such notice for the support either of separate or public schools, as the case may be.

Position of such ratepayers.

Such person, while his property is not levied upon for support of separate schools as aforesaid shall not enjoy any of the privileges, nor shall he be eligible to vote, or liable to perform any of the duties provided by this act.

As to land owned by R.C. and occupied by non-R.C.

29. Land owned by a Roman Catholic who has not given the notice prior to assessment referred to in section 28 of this act, but occupied by a non-catholic and situate within a separate school district shall be assessed for the support of separate schools in the district and shall not be assessed, taxed or required to contribute for the erection, maintenance or support of any otherschool whether by provincial law or otherwise.

Cases of tenants in common of different creeds.

30. Whenever property is held jointly as tenants or as tenants in common by two or more persons, the holders of such property being Catholics or Non-Catholics, and such property being situated within a separate school district, such of those persons as are catholics, who have not given the notice prior to assessment referred to in section 28 of this act shall be assessed for the support of the separate schools of the district in respect of their respective interests in the property and shall not in respect of such property be assessed, taxed or enquired in any way to contribute for the erection, maintenance or support of any other school, whether by provincial law or otherwise.

Maximum rate in cities and towns.

31. In incorporated cities and towns no rate shall be levied at any general or special meeting, for the building, repairing or improving of a school-house to exceed in any one year one cent on the dollar on the rateable property in the district.

SCHOOL TRUSTEES.

School trustees to be a corporation.

32. The school trustees in each district shall be a corporation under the name of "The trustees for the Separate School District of No. in the Province of Manitoba", and it shall be lawful for the Board of Education to assign a name and a number to designate each school district under it's authority. The trustees of each school district shall have perpetual succession and a common seal, if they think proper to have one; they may sue and be sued, and shall generally have the same powers which any other body politic or corporate has or ought to have with regard to the purpose for which it is constituted.

Tenure of office of trustees.

33. Except as elsewhere provided the time of holding office as such trustee shall be three years. Provided that the trustees in any year elected shall remain in office until their successors are elected.

declaration by Trustees.

34. Every trustee after his election and before he shall be entitled to sit or vote as such at any meeting of the Board shall make before the chairman of the school meeting at which he was elected or before a justice of the peace a declaration, which he shall produce and deposit with the secretary-treasurer of the Board, and which shall be in the following form:

I, A.B. do solemnly declare that I will truly, faithfully and to the best of my ability and judgment discharge the duties of the office of school trustee for the separate school district of to which I have been elected.

Dated at the the day of

Taken before me etc.

J.P.(or chairman as the case may be)

Meetings.

35. The school trustees shall meet within ten days of receiving notice of their election for the purpose of choosing a chairman and a secretary-treasurer and transacting such other business as may be required.

Chairman.

(2) In the absence of the chairman from any meeting of the Board, the then assembled school trustees shall elect one of their number to act in that capacity for the time being who shall then be vested with the same powers and privileges as the ordinary chairman.

Voting at meetings.

36. In the meetings of the trustees all questions shall be decided by the majority of votes, and the chairman shall have the right to vote, but in case of an equality of votes the question shall be decided in the negative.

Duties Trustees in rural Dists.

37. It shall be the duty of the Board of Trustees of rural school districts;

as to school property.

(a) To take possession and have the custody and safekeeping of all school property which has been acquired or given for school purposes under the Act in their district, and such corporation shall be empowered to acquire and hold as a corporation, by any title whatsoever any land, moveable property, moneys or income for school purposes, and to apply the same according to the terms on which the same was acquired or received but they shall not without the sanction of the Board of Education have power to alienate or dispose of any school real estate.

Schoolhses, books.

(b) To do whatever they may judge expedient with regard to building, repairing, renting, warming, furnishing, and keeping in order the schoolhouse or houses in their district, it's furniture and appendages, and the school land and enclosures held by them, and for procuring apparatus and school books for their school, and when there is no suitable school- house belonging to the district, or when a second schoolhouse is required, then to build, rent, repair, furnish, warm and keep in order a house and it's appendages to be used as a school-house.

Employt. of teachers.

(c) To contract with and employ teachers duly qualified under this act and such contracts shall be in writing and signed by the contracting parties.

Salaries.

(d) To provide for the salaries of teachers and all other expenses of the school.

Monthly visit to schls.

(e) To visit the school once a month for the purpose of seeing that it is conducted according to the prescribed regulations; and the school trustees or any of them shall if necessary, make any suggestions in accordance with the said regulations with a view to the more effectual working of the school, and should the teacher fail to act upon them, the matter shall be referred to the whole body of trustees who shall report to the superintendent.

Enforcement of discipline.

(f) To see that the discipline of the school is properly enforced; at duly called meetings of the board of trustees to expel the unmanageable pupils on the complaint of the teacher; and the holding of meetings to inquire into the same.

Keeping of records and a/c s.

(g) To keep a record of their proceedings, signed for each sitting by the chairman and secretary, and also correct accounts of their receipts and expenditures with reference to the school or schools under their control, mentioning especially what relates to each school and such account shall at all reasonable hours be open to the inspection of the ratepayers of the school district.

Admission of pupils.

(h) To admit as pupils of the school any children whose parents or guardians are not assessed and do not contribute through assessment to the support of the school, and to charge and collect a sum not exceeding fifty cents per month from each such pupil.

Keeping schools open.

(i) To have their schools in operation for at least six months every year when there are not less than ten children of school age in their district.

Annual report.

(j) To transmit to the superintendent the half-yearly and annual reports and the census returns, required by him, on the form provided, and to cause their books and accounts at any time to be laid open to his inspection or that of any person appointed by him for that purpose.

Special meetings.

(k) To call special meetings for any purpose whatever, whenever required to do so by the majority of the ratepayers or by the superintendent.

Case of non-Catholic child attending sep. school.

(l) Whenever any child of non-Catholic parents attends a separate school the trustees shall make such arrangements as will without discomfort or annoyance to the child, enable the child either to be absent during religious exercises and instruction or to be otherwise engaged during that period; special regard is to be had to the wishes of the parents of every such child in respect of such matters.

Notice of meetings.

38. No act or proceeding of a board of trustees shall be deemed valid or binding on any party which is not adopted at a regular or special meeting of the corporation of which notice shall be given either by one of their body or the person chosen by them to act as secretary-treasurer, to all the trustees and a majority of the trustees at such meeting shall have full authority to perform any lawful business.

Trustees may not have contracts with Bd.

39. It shall not be lawful for any trustee to enter into a contract with the corporation of which he is a member or to have any pecuniary claim on such corporation, except for a school site, or as a secretary treasurer, and then only when he shall have been appointed by the other two members of the corporation.

Not to be tchr or inspect.

40. No school trustee shall be a teacher or inspector of any school in his school district.

Refusal to act as trustee.

41. Any person elected to the office of school trustee who refuses to serve as such shall forfeit the sum of five dollars for the use of the school district, and his neglect or refusal to take the declaration of office within one month after his election, if resident at the time within the district shall be construed as such refusal, after which another trustee shall be elected to fill the place; but no school trustee shall be re-elected except by his own consent during the four years next after his going out of office.

Resignation non-residence

42. Any person chosen as trustee may resignwith the consent expressed in writing of his colleagues in office and a continous non-residence of three months shall cause the vacation of his office.

Filling of vacancies.

43. In all cases of vacancy another trustee shall be elected at a meeting called by the trustees or trustee remaining in office, and the person so elected shall hold office for the unexpired term of the trustee whom he replaces; provided that if the vacancy is not filled within one month, the superintendent shall appoint some qualified person to fill it.

Sickness of trustee.

44. In all cases of prolonged incapacity arising from sickness, no election or appointment to fill the said office shall take place unless the said incapacity has been established by the certificate of a physician deposited with the secretary-treasurer and the vacancy arising from such incapacity shall date

from the day of the deposit of such certificate.

Trustees to have access to assessment rolls.

45. The board of school trustees or their secretary-treasurer shall have at all times during office hours free access to the assessment roll of the municipality, and they shall be permitted to copy therefrom that portion of it having reference to their respective school districts, together with the names and amount for which each individual is assessed.

Absence or non-residence vacates seat.

46. If any trustee in cities or towns shall absents himself for three months from the meetings of the board of school trustees, without being authorized so to do by a resolution of the board, or if he ceases to reide in the school district for a period of three months consecutively, his seat shall thereby become vacant.

DISQUALIFICATION OF SCHOOL TRUSTEES.

Trustee must be resident taxpayer.

47. Except as provided in clause 17 no person shall be eligible to be elected or to serve as a school trustee who is not a resident ratepayer of the district which he proposes to represent.

Felon etc. not eligible.

48. No person convicted of a felony or of an infamous crime shall be eligible to be elected as a school trustee

SECRETARY-TREASURER.

Duties of sec-treas.

49. The trustees shall appoint as secretary-treasurer one of their own number or some other competent person, and the duties of such secretary-treasurer shall include;

(a) The correct and safekeeping and producing (when called for) of the papers and moneys belonging to the corporation.

