SEPARATE SCHOOL LAW IN THE PRAIRIE PROVINCES

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EVOLUTION

OF THE

SEPARATE SCHOOL LAW

IN THE

PRAIRIE PROVINCES

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CONTENTS.

INTRODUCTION

Since the struggle for responsible government in Canada, reaching its climax in the Metcalfe Crisis and the famous Rebellion Losses Bill, no public question has caused more bitter controversy or engendered deeper feelings of animosity than the so-called separate school question. When it is remembered that the population of Canada is, in the main, composed of two racial groups, corresponding roughly to the two great branches of the Christian faith, one can readily understand why racial and religious considerations should have been important factors in determining the fundamental school law of the Dominion. Nor is it remarkable that this law should have embodied what was little more than a compromise.

While it is universally admitted that the true function of the common school is to train for enlightened citizenship, the question of the means to be adopted for such training—whether the instruction imparted shall be of a secular nature only, or religious as well as secular—has proved to be a subject of unprofitable discussion. The position taken by the advocates of the secular institution is that instruction in the fundamental ethical and moral principles, sanctioned by all religious sects, should be given in the public school. But here the line is sharply drawn to exclude all teaching of a denominational character.

When the respective spheres of church, home, and state have been satisfactorily defined and agreed upon, the separate school problem may cease to exist. And if present conditions in Canada be any criterion, there is little prospect of such a happy settlement being reached before the dawn of the millenium. Even in those countries that can boast of national school systems, elements of separatism exist beyond state control; in the United States, for example, it is reported that nearly two million children attend schools of a private and denominational character[1].

Whether separate schools be a desirable part of our educational systems or otherwise, when once constitutionally established, they cannot, according to the weight of competent opinion, be legally abolished by any Canadian authority; and only under exceptionally grave circumstances would there be any likelihood of Imperial intervention. In fact, our legally constituted dual school system, in the several provinces where such exists, possesses every element of a comparatively permanent institution, and the more fully Canadians grasp this fact the better will it be for the harmony of our national life.

A matter closely allied to religious instruction in schools, and yet, in the writer's opinion, not a distinctly legal phase of the separate school problem, is the language or so-called bi-lingual question. There is good ground for argument that a provincial legislature is competent to determine what shall be the official

[1]For an authoritative statement of the parochial school situation in the United States, see Appendix V.

language in any school, public or separate, so long as the distinctly denominational character of the separate school is not thereby prejudiced. Many advocates of bi-lingualism maintain, however, that the end of religious instruction is defeated unless it be imparted through the medium of the pupils' mother tongue. A French Roman Catholic student (a graduate of Osgoode Hall), who recently attended the Provincial Normal School at Saskatoon, summed up the matter in the following words:—"If you take away our language, you take away our faith; two per cent. of our people may go with the Irish, two per cent. go with the Protestants, and ninety-six per cent. go to the D——."[1] Yet there is no disposition on the part of the authorities in the west "to take away" the French or any other non-English language. It is simply maintained by the majority of westerners that English is the official language in the Prairie Provinces, and hence that all pupils should be able to speak, read, and write English with a reasonably fair degree of efficiency on leaving the public school. Sound public policy, it is asserted, demands that the English language shall not be sacrificed to any foreign tongue, but shall be given the place of first importance in all our schools[2]. Hence the ground for dispute: Can this object be attained if bi-lingual conditions prevail? In the following pages

[1]The writer is assured on reliable authority that the above statement of the case represents the viewpoint of a considerable section of the non-English in Saskatchewan.

[2]"No man on this continent is equipped for the battle of life unless he knows English. This I know from personal experience."—Sir Wilfrid Laurier, House of Commons, May 10, 1916, on the Lapointe Resolution.

the legal status of the language question will be more fully considered[1].

The foregoing remarks will give some idea of the problems discussed in the main narrative. While the chief emphasis is laid on the Saskatchewan school system, to which that of Alberta bears a close analogy, considerable space is also devoted to the school system of Manitoba. Although in the latter Province no separate schools are, since 1890, recognized by law, the historical importance of the Manitoba School Question (1890-1896) not only merits special treatment but, as will presently be seen, serves as the background for any intelligent discussion of Saskatchewan issues. The sister Province was the scene of the most memorable separate school conflict in Canadian history; furthermore, several problems of a separate school nature still remain unsolved in Manitoba. A number of important amendments to the school law were passed at the spring session of the legislature held in 1916, nevertheless, certain elements of separatism are at least as prominent in the Manitoba school system as in that of Saskatchewan. As a result of the so-called Laurier-Greenway Compromise of 1897, religious instruction, under certain conditions, found shelter in the national schools of the sister Province.