(b) The correct keeping of a record of all proceedings in a book procured for that purpose; and

(c) The collecting receiving and accounting for of all school moneys, whether from the government or otherwise; for the purpose of public school education within his district and the distributing of such moneys in the manner directed by the majority of the trustees.

Security.

50. Every secretary-treasurer shall before entering upon his duties as such give security to the school trustees by a bond signed and acknowledged before a justice of the peace, and such security shall be given by at least two solvent sureties, jointly and severally to the satisfaction of the board of school trustees, and for the total amount of the moneys for which the secretary-treasurer may at any time be responsible whether arising from the local school fund or from any particular contribution or donation paid into his hands for the support of schools and such security shall be renewed or changed whenever it's renewal or change is required by the school trustees.

If security is not given.

(2) In school districts in which the secretary-treasurer has not given such security the trustees shall be personally liable and responsible for any loss that may be caused through his default, except in case they shall within three months from the date of their election as trustees or his appointment as secretary-treasurer, enter a written protest against the refusal of the majority to exact such security.

Duties as to assessment rolls.

51. When the assessment is made by the trustees the secretary-treasurer shall receive the assessment roll from the assessors and shall thereupon notify each person whose name appears on said roll of the amount for which he is assessed and such assessment

roll shall be open at all reasonable hours to the inspection of any ratepayer of the school district, and every such ratepayer shall be entitled to receive a copy thereof on payment to the secretary-treasurer at the rate of five cents per name on such roll.

Notice of sitting Court of revision.

(a) The secretary-treasurer shall notify each person whose name appears on the assessment roll of the date and place fixed by the school trustees for the sitting of the Court of Revision.

(b) The secretary-treasurer shall within one month after receiving the assessment roll from the assessors lay the same before the board of trustees and after the said board have struck the rate he shall receive the roll from them for the purpose of collection.

Annual statment by sec-treas.

53. Every secretary-treasurer shall prepare and submit to the board of school trustees annually, previous to the general meeting of the ratepayers a detailed statement of the receipts and expenditures of the school district for the current school year then expiring and such statement after being approved by the school trustees shall be by them submitted at the annual meeting of the school district, and the secretary-treasurer shall on the payment to him of the sum of one dollar furnish to any ratepayer a copy of such statement.

His remuneration.

55. The remuneration of the secretary-treasurer may in the discretion of the school trustees, be fixed at any amount not exceeding eight per cent on the money received by him, in such capacity, but such remuneration shall include every service which the trustees may require from time to time from the secretary-treasurer, and shall cover all contingent expenses whatever except such as may be specially authorized by the rules and regulations of the board of Education and shall not in any case exceed the sum of one hundred dollars.

Duties of trustees in cities & tns.

54. It shall be the duty of the Board of trustees of cities and towns and they are hereby empowered:

Election of chairman and sec-treas.

(a) At their first meeting after the annual meeting of ratepayers or at some subsequent meeting to elect one of their number as chairman and to appoint one of their number or some other person as the majority of the board may decide to be their secretary-treasurer, to determine the amount of salary to be paid such officer, and to impose by by-law such additional duties as may be required of him by the board of trustees and his appointment shall in all other respects be subject to the same duties, obligations and penalties as are imposed by this Act in the appointment of secretary-treasurers in rural school districts.

Collectors.

(b) To appoint if they think proper to do so, a collector or collectors of school taxes for the city or town who shall discharge similar duties and be subject to similar obligations and penalties and have the full power and authority as a collector of a municipality.

Collection of school tax.

(c) To collect at their discretion from the parents or guardians of children who do not reside or are not assessed within the school district, a sum not exceeding one dollar per month for each pupil attending their schools, and if they think proper so to do to supply all the pupils attending their schools with the necessary text-books and other school requisites and to collect from the parents or guardians a sum not exceeding twenty cents per month for each pupil in payment for the same. Whenever any child of non-catholic parents attends a

separate school the trustees shall make such arrangements as will without discomfort or annoyance to the child enable the child either to be absent during religious exercises and instruction or to be otherwise engaged during that period, and special regard is to be had to the wishes of the parents of every such child in respect of such matters.

Audit of accounts.

(d) To submit the books and accounts of their secretary-treasurer annually to the examination of the city or town auditor, or two auditors appointed by the board for that purpose and to publish in one or more public newspapers or on printed sheets for the information of the public, on or before the 15 th of January in each year, a detailed statement of the receipts and expenditures of all school moneys for the current year and of the assets and liabilities of the board, with a certificate of the said auditor or auditors as to the correctness of such statement.

Returns.

(e) To make all the returns required by the Department of Education or by the Board of Education upon the forms provided and within the time specified by the Department of Education or the board requiring the same.

Action of officers and teachers.

(f) To require the officers and teachers to comply with the law and regulations of the Board of Education in the attendance and classification of pupils and the arrangement of their school exercises, the certification and duties of teachers, the arrangement of school rooms and their furniture and the use of text-books and apparatus.

School property apparatus etc.

(g) To purchase or rent school site or school premises, and rebuild, furnish, repair, warm and keep in order the schoolhouses and appendages, lands, inclosures, and moveable property of the school district, and to provide registers in the prescribed form, suitable maps, apparatus, text and prize books for the schools and if they deem it expedient to establish and maintain school libraries.

Schools and teachers.

(h) To determine under the direction and authority of the Board the number, kind, grade and description of schools (such as male, female, infant, central or ward schools) to be established and maintained, the teachers to be employed, the terms upon which they are to be employed, the amount of their remuneration and the duties in addition to those prescribed by the Board of Education which they are to perform.

Collegiate Dept.

(i) To establish, with the consent and not otherwise, of the Board of Education and to conduct in accordance with the regulations of the same, a collegiate department for the preparation of students for matriculation in the University of Manitoba, for the preparation of students for first and second class teachers' certificates and for the purpose of laying the foundation of a thorough education in the English or French language and literature.

(j) To exercise all the powers and perform all the duties not herein specified, and not inconsistent with those provisions that are given to the trustees of rural school districts by this Act.

Suits by trustees.

55. The school trustees of any school district may institute suits or prosecutions for the school assessments, assessment for school-houses, and for all arrears of the said assessments and the monthly fees, and such suits or prosecutions may be instituted before the County Court or before two justices of the peace of the county and the justices may after judgment cause the amount of the judgment, together with costs thereof to be levied under warrant by the seizure and sale of the goods and chattels of the

defendant, such seizure and sale to be effected by the secretary-treasurer, who shall for that purpose have and execute the powers of sheriff, and who shall be entitled for such services to the same fees as the said officer.

Judgment to be final.

56. In all such suits or prosecutions judgment may be rendered with costs, and no judgment rendered on any such prosecution shall be liable to be appealed from, nor shall any such suit or prosecution be removed by writ of certiorari.

In whose name suit by trustees may be brought.

57. No member of any board of school trustees shall engage in any suit at law as such trustee, as plaintiff, without a special authorization from the trustees, duly entered in the minutes after deliberation; and every such action may be brought either by the chairman or by the secretary-treasurer, in the name of the corporation as the board may see fit.

Suits by other persons.

58. All persons entrusted in any manner with the carrying of this act into effect or qualified to vote at the election of school trustees, shall be competent to institute proceedings under this Act except in cases where it is specially provided to the contrary.

Contestation of election etc.

59. All contestation with regard to the election of school trustees and to the functions and powers assumed by school trustees or any of them, or their officers, or by any person or persons claiming to be such trustee or trustees or officer or officers may by any competent person be brought by a petition setting forth the case, of which a copy must have been served on the parties concerned, before the County Court at it's next sitting and shall then be determined in a summary manner on the evidence adduced; but no resolution, bylaw, proceeding or action of any board of trustees shall be invalid or set aside by reason of any person whose election has been annuled or declared illegal having acted as a trustee.

Prosecution of trustee acting or elected illegally.

60. Any school trustee whose election has been obtained by fraud or strategem or by votes of persons not qualified as electors or any person usurping the function of school trustee or illegally holding that office may be summarily prosecuted at the instance of any party interested or several collectively interested before any of the judges of the County Court of the county in which such election, usurpation or illegal retention of office has taken place for the purpose of declaring such election or such retention of office illegal and such seat vacant.

Judicial investigation of complaint as to election etc.

61. It shall be the duty of any judge of the Court of Queen's Bench or of the County Court of this province or any stipendary magistrate to investigate and decide any complaints which may be made in the manner provided by the statute in that behalf in regard to the election of any school trustee, or in regard to any proceeding at any school meeting; provided always that no complaints in regard to any election or proceeding at any school meeting shall be entertained unless made in writing within twenty days after the holding of such election or meeting. The costs and expenses of such investigation shall be paid by the parties concerned in it as such judge or magistrate may decide, but such judge or magistrate shall not be entitled for his own services, expenses to a greater sum than five dollars per day for each day actually engaged in such investigation.

Trustees to be court to hear complaints against assessments.

62. The school trustees shall be constituted a court of revision for hearing and deciding any complaints that may be made against any assessment made under their authority and shall sit as such at any time fixed by the trustees after eight days notice given by posters in three public places of the district by the secretary-treasurer and the decision of the said court of revision shall be final when the

amount to be paid shall not exceed twenty dollars and the members of the said court of revision shall be empowered to administer oaths while sitting as such; and every appeal from the decision of such court of revision shall be heard and determined finally at the next sitting of the County Court within the jurisdiction of which the school district is situated.

QUORUM.

Quorum to be a majority.

63. The quorum of any corporation, board or body constituted under this Act shall unless otherwise expressly declared be an absolute majority of all the members thereof and the majority of the members present at any meeting regularly held at which there shall be a quorum may validly exercise the powers of the corporation.

ASSESSORS.

Appointment and pay of assessors.

64. The school trustees or in default of appointment by them the Board of Education may appoint one or more assessors from the resident ratepayers, provided the district is not included within a municipality, or the municipal council does not do so, or access is not given to the assessment roll of the municipality, as provided by section forty-five of this act, or the trustees are unable to obtain a copy of the assessment roll for the purposes of section twenty-three paragraph (e) or paragraph (f) or section twenty-four paragraph (a) or paragraph (c) and such remuneration shall be paid to such assessor as the board shall see fit.

Assessors to be sworn.

65. Before entering upon the discharge of their duties such assessors shall be sworn before a justice of the peace to the faithful discharge of their duties, and they shall within two weeks after their appointment proceed to make out an assessment roll of the rateable property of each Roman Catholic ratepayer in the school district or municipality as the case may be other than that of those Roman Catholics who have given the notice prior to assessment referred to in section twenty-eight, and shall deliver the same into the hands of the secretary-treasurer of the school trustees within one month thereafter.

AUDITORS.

Auditors in rural dists.

66. At every annual meeting of any rural school district there shall be appointed by the ratepayers two auditors or persons to examine the accounts of the secretary-treasurer or of the school trustees and report thereon at the next annual meeting and who shall certify to the correctness or otherwise of such accounts.

Their report.

(2) It shall be the duty of the secretary-treasurer to submit his books and vouchers to such auditors when called upon to do so and their report shall be presented to the annual meeting next after their appointment.

Duties of teacher.

67. It shall be the duty of every teacher employed by any board of school trustees:

As to teaching.

(a) To teach diligently and faithfully all the branches required to be taught in the schools according to the terms of his agreement with the school trustees and in accordance with the provisions of this Act or any bylaws or regulations issued under the same

Registers.

(b) To keep in the prescribed form the register of the school.

Discipline.

(c) To maintain proper order and discipline in his school.

Visitors. (d) To keep a visitors book (which the trustees shall provide) and enter therein the visits made to his school, and to present such book to every visitor and request him to make such remarks suggested by his visit.

Access to register (e) To give the trustees and visitors access at all times when desired by them to the register and visitors' book appertaining to the school.

As to trustees (f) To deliver up any school register, visitors' book, school-house key or other school property in his possession on the demand or order of the board of school trustees employing him.

Public examinations. (g) To have at the end of every half year at least a public examination of his school, of which he shall give due public notice.

As to Inspector. (h) To furnish to his superintendent or to the inspector any information which it may be in his power to give respecting anything connected with the working of his school, or in any wise affecting his interests or character.

Form of agreement with tchr. 68. All agreements between trustees and teachers to be valid and binding shall be in writing and signed by the teacher and chairman of the board of trustees employing him, and sealed with the corporate seal, if any, of the trustees.

Retiring or dismissed tchr entitled to pay. (2) Any teacher whose agreement has expired with the board of trustees or who is dismissed by them, shall be entitled to receive forthwith all moneys due to him for his services as teacher while employed by the said board; if such payment be not made by the trustees or tendered to the said teacher by them he shall be entitled to recover from the said trustees the full amount of his salary due and unpaid with ten per cent interest per annum until payment is made, by a suit in a court of competent jurisdiction, and upon his obtaining judgment therein his case shall be a first lien upon all payments due the said trustees from any source whatsoever until the said claim is satisfied.

INSPECTORS.

Appointment of Inspectors. 69. The Board of Education shall have power to appoint inspectors subject to the approval of the Lieutenant Governor in council (who may within one month after the notification of the appointment disapprove of it, whereupon the office shall become vacant) who shall hold office subject to such disapproval during the pleasure of the Board and of the Lieutenant Governor in council, to define their duties and to provide for their remuneration; and such inspectors shall visit the schools and report thereon at least twice a year.

Visitors. 70. The visitor in each school district may be:
(a) The resident Roman Catholic priest.
(b) The members of the Provincial Legislature.
(c) The judges of the Court of Queen's Bench and the County Court.
(d) The members of the Department of Education.
(e) The members of the Board of Education.
(f) The trustees of each school district in their own school district.

Meetings of visitors 71. In incorporated cities and towns a general meeting of the visitors may be held at any time or place appointed by any two visitors on sufficient notice being given to the other visitors; and the visitors thus assembled may devise such means as they may deem expedient for the efficient visitation of the schools, and in concert with the school auth-

orities for promoting the establishment of libraries and the diffusion of knowledge.

SCHOOL ATTENDANCE.

Semi-annual statement of school attendance.

72. The teacher of each school receiving aid shall within ten days after the close of each semi-annual school term, transmit to the superintendent a correct statement of the names of the children attending such school, with their respective ages and distinguishing between the sexes, together with the average attendance during the preceding school term and a statement of the number of months during which the school has been kept open, and such additional information as the superintendent may from time to time require.

ANNUAL CENSUS OF CHILDREN.

Annual census of children

73. The school trustees in each school district shall between the first and thirtieth day of November in every year cause to be made by their secretary treasurer a census of the children in such school district from the age of five years inclusive to the age of fifteen years inclusive, giving the age in each case and mentioning those who attend the school, and such census after being certified by the secretary-treasurer of the school district under oath, signed by at least one of the trustees shall, on or before the tenth of the month of December following be presented to the superintendent whose duty it shall be to keep a copy thereof of record and to forward the same to the Provincial Secretary within the eight days following and no census shall be received by the superintendent after the said date the tenth day of December in each year.

LEGISLATIVE GRANT.

Legislative grant to separate schools.

74. The right to share proportionately in any grant made out of public funds for the purposes of education having been decided to be and being now one of the rights and privileges of the Roman Catholic minority of Her Majesty's subjects in the Province of Manitoba, any sum granted by the Legislature of Manitoba and appropriated for the separate schools shall be placed to the credit of the Board of Education in accounts to be opened in the books of the treasury department and in the audit office.

EXPENDITURE OF SCHOOL MONEYS.

Payment of expenses of supt.

75. From any sum so appropriated to the Board of Education there shall be paid such sums as may be provided by the Lieutenant Governor in council for incidental expenses and salaries of the superintendent.

Payment to schools

(2) Then the sum of seventy-five dollars shall be paid semi-annually to each school which has been in operation during the whole of the previous term and a proportionate part thereof to each school in operation for a part of the same; and in the case of newly established schools, to those which have been inoperation for at least one month of said term; provided that except in the case of new school districts, no school shall be entitled to receive a larger amount than one-half the sum incurred by the trustees thereof for it's current expenses during the term for which such grant is made; provided further that a reduction in the amount to be paid may, in the discretion of the Board be made in the case of any school district in which the average attend-

ance of the resident pupils enrolled for the term has been less than forty per cent of such enrolled number.

Distribution of balance.

(3) The residue remaining after all payments have been made as above provided shall be divided among all the school districts on the basis of average attendance of pupils at the schools of such districts. Provided that in reckoning such average attendance fifty per cent shall be added to the average attendance in rural school districts (being school districts outside the cities, towns and villages).

Schools for which there is no return not entitled to moneys.

(4) No school shall be deemed to be entitled to receive any portion of the legislative grant whose trustees have neglected to transmit within the time provided by law in the preceding year the census returns, or whose annual or semi-annual returns are not transmitted as required by the regulations of the Board or whose school has not been kept in operation at least six months during the school year, unless with the sanction of the Board.

Districts not having Ten children.

(5) No school district shall be deemed to be entitled to receive any money from the legislative grant or the municipal levy in any year that does not contain at least ten resident children of school age, but the trustees of such may levy and collect from their school district the amount of any indebtedness that may fall due within the same during such year.

S. D. must be efficient.

(6) No school district shall be deemed to be entitled to receive money from any legislative grant or fund in respect of any school which is not efficient. Every school is to be deemed efficient until the following conditions have been fulfilled:

School reported inefficient by Inspector.

(a) An inspector appointed or authorized by the Lieutenant Governor in council must report the school inefficient and state specifically the grounds of such judgment and the Department of Education must with the report give formal warning to the trustees that the grant may be withheld under this section at an inspection to be held one year afterwards if the inspector again reports the school to be inefficient.

2nd Report of inefficiency.

(b) The inspector must as a result of a visit to the said school made about twelve months thereafter, again report the school inefficient and again state specifically the grounds of such judgment.

Confirmation by another Inspector.

(c) If the trustees within fourteen days of the receipt of the second adverse report of the inspector appeal against his decision to the Department of Education the school must be visited and such adverse report must be confirmed by another inspector to be named by the Department of Education.

School restored to efficiency.

76. Such school shall be deemed to have become efficient if at any subsequent time an inspector appointed or authorized by the Lieutenant Governor in council so reports and the Department itself is satisfied that such is the case.

Actions of Dept.

77. In all such cases of inefficiency the Department shall have power after considering all the circumstances to continue to regard such school as efficient or to pay such schools a portion of the amount to which it would have been entitled and to give a warning to the trustees that the grant may be withheld next year.

To whom payments shall be made.

78. All payments to school districts shall be made to the order of the duly qualified teacher or teachers of the school, unless it be shown that the salary of such teacher or teachers has been paid in full.

(2) All payments made by the Provincial Treasurer for the purposes of education shall be made

direct to the person or persons entitled to receive the money. Provided no payment shall be made except upon the requisition of the superintendent of Education.

Sep. School defined.

79. Any school not conducted according to all the provisions of this or any act in force for the time relating to separate schools or the regulations of the Board of Education in force under it's authority, shall not be deemed a separate school within the meaning of the law, and such school shall neither participate in the educational fund nor in the legislative grant.

HOLIDAYS.

Holidays.

80. Every Saturday and every statutory holiday shall be a holiday in the public schools; subject however to such regulations respecting holidays as the Board of Education may from time to time make for the schools.

BY-LAWS FOR COMPULSORY ATTENDANCE OF CHILDREN.

Compulsory attendance of children.

81. Every Board of school trustees may with the sanction of the Board, make, amend or revoke any by-laws for their school district, for any of the following purposes.

(a) Requiring the parents or guardians of the Roman Catholic children of not less than seven nor more than twelve years of age, as may be fixed by the law to send such children to school for a certain period in each year, unless sufficient evidence be produced by such parents or guardians that they cannot do so; and any of the following shall be considered a reasonable excuse;

Excuses.

(1) That the child is under instruction in some other manner satisfactory to the majority before whom the complaint may be brought.

(2) That such child has been prevented from attending school from sickness or any unavoidable cause.

(3) That such child has reached a standard of education of the same or greater degree than that to be obtained in such school by children of twelve years of age.

Hours of attendance.

(b) Determining the time during which such children are to attend school.

(c) Imposing penalties upon parents or guardians for the breach of any bylaw.

(1) Admonition in the form of a note of warning, signed by the chairman of the board or school trustees.

(2) Summons to appear before the board of school trustees and to receive reprimand from the chairman if merited.

(3) Complaints by the board of school trustees to any justice of the peace of the district, who may impose a fine not exceeding twenty-five cents for the first offence, fifty cents for the second and so on, doubling the last fine for any repetition of the offence.

Investigation of complaints vs parents or guardians.

82. It shall be competent for any judge of the county or stipendary magistrate to investigate and decide upon any complaints made by the trustees or any person authorized by them against any parent or guardian for the violation of any such bylaw as, by the previous section provided, may be enacted; and it shall be the duty of such judge of the County Court to ascertain, as far as may be, the circumstances of any party complained of; for not sending his child to school or otherwise educating him or them, and whether the alleged violation has been caused by

poverty or ill-health, and in any such case the Judge shall not award punishment but shall report the circumstances to the trustees making the complaint.

REGISTRATION OF SCHOOL TAXES.

Registration of arrears of school taxes.

93. Previous to the first day of August in each year the boards of school trustees, if they themselves collect the school taxes, shall cause to be made a list of the names of all persons in their districts in arrears for school taxes, the amount due by them, the lot or lots on which such taxes are due; and if such taxes remain unpaid it shall be the duty of the said board of school trustees on or previous to the last day of August in each year, to register the said lots with the amount due on real estate only with the treasurer of the municipality in which such lots are situated, and if such lots are not within a municipality, then in the Registry Office of the County in which such lands are situated, by filing a copy of the tax list, after which such taxes shall become a lien or mortgage on the lot or lots on which they are respectively due and payable, and any sale of property or transfer made thereafter shall be subject to such taxes.

BORROWING MONEY.

Trustees may borrow money when authorized by ratepayers and Lt-Gov.

94. If the ratepayers of any school district at a public meeting duly called require the trustees to borrow any sum of money for the purchase of school sites or the erecting of school-houses and their appendages, or for the purchase or erection of a teacher's residence, or for the purpose of paying off any debt, charge or lien against such school-house or residence or against the trustees of any school district incurred by them as such trustees for any of the purposes aforesaid, the said trustees shall forward to the Lieutenant Governor in council, a certified copy of the minutes of such meeting and the Lieutenant Governor in Council may thereupon sanction such loans and such sanction shall bind the ratepayers of the said school district to cause to be levied a sum sufficient for the repayment of the principal and interest on any such loan at the times when the same shall become payable, as provided between the trustees and the lender.

Maximum amount.

(2) No loans under two thousand dollars shall be made for any term exceeding ten years nor for any amount for a period exceeding twenty years.

Debentures.

(3) The principal on such loans shall be made payable by annual instalments unless with the sanction of the Lieutenant Governor in council and the said annual instalments together with interest on the principal of such loan may be applied towards the immediate redeeming of the debt contracted by the issue of such debentures, and all school boards that have issued debentures not payable in instalments shall invest in a sinking fund annually sufficient sum to meet such debentures when due, and such investment shall be made with the consent and advice of the superintendent, and when so made shall not be payable to the order of the trustees without such order being countersigned by said superintendent until their debentures mature.

Meeting of ratepayers

(4) Notice of such meeting shall be given by posting up on the doors of the school-house (if any) and in two or more conspicuous places within the

school district for which such loan is sought to be obtained, at least two weeks previous to such meeting, a notice in the form or to the effect of that set forth in schedule "A" of this Act.

Sanction of Lieut. Gov.

(5) A majority of the Roman Catholic ratepayers of any such school district, who are supporters of the separate schools within the district, present at such meeting shall be sufficient to authorize such loans, and the assent of the Lieutenant Governor shall be obtained before such loan is completed.

Effect of sanction.

(6) The assent of the Lieutenant Governor to any such loan shall be conclusive evidence of all the necessary formalities having been complied with and that such loan is one which such school district may lawfully make.

Issue of debentures.

(7) Any school district having obtained the assent of the Lieutenant Governor to a loan, may issue debentures therefor in the form set forth in schedule "B" of this Act, to secure the amount of the principal and interest upon such loan, upon such terms as such loan can be obtained on, and the said debentures shall be sufficient when signed by the secretary-treasurer and counter-signed by one or more trustees to bind the said trustees and to create a charge or lien against all revenues of the school district for which such loan is made.

A charge on school property.

(8) All debentures issued by or under the authority of this act and the coupons attached thereto shall create and be a charge and lien upon all school property then or thereafter acquired by, or granted, or given to the school district which shall issue the said debentures as well as upon all the Roman Catholic property assessable in such school district for separate school purposes for the said district and the amounts from time to time falling due upon such debentures and coupons (subject to any provisions for establishment of sinking funds for the repayment of any such debentures) shall be included in the amount required from time to time for school purposes for the said district, and shall be collected and received by and paid to the trustees of the said school district in the manner directed for the raising of money for school purposes.

Writ of execution vs trustees.

(9) Any writ of execution against the trustees for any school district which school lies wholly within one municipality may be endorsed with a direction to the sheriff to levy the amount thereof by rate and the proceedings thereon shall be the following.

Proceedings thereon.

(a) The sheriff shall deliver a copy of the writ and endorsement to the treasurer of the municipality in which such school district is situate, or leave such copy at the office or dwelling-house of such officer with a statement in writing of the sheriff's fees and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of service.

(b) In case this amount with interest thereon from the day mentioned in the statement is not paid to the sheriff within one month after the service, the sheriff shall examine the assessment roll of the municipality in which such school district is situated and shall in like manner as rates are struck for general municipal purposes strike a rate on the assessable lands in said school district sufficient on the dollar to cover the amount due on the execution with such addition to the same as the sheriff deems sufficient to cover the interest and his own fees up to the time when such rate will probably be available.

(c) He shall thereupon issue a precept or precepts under his hand and seal of office directed to the said treasurer, and shall annex to every such precept the roll of such rate, and shall by such precept after reciting the writ and that the said trustees had neglected to satisfy the same, and referring to the roll annexed to the precept, command the said treasurer to levy or cause to be levied such rate at the time and in the manner by law required in respect of the general municipal rates.

(d) At the time for levying the annual rates next after the receipt of such precept the said treasurer shall add a column to the tax roll of the lands in said school district headed "Execution rate A.B. vs The School Trustees for the separate school district of in the Province of Manitoba" (or as the case may be adding a column for each execution, if more than one) and shall insert thereon the amount by such precept required to be levied upon each person respectively and shall levy the amount of such execution rate as aforesaid and said treasurer so soon as the amount of such execution or executions is collected, shall return to the sheriff the precept with the amount levied thereon.

(e) The sheriff shall after satisfying the execution and all fees thereon return any surplus within ten days after receiving the same to the said treasurer for the general purposes of the said school trustees.

(f) The treasurer shall for all purposes connected with ~~XXX~~ carrying into effect or permitting or assisting the sheriff to carry into effect the provisions of this act with respect to such execution, be deemed to be an officer of the court out of which the writ issued, and as such, shall be amenable to the court and may be proceeded against by attachment, mandamus or otherwise in order to compel him to perform the duties hereby imposed upon him.

(g) The above paragraphs, 1 to 6 both inclusive shall be applicable to executions against the school trustees for any district lying within more than one municipality, but in such case the sheriff shall strike a rate on the assessable lands in said school district for the assessment rolls of the several municipalities in which said school is situate, and shall deliver to the treasurer of each of the municipalities the precept or precepts aforesaid, attaching a roll of said rate so far as it applies to the lands of said school district in the municipality of each of such treasurers.

Form of Minutes.

(10) The minutes of any section of the ratepayers of the school district called to consider the propriety of borrowing money as above mentioned shall be headed with a statement in the following form or to the same effect:

"Minutes of a public meeting of the Roman Catholic ratepayers of the Separate School District of No. in the Province of Manitoba held the day of ,in pursuance of a notice given as required by "The Remedial Act", (Manitoba) and called for the purpose of considering(and advising the trustees of the said school section in respect to) the question of raising or borrowing a sum of money for the purpose of (here state the purpose for which the loan is intended as in the public or posted notice)

"The said meeting having been organized by Mr. A.B. as chairman and Mr C.D. as secretary, the following proceedings were had:

It was moved by Mr etc (the motion and formal proceedings of the meeting to be then given,certified at the foot thereof to be correct and signed by the chairman and secretary").

The said minutes shall also contain a list of the names of the ratepayers who voted at the said meeting upon the question of raising or borrowing money, distinguishing those who are freeholders from those who are not and recording the vote given by each person for or against the said question.

Minutes of meeting to be sent to supt.

85. A copy of said minutes shall be given to the secretary-treasurer of the Board of Trustees of the district for the information of the said board and the original with a declaration endorsed thereon and attached thereto, taken before a justice of the peace or other person authorized to take declarations under the statute, with a copy of the notice calling such meeting, proving the posting of the said notices as required by the act, shall be given, or transmitted to the superintendent and it shall be the duty of such superintendent, with as little delay as possible after the receipt of such minutes and proof, to inquire and satisfy himself that the purpose for which the loan is required is a proper and necessary one, and having regard to the means of the ratepayers of such school district to repay the same; and if such superintendent approves of such loan he shall transmit said minutes, proof and other documents connected therewith to the Provincial Secretary together with a certificate or note of his approval endorsed thereon over his signature.

His action thereupon.

Sec-Treas. to send statement to supt.

86. It shall be the duty of the secretary-treasurer of the Board of Trustees of any school district being made aware that a loan as aforesaid had been sanctioned by the ratepayers to at once transmit to the superintendent a statement duly certified under the hand of the secretary-treasurer and the seal of the said board of trustees to be correct shewing the amount of the assessed value of the real and personal estate of such school district, it's debenture indebtedness including the amount proposed to be added under such bylaw then being submitted for approval, it's indebtedness other than under said debentures; the yearly rate in the dollar required for all purposes and the interest past due, if any, on the indebtedness of said school district.

Statement to be endorsed on debentures.

87. A statement embodying the information mentioned in the last preceding section as to assets and liabilities of the school section, shall be written or printed on the back of each debenture, issued under the authority of this act and following such statement shall also be written or printed the words "Issued under the provisions of the Remedial Act (Manitoba) viz Vic, cap ".

Signature of debentures by Prov. Sec.

88. Upon the assent of the Lieutenant Governor being obtained to such loan and upon presentation within six months thereafter to the Provincial Secretary or acting Provincial Secretary of the debenture or debentures issued to raise the same the said Provincial Secretary or acting Provincial Secretary (unless such assent has in the meantime been withdrawn) shall sign such debenture or debentures under the statement or endorsement thereon hereinbefore mentioned, and shall affix the seal of his office or of the Province thereto and such signature and seal shall be conclusive that all the formalities in respect to said loan and the issue of said debentures have been complied with, and the correctness of the statement or endorsement thereon and the legality of the issue of such debentures shall thereby be conclusively established and it's validity shall not be questionable in any court in the Province, but the same shall to the extent of the assets of the school district issuing the same be a good and indefeasible security in the hands of any bona fide holder thereof.

When Lt-Gov. may withhold assent to loan.

99. The Lieutenant Governor in Council when the question of any school loan shall be before him for assent thereto, may take into consideration the effect of the proposed loan upon the security of any previous loan in case the new proposed loan shall be repayable before a former one or former ones, and may withhold such assent to such new loan if he considers that the security of the holder of any existing debenture loan of such school district was likely to be rendered insufficient by reason of the date of payment of the proposed new loan being prior to that of any then existing debenture debt of such district.

Powers of Gov-Gen. if Lt-Gov. does not act.

100. If within one month after the trustees of a school district have under the provisions of section 84 of this act forwarded to the Lieutenant Governor in council a certified copy of the minutes of a public meeting authorizing a loan, the Lieutenant Governor in council does not sanction such loan the trustees may apply to His Excellency the Governor General in Council to sanction such loan and His Excellency the Governor General in Council shall thereupon have all the power and authority vested in the Lieutenant Governor or in the Lieutenant Governor in Council by the five sections immediately preceding this section and any Act or Decision of the Governor General in Council shall have all the force and effect that the same would have had if it had been done or decided by the Lieutenant Governor or by the Lieutenant Governor in Council and the powers and authority vested in the Provincial Secretary or acting Provincial Secretary by the said sections shall be vested in such officer as the Governor General in Council may select or appoint for that purpose.

Sinking Fund.

101. The trustees of any school district may under the advice and with the consent of the superintendent invest any money under the control of such trustees as a sinking fund for the payment of any loan, or otherwise held for school purposes and not required for expenditure within twelve months.

Powers of trustees as to real estate.

102. The trustees of any school district may with the consent and approval of the superintendent, sell and dispose of any land or real estate, or any interest therein for the benefit and advantage of the said school district and convey the same or any portion thereof in fee simple or for any less estate to any purchaser or purchasers thereof, or for any interest of freehold, leasehold, or other estate therein, by deed or other instrument, as the case may be, signed by the chairman and secretary-treasurer of such school district.

Pending suits notect effected

103. None of the provisions of this Act shall affect any suit pending in any of the courts at the date of the passing of the same.

Powers of supt. if trustees do not meet indebtedness.

104. In the case of any rural school district the trustees of which neglect or refuse to levy or ask the council to levy a special rate to meet their debentures indebtedness maturing within the school year, and in the case of any rural school district in which there is not a legally competent school board, the superintendent shall be empowered to act for such school board or school district in requiring the council or councils concerned to levy or collect the sum he shall designate as necessary to meet such indebtedness and the council or councils shall levy and collect such sum and pay the same over to the creditors upon the order of the said superintendent. And it is further provided that upon the trustees of any rural school district becoming legally incompetent or unable to act from any cause and there not being a sufficient number of ratepayers resident in the district to form a new school board the superintendent shall thereupon be invested

with the powers of the school trustees for such district, and shall be empowered to collect and receive all moneys due the said trustees from any source, to take possession of all their school properties, secure a proper title for all properties they may be entitled to, and in his discretion to dispose of or sell the same; provided that all moneys received by the superintendent in any way in behalf of such district shall be paid over by him to meet the liabilities of the same that may become due from time to time.

LOANS.

Borrowing by Bd. of Trustees on it's credit.

96. At any time in any one year before the estimate of a school district has been prepared by a board of school trustees or handed to the clerk of the municipality, or before the moneys have been paid over to the board by the municipality, a board of school trustees in any city, town or local municipality, may borrow money upon the credit of the board and give the promissory note or notes of the board for the same or for the moneys theretofore borrowed to such an amount as is legally authorized; provided however that no such money shall be borrowed or notes given to an amount exceeding in the aggregate one-half of the amount of the said estimate for the next preceding year, if such estimate has not been made for the current year; provided

conditions.

also that such moneys shall only be borrowed or notes given upon a by-law of the board which recites the amounts previously borrowed and the notes previously given therefor and any sum paid thereon, but any error or omission in reciting such sums or notes shall not invalidate such by-law as against a bona fide lender or payee or holder for value of any such note not having notice of such error or omission.

Enforcement of payment.

(2) Any such note or debt for money so borrowed may be enforced against the board of trustees and the ratepayers liable to contribute to it's revenues in the judgment and execution as hereinbefore provided.

Reduction of debt.

(3) Upon the payment to the Board by a municipality of any portion of the sum to be levied for the trustees by a municipality it shall be the duty of the Board of School Trustees to apply one-half of such sum so paid to it for the reduction of the debt incurred for the moneys so borrowed, or upon such note or notes, or in the event of no such debt or note or not sufficient thereof to exhaust the one-half of the sum so paid being then overdue, then to deposit such half or the unexhausted portion thereof in some chartered bank and to apply the same to such debt or notes as may become due and payable.

EXPROPRIATION.

Obtaining lands.

96. It shall be the duty of the trustees of every school district to purchase and lease, and take with the consent, in writing, of the Board of Education in that behalf, the necessary land or real property for school houses, teacher's residences and other buildings in connection therewith, and if necessary for the purpose aforesaid, to increase the extent of the school grounds already in possession by purchasing or leasing and taking lands adjoining the same.

Consent of owner.

(2) No land or property may be taken for the purpose aforesaid without the consent of the owner, if at the time of the application of the trustees for the same,

(a) The said land or property is owned by any religious, charitable or educational corporation.

(b) The land or property required for a separate school is owned by a non-catholic.

(c) In a rural district the land required is less than three hundred yards from the owners residence or exceeds one acre in extent.

(d) In a city or town the lot required is not vacant.

Notice to owners.

(3) For the purpose aforesaid the school trustees shall first serve the owners of the land or parties empowered to convey the land required as aforesaid with a notice which shall contain:

(a) A description of the land to be taken.

(b) A declaration of a readiness to pay some certain sum or rent, as the case may be for such land.

(c) The name of a person to be appointed as the arbitrator of the school trustees if their offer be not accepted.

Affidavit to accompany notice.

(4) Such notice shall be accompanied by an affidavit of one or more of the school trustees, setting forth that he knows the land, that the said land is required for school purposes, and that the sum offered is in his opinion a fair compensation.

If owner accepts offer.

(5) If within ten days after service of the said notice the person owning the said land signifies in writing his readiness to accept the said sum for rent, then the school trustees shall cause the proper agreements and contracts to be made and entered into, and the price of compensation to be paid.

Arbitration if he refuses.

(6) If within the time aforesaid, the owner or holder of the land does not signify his readiness to accept the said sum, but gives notice in writing, of the name of his arbitrator then the two arbitrators shall jointly appoint the third, and if they cannot agree upon a third, the Judge of the County Court having jurisdiction in the division in which the land is situate shall appoint upon application such a third arbitrator.

Owner does not give notice of acceptance.

(7) If within the time aforesaid the owner or holder of the land does not notify the trustees of his acceptance of the sum offered nor of the name of the person whom he appoints as arbitrator, then the Judge of the County Court shall upon application appoint one in his stead and the third arbitrator shall be appointed as aforesaid.

If owner is unknown.

(8) Where the person owning or holding the said lands or his agent or representative is unknown or cannot be found with due diligence, or is incapable of receiving tender then upon proof thereof to the County Court Judge, the said Judge may dispense with such tender and notice; and in such case notice of submission to arbitration shall be published in a newspaper in or near the district in which the land lies and subsequent proceedings may thereafter be taken as if such tender had been personally made and notice given.

Award and expenses

(9) The said arbitrators duly appointed, or a majority of them shall value the land and make an award in writing and fix the amount of the costs of the arbitration not to exceed three dollars per day for each arbitrator, and ten cents per mile each way for travelling expenses, and they shall further direct which of the parties shall pay the said costs, and if a portion in what proportion.

Appeal.

(10) An appeal to the Judge of the County Court shall lie upon application filed and served within ten days of the award for the revision of the costs taxed.

Claims on compensation money.

(11) The compensation money agreed upon by the trustees or awarded by the arbitrators for any such land or property shall stand instead of such land or property, and any claim thereto or encumbrance upon the said lands or property, shall be converted into a claim for compensation money or to a proportionate share thereof, and shall be void as respects the land or property which shall by the fact of the making of the said tender or award and of the payment of the money become and be absolutely vested in the trustees for the purposes of this Act.

Payment into court in certain cases.

(12) If the person owning such land is incapable of conveying the same or the person to whom the compensation money is payable is incapable of executing or refuses to execute a proper conveyance and transfer of the said lands to the said trustees or cannot be found, or is unknown or has no agent or representative or the trustees have reason to fear any claim or encumbrance, they shall pay the compensation money agreed upon or the money awarded into the office of the clerk or Prothonotary of the Court of Queen's Bench with interest thereon for six months at the rate of six per cent per annum and deliver to the clerk or prothonotary of the Court a copy of the conveyance or agreement or award or a certified copy of the agreement or award.

Notice.

(13) Notice in such form and for such time as the court appoints shall be forthwith inserted in a newspaper in or near the district in which the lands are situate and shall state the facts under which such money is paid, and call upon all persons entitled thereto or claiming the same or any part thereof to file their claims, and such claims shall be received and adjudged upon by the court and such proceedings shall forever bar all claims to the compensation money or any part thereof, and the court shall make such order for the proper distribution or payment of said moneys and for costs incidental to the application as may be proper.

OFFENCES.

Protection of children vs disease.

97. No person suffering from any contagious or infectious disease or who resides in a house in which any such disease exists shall be entitled to attend or enter any separate school during the existence of any such disease as aforesaid nor at any times thereafter, until he presents to the trustees of the school he wishes to attend a certificate of a physician that there is no longer danger of contagion or infection from his attendance, to the other pupils of the school provided that in rural school districts the trustees may in the absence of a physician admit applicants for admission without such certificate if they are satisfied that there is no danger of contagion or infection from their doing so. And any parent or guardian of any child who knowingly sends such child to any separate school in contravention of these provisions shall be liable upon conviction before a justice of the peace, upon the complaint of the trustees or of any ratepayer of the school district to a fine not exceeding ten dollars for each offence or imprisonment in the common jail for a period not exceeding thirty days.

penalty

Contravention of Act by trustee or Sec-treas.

98. Any trustee or secretary-treasurer neglecting or refusing to discharge any duty assigned to him or them by this Act shall be liable to a penalty of ten dollars for each offence and the said penalties may be recovered within three months of the time when such offence was committed.

Detention of school property.

99. Whenever any school trustee or secretary-treasurer after his dismissal, resignation or ceasing to hold office, detains any money, book, paper or property belonging to the school trustees of any school he shall thereby incur a penalty of not less than five dollars nor more than twenty dollars for each day during which he shall retain possession of any such money, book, paper or property, after having received a notice from the superintendent of Education requiring him to deposit the same in the hands of some person mentioned in such notice.

False returns.

100. If any trustee of a school or other person, knowingly signs a false report, or any teacher of a school keeps a false school register, or makes a false return with a view of obtaining a larger sum than the just proportion of school moneys coming to such school, such trustee or teacher shall for each offence forfeit the sum of twenty dollars.

False information by father etc.

101. Every father, head of family or guardian who refuses to give the trustees of any school district the information required by them to make up the census of children required by this Act, or who makes a false declaration shall incur a penalty of not less than five nor more than twenty-five dollars.

Offences by certain officers

102. Any justice of the peace, assessor, constable or other officer neglecting or refusing to discharge any duty assigned to him by the provisions of this Act shall be liable to a penalty for each offence of a sum not exceeding fifty dollars.

False declaration by voter.

103. If any person wilfully makes a false declaration of his right to vote he shall be liable to a penalty of not less than fifty nor more than one hundred dollars.

Chairman failing to report

104. The proceedings of every school meeting shall within eight days thereafter be reported by the chairman of such meeting to the superintendent under a penalty of five dollars.

Disturbing proceedings.

105. Any person who wilfully disturbs, interrupts, or disquiets the proceedings of any school meeting, or any one who interrupts or disturbs any school by rude or indecent behaviour or by making a noise either within the place where the school is kept or held, or so near thereto as to disturb the order or exercises of the school shall for each offence on conviction thereof before a justice of the peace, forfeit and pay a sum not exceeding twenty dollars together with the costs of the conviction as the said justice may think fit.

Trustee refusing to act.

106. Any person chosen as a trustee who has not refused to accept office, and who at any time refuses or neglects to perform his duties shall forfeit the sum of twenty dollars.

Board refusing to act.

107. Should the trustees of any school wilfully neglect or refuse to exercise all the corporate powers vested in them by this Act, or any other Act or Acts of this Province or the fulfillment of any contract or agreement made by them, any trustee or trustees so neglecting or refusing to exercise such powers shall be held to be personally responsible for the fulfillment of such contract or agreement.

Prosecution by any person.

108. All such prosecutions for fines and penalties may be instituted by any competent person before any justice of the peace who may convict the offender on the oath of one creditable witness other than the prosecutor; and if upon conviction the penalty, with costs, is not paid forthwith, the same shall, under warrant of such justice be levied with costs of distress, sale of goods and chattels of the offender and such penalties when so paid and collected, shall, by such justice be paid over to the school fund of the district to which such delinquent belongs.

Prosecution by Supt.

109. It shall be the duty of the Superintendent in the case of the loss of any school money or properties belonging to any school district through default, embezzlement or wilful neglect of any trustee or person connected therewith, to prosecute such trustee or person in his own name as such superintendent for the benefit of the district concerned, and to collect any costs that may be incurred by him in such prosecution from the school district or districts for whose benefit such prosecution was undertaken by notifying the clerk of the municipality in which each such district is wholly or partly situated, and such clerk shall thereupon pay the said costs of the superintendent out of the municipal levy for the said school district before paying any portion of the same to the trustees, provided taht all such prosecutions shall be undertaken only when authorized by a resolution of the Board of Education.

NORMAL SCHOOLS.

Normal schools.

110. The Board of Education is hereby empowered

(a) To establish in connection with any separate schools which may be established at St. Boniface, Normal School Departments with a view to the instruction and training of teachers of public schools in the science of education and the art of teaching, and to establish and provide for the conducting of teachers' institutes at any other schools within the jurisdiction of the Board,

(b) To make from time to time, rules and regulations necessary for the management and government of the said departments.

(c) To arrange with the trustees of such separate schools all things which may be expedient to promote the objects and interests of the said Normal School Departments.

(d) To prescribe the terms and conditions on which students and pupils will be respectively received and instructed in the said departments.

(e) To determine the number and compensation of teachers and of all others who may be employed in the said departments.

Grant for their maintenance.

111. The Lieutenant Governor in Council may direct that a sum not exceeding one tenth of the amount of the grant for educational purposes be allowed for the maintenance of Normal school departments as hereby established.

Power reserved to Parlt.

POWER RESERVED.

112. Power is hereby reserved to the Parliament of Canada to make such further and other remedial laws as the provisions of the said section twenty-two of Chapter 3 of the statutes of 1870, and of the decision of the Governor General in Council may require.

SCHEDULE "A".

Public Notice.

Notice is hereby given that at a meeting of the Roman Catholic ratepayers within the separate school District of No. will be held at the in the said district on day the day of A.D. at the hour of o'clock in the noon for the purpose of considering the expediency of raising money by way of loan to (here state the purpose for which the loan is intended)

Dated this day of A.D.

Secretary-treasurer.

Schedule "B".

Debentures of the School Trustees for the Separate School District of No. in the Province of Manitoba.

The School Trustees for the Separate School District of No. in the Province of Manitoba, promise to pay to bearer at at the sum of Dollars of lawful money of Canada, in years from the date hereof; and to pay interest thereon during the currency hereof at the same place at the rate of % per annum to the bearer of the coupons hereunder annexed respectively, and numbered with the number of this debenture.

Issued at this day of , by and under the authority of subsection "f" of section eighty-four of an Act of the Dominion of Canada passed in the year of Her Majesty's reign Chapter

S.M.
Trustee

T.R.
Secretary-treasurer.

Coupon No.

The School Trustees of the Separate School District of No. In the Province of Manitoba, will pay to the bearer hereof at the at on the day of , the sum of Dollars being interest due on that date on school debentures No.

T.R.
Secretary-Treasurer.

APPENDIX II.

Bill of Rights. (Given by Bryce and Begge)

Bill of Rights, proposed to be sent to Governor McDougall.

1. The Right to elect our own legislature.

2. the legislature to have power to pass all laws, local to the territory, over the veto of the Executive by a two-third vote.

3. No Act of the Dominion Parliament (local to this Territory) to be binding on the people until sanctioned by their representatives.

4. All sheriffs, magistrates, constables etc., to be elected by the people ---- A free homestead pre-emption law.

5. A portion of the public lands to be appropriated to the benefit of schools, the building of roads, bridges, and parish buildings.

6. A guarantee to connect Winnipeg by rail with the nearest line of Railroad -- The land grant for such road or roads to be subject to the legislature of the Territory.

7. For four years the public expenses of the Territory, civil, military and municipal to be paid out of the Dominion Treasury.

8. The military to be composed of the people now existing in the Territory.

9. The French and English language to be common in the Legislature and council, and all public documents and Acts of the Legislature to be published in both languages.

10. That the Judge of the Superior Court speak both French and English.

11. Treaties to be concluded and ratified between the Government and several tribes of Indians of this Territory, calculated to ensure peace in the future.

12. That all privileges, customs and usages existing at the time of the transfer be respected.

13. That these rights be guaranteed by Mr McDougall before he be admitted into this Territory.

14. If he have not the power himself to grant them, he must get an Act of Parliament passed expressly securing us these rights; and until such Act be obtained he must stay out of the Territory.

15. That we have a full and fair representation in the Dominion Parliament.

LIST OF RIGHTS.

Adpoted February 3rd 1869 by the convention chosen by the people of the Red River Settlement after the meeting with Hon. Donald A. Smith. (Begge "Creation of Manitoba" p.255)

1. That in view of the present exceptional position of the North-West; duties upon goods imported into the country shall continue as at present (except in the case of spirituous liquors) for three years and for such further time as may elapse, until there be uninterrupted railroad communication between Red River Settlement and St. Paul, and also steam communication between Red River Settlement and Lake Superior.

2. As long as this country remains a territory in the Dominion of Canada, there shall be no direct taxation, except such as may be imposed by the Local Legislature for municipal or other local purposes.

3. That during the time this country shall remain in the position of a territory, in the Dominion of Canada, all military, civil and other public expenses, in connection with the general government of the country, or that have hitherto been borne by the public funds of the settlement, beyond the receipt of the above-mentioned duties shall be met by the Dominion of Canada.

4. That while the burden of public expense in this territory is borne by Canada, the country be governed by a Lieutenant Governor from Canada, and a Legislature, three members of whom being heads of Departments of the Government shall be nominated by the Governor General of Canada.

5. That after the expiration of this exceptional period, the country shall be governed, as regards it's local affairs, as the Provinces of Ontario and Quebec are now governed, by a legislature elected by the people and a ministry responsible to it, under a Lieutenant Governor appointed by the Governor General of Canada.

6. That there shall be no interference by the Dominion Parliament in the local affairs of this Territory, other than is allowed in the provinces, and that this territory shall have and enjoy in all respects, the same privileges, advantages and aids in meeting the public expenses of this territory as the provinces now have and enjoy.

7. That while the North-West remains a territory the legislature have a right to pass all laws local to the territory over the veto of the Lieutenant Governor by a two-third vote.

8. A homestead and pre-emption law.

9. That while the North-West remains a Territory the sum of $25,000.00 a year be appropriated for schools, roads and bridges.

10. That all the public buildings be at the expense of the Dominion Treasury.

11. That there shall be guaranteed uninterrupted steam communication to Lake Superior, within five years; and also the establishment by rail, of a connection with the American Railway as soon as it reaches the international line.

12. That the military force required in this country be composed of natives of the country during four years. (Lost by a vote of 16 yeas to 23 nays and consequently struck out of list.)

13. That the English and French languages be common in the legislature and in the courts and that all public documents and Acts of the Legislature be published in both languages.

14. That the Judge of the Supreme Court speak the French and English languages.

15 That treaties be concluded between the Dominion and the several Indian Tribes of the country as soon as possible.

16. That until the population of the country entitles us to more, we have three representatives in the Canadian Parliament, one in the Senate and two in the Legislative Assembly.

17. That all the properties, rights and privileges as hitherto enjoyed by us be respected, and that the recognition and arrangement of local customs, usages and privileges be made under the control of the local legislature.

18. That the local legislature of this Territory have full control of all the lands inside a circumference having Upper Fort Garry as a centre and that the radius of this circumference be the number of miles that the American line is distant from Fort Garry.

19. That every man in the country (except uncivilized and unsettled Indians) who has attained the age of twenty-one years and evry British subject, a stranger to the country, who has resided three years in this country and is a householder, shall have a right to vote at the election of a member to serve in the Legislature of the country, and in the Dominion Parliament; and every foreign subject, other than a British subject, who has resided the same length of time in the country, and is a householder, shall have the same right to vote on condition of his taking the Oath of Allegiance, it being understood that this article be subject to amendment exclusively by the local Legislature.

20. That the North-West Territory shall never be held liable for any portion of the 300,000 Pounds Sterling paid to the Hudson's Bay Company or for any portion of the public debt of Canada, as it stands at the time of our entering Confederation; and if, thereafter, we be called upon to assume our share of said public debt, we consent only on condition that we first be allowed the amount for which we shall be held liable.

LIST OF TERMS and conditions which accompanied the commission to Rev. Father Ritchot, J. Black Esq., Alfred Scott Esq.; given by the Provisional Government.

1. That the Territories heretofore known as Rupert's Land and North-West shall not enter into the confederation of the Dominion, except as a Province, to be styled and known as the Province of Assiniboia, and with all the rights and privileges common to the different provinces of the Dominion.

2. That we have two representatives in the Senate and four in the House of Commons of Canada, until such time as an increase of population entitles the Province to a greater representation.

3. That the Province of Assiniboia shall not be held liable at any time for any portion of the public debt of the Dominion contracted before the date the said Province shall have entered the confederation, unless the said province shall have first received from the Dominion the full amount for which the said Province is to be held liable.

4. That the sum of $80,000.00 be paid annually by the Dominion Government to the local Legislature of the Province.

5. That all properties, rights and privileges enjoyed by the people of this Province up to the date of our entering into the confederation be respected, and that the arrangement and confirmation of all customs, usages and privileges be left exclusively to the local Legislature.

6. That during the term of five years, the Province of Assiniboia shall not be subjected to any direct taxation, except such as may be imposed by the local Legislature for municipal or local purposes.

7. That a sum of money equal to eighty cents per head of the population of this Province be paid annually by the Canadian Government to the local Legislature, of the said province, until such time as the said population shall have increased to 600,000.

8. That the local Legislature shall have the right to determine the qualification of members to represent this Province in the Parliament of Canada, and in the local Legislature.

9. That in this Province, with the exception of uncivilized and unsettled Indians, every male citizen who has attained the age of twenty-one years, and every foreigner, being a British subject, who has attained the same, and has resided three years in the Province, and is a householder; and every foreigner other than a British subject, who has resided here during the same period, being a householder and having taken the Oath of Allegiance shall be entitled to vote at the election of members for the local Legislature and for the Canadian Parliament. It being understood that this article be subject to amendment exclusively by the local Legislature.

10. That the bargain of the Hudson's Bay Company in respect to the transfer of the government of this country to the Dominion of Canada can be annuled so far as it interfered with the rights of the people of Assiniboia and so far as it would affect our future relations with Canada.

11. That the local Legislature of the Province of Assiniboia shall have full control over all the public lands of the Province, and the right to annul all Acts or arrangements made or entered into with reference to the public lands of Rupert's Land and the North-West, now called the Province of Assiniboia.

12. That the Government of Canada appoint a commissioner of Engineers to explore the various districts of the Province of Assiniboia, and to lay before the local Legislature a report of the mineral wealth of the Province within five years from the date of our entering into confederation.

13. That treaties be concluded between Canada and the different Indian tribes of the Province of Assiniboia by and with the advice and co-operation of the local Legislature of this Province.

14. That an uninterrupted steam communication from Lake Superior to Fort Garry be guaranteed to be completed within the space of five years.

15. That all public buildings, bridges, roads and other public works be at the cost of the Dominion Treasury.

16. That the English and French languages be common in the Legislature and in the courts, and that all public documents, as well as all Acts of the Legislature be published in both languages.

17. That whereas the French and English speaking people of Assiniboia are so equally divided as to numbers, yet so united in their interests, and so connected by commerce, family connections, and other political and social relations, that it has happily been found impossible to bring them into hostile collision, although repeated attempts have been made by designing strangers, for reasons known to themselves, to bring about so ruinous and disastrous event.

And whereas after all the trouble and apparent dissensions of the past, the result of misunderstanding among themselves, they have, as soon as the evil agencies referred to above were removed, become as united and friendly as ever; therefore as a means to strengthen this union and friendly feeling among all classes we deem it expedient and advisable;

That the Lieutenant Governor who may be appointed for the Province of Assiniboia should be familiar with both the English and French languages.

18. That the Judge of the Superior Court speak the English and French languages.

19. That all debts contracted by the provisional government of the Territory of the North-West now called Assiniboia, in consequence of the illegal and inconsiderate measure adopted by Canadian officials to bring about a civil war in our midst, be paid out of the Dominion Treasury, and that none of the members of the Provisional Government, or any of those acting under them, be in any way held liable or responsible, with regard to the movement or any of the actions which led to the present negotiations.

20. That in view of the present exceptional position of Assiniboia, duties upon goods imported into the province shall, except in the case of spirituous liquors continue as at present for at least three years from the date of our entering the confederation, and for such further time as may elapse until there be uninterrupted railroad communication between Winnipeg and St. Paul, and also steam communication between Winnipeg and Lake Superior.

Notes by Geo. Bryce

(1) See Begg "Creation of Manitoba" publ.1871 p.325.

(2) This is verbatim the official copy found in the papers of Thos Bunn, Secretary of Riel's government.

(3) In the same "Bunn papers" is a copy in French, which differs only in dropping the name "Province of Assiniboia" and substituting "The Province".

(4) In the same "Bunn papers" is a verbatim copy of this French copy, printed by the provisional government and signed "Maison du Gouvernement Mar 23rd 1870", the very day Messrs Nitchot and Scott started for Ottawa.

Fourth Bill of Rights.

(Referred to by Bryce as "Riel's fictitious Bill of Rights", First published by Archbishop Taché in the Daily Free Press of Dec. 27, 1869.

1. That the Territory of the North-West enter into the Confederation of the Dominion of Canada as a province, with all the privileges common with all the different provinces in the Dominion.

That this Province be governed;

(1) By a Lieutenant Governor appointed by the Governor General of Canada.

(2) By a Senate.

(3) By a legislature chosen by the people with a responsible ministry.

2. That until such time as the increase of the population in this country entitle us to a greater number, we have two representatives in the Senate and four in the Commons of Canada.

3. That in entering the confederation the Province of the North-West be completely free from the public debt of Canada; and if called upon to assume a part of the said debt of Canada, that it be only after having received from Canada the same amount for which the said Province of the North-West should be held responsible.

4. That the annual sum of $80,000.00 be allotted by the Dominion of Canada to the Legislature of the Province of the North-West.

5. That all properties, rights and privileges enjoyed by us to this day be respected, and that the recognition and settlement of customs, usages and privileges be left exclusively to the decision of the local legislature.

6. That this country be submitted to no direct taxation except such as may be imposed by the local legislature for municipal or other local purposes.

7. That the schools be separate, and that the public money for schools be distributed among the different religious denominations in proportion to their respective populations according to the system of the Province of Quebec.

8. That the determination of the qualification of members for the Parliament of the province, or for the Parliament of Canada be left to the local legislature.

9 That in this province, with the exception of the Indians, who are neither civilized nor settled, every man having attained the age of twenty-one years, and every foreigner being a British subject, after having resided three years in this country, and being possessed of a house, be entitled to vote at the elections for the members of the local legislature and of the Canadian Parliament, and that every foreigner other than a British subject, having resided here during the same period, and being proprietor of a house, be likewise entitled to vote on condition of taking the Oath of Allegiance.

It is understood that this article is subject to amendment by the local legislature exclusively.

10. That the bargain of the Hudson's Bay Company with respect to the transfer of government of this country to the Dominion of Canada, never have in any case an effect prejudicial to the rights of North-West.

11. That the local legislature of this province have full control over all the lands of the North-West.

12. That a commission of engineers appointed by Canada explore the various districts of the North-West, and lay before the local legislature within the space of five years a report of the mineral wealth of the country.

13. That treaties be concluded between Canada and the different Indian tribes of the North-West, at the request and with the co-operation of the local legislature.

14. That an uninterrupted steam communication from Lake Superior to Fort Garry be guaranteed to be completed within the space of five years, as well as the construction of a railroad connecting the American railway as soon as the latter reaches the international boundary.

15. That all public buildings and constructions be at the cost of the Canadian exchequer.

16. That the English and French languages be common in the legislature and in the courts; and that all public documents as well as the Acts of the legislature be published in both languages.

17. That the Lieutenant Governor to be appointed for the Province of the North-West be familiar with both the English and the French languages.

18. That the Judge of the Supreme Court speak the English and French languages.

19. That all debts contracted by the Provisional Government of the Territory of the North-West, now called Assiniboia, in consequence of the illegal and inconsiderate measures adopted by Canadian officials to bring about a civil war in our midst, be paid out of the Dominion treasury, and that none of the provisional government, or any of those acting under them, be in any way held liable or responsible with regard to the movement or any of the actions which led to the present negotiations.

Note. "Archbishop Taché explains in a letter, in the Free Press January 15th 1890, that the sheet on which clause 20 was written had been lost sight of". George Bryce.

APPENDIX III.

Affidavit of Archbishop Taché.

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

2. Prior to the passage of the Act of the Dominion of Canada passed in the thirty-third year of the reign of Her Majesty Queen Victoria, chapter three, known as the Manitoba Act, and prior to the Order in Council issued in pursuance thereof, there existed in the territory, now constituting the Province of Manitoba, a number of effective schools for children.

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

4. The means necessary for the support of the Roman Catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools, and the rest was paid out of the funds of the church contributed by it's members.

5. During the period referred to Roman Catholics had no interest in or control over the schools of the Protestant denominations, and the members of the Protestant denominations had no interest ~~in~~ control over the schools of Roman Catholics there were no public schools in the sense of state schools. The members of the Roman Catholic Church supported the schools of their own church for the benefit of the Roman Catholic children, and were not under obligation to and did not contribute to the support of any other schools.

6. In the matter of Education, therefore, during the period referred to, Roman Catholics were as a matter of custom and practice, separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth.

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

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

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

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

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

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

APPENDIX IV.

Affidavit of Rev. Geo. Bryce.

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

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

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

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

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

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

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

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

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

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