In January, 1913, two amendments to the School Assessment Act, the import of which is discussed in the following pages, were passed by the Saskatchewan Legislature. These amendments gave rise to a strong outburst of resentment on the part of a section of the com-

[1]And see Appendix III.

munity, who scented evidence of alleged clerical interference in the affairs of state, and led to a bitter controversy conducted in the press and the pulpit. An examination of the issues involved in this regrettable controversy suggested to the writer the need of an impartial presentation of the separate school problem, in its historical and legal aspects, especially as it affects the three Prairie Provinces. It is hoped that the present thesis may, in some measure, serve this purpose.

A word of explanation may not be out of place with reference to the treatment of the various phases of the Saskatchewan position. The year 1913, (when the two above mentioned amendments were introduced), seemed to be the natural dividing line between chapter IV. and chapter V. Probably, however, the year 1905, when the Province of Saskatchewan was created, would have served the purpose equally as well. Considerable of the controversy which has arisen since 1913 serves but to illuminate the import of the original separate school law passed in Territorial days, and hence is included in chapter IV. The statement of historical facts usually precedes the writer's analysis of the constitutional questions involved. Greater clearness in presentation might perhaps have resulted had the historical and legal phases of the subject been kept more distinct.

The treatment of the language question and of parochial schools has been made incidental to the main narrative. When it is remembered that these matters are only indirectly related to the separate school law of the Province, perhaps this method of treatment is justifiable. Further-

more, a leading educationist in Saskatchewan is now engaged in the preparation of a comprehensive work on our bilingual and parochial school problems, which will be published in the near future and which should fully meet the needs of those students who are anxious thoroughly to investigate this important subject.

For the greater part of his material the writer had access to the statutes, law reports, sessional papers, articles in the press, and to Hansard. The authorities consulted are found in the archives and law library of the University of Saskatchewan. He also profited from a perusal of the relevant passages found in volumes XIX and XX of "Canada and its Provinces" series.

In the appendix will be found an amount of collateral material, which, it is hoped, will shed some light on the argument of the main narrative. Especially should the extracts from the Hansard Debates, found in Appendix I, prove interesting and instructive.

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Saskatoon, Sask., 1917.

CHAPTER I.

Background and Import of Section 93, B.N.A. Act, 1867.

The student of history who turns to an investigation of the separate school problem in Canada is early impressed with the safeguarding of the educational privileges of religious minorities which confederation involved. Section 93 of the British North America Act (discussed below) was essentially a compromise,[1] reciprocal in character, and designed to protect those concessions in the sphere of education which were alleged to be the sine qua non of confederation.

For various reasons, unfortunately, the application of this section has not always been productive of the most harmonious results. It cannot be denied that in the attempted settlement of our separate school differences the spirit of the confederation compact has not infrequently been sacrificed to political rancour and sectarian prejudice. Nevertheless, even if it were possible for Protestants and Roman Catholics alike to divest themselves of pre-

[1]On the second reading of the B.N.A. Bill in the Imperial Parliament, February 19th, 1867, Lord Carnarvon, who was fathering the measure, spoke as follows in reference to section 93: "This clause has been framed after long and anxious controversy, in which all parties have been represented, and on conditions to which all have given their consent. . . . . but I am bound to add as the expression of my own opinion that the terms of the agreement appear to me to be equitable and judicious."

judice and to adopt a purely impartial viewpoint, ample ground would still exist for an honest difference of opinion as to the interpretation of the fundamental school law of the Dominion. In the Manitoba School Question, for instance, two eminent judicial tribunals interpreted differently the application of section 93 to the same set of facts. Indeed, no product of human ingenuity, not excepting the constitutional adjustment of our separate school problem as embodied in section 93 of the British North America Act, can lay claim to absolute perfection.

In any attempt to investigate adequately the legal phases of the separate school question, as pertaining to the Prairie Provinces, reference must be made to the federal background of the subject. The western provinces were not left free to work out their educational destiny in their own way, but were required to conform to certain federal statutes, in the nature of constitutions for the newly-created provinces, containing educational clauses calculated to protect the rights and privileges of religious minorities. These clauses, in turn, were a modification of section 93 of the British North America Act, 1867, and were alleged to derive their validity both from this section and from section 2 of the British North America Act, 1871. Thus it was anticipated that, by means of these constitutional safeguards, the educational rights and privileges of religious minorities, enjoyed "by law" prior to confederation or granted by the province since the date of union, would be protected from invasion by any act of the provincial legislature. In ad-

dition to this federal legacy, it might be added, racial and religious prejudices, inherited from the east and fostered under western conditions, have tended to obstruct any clear perspective of the purely legal phases of the subject.

Enough has been said to show the necessity of obtaining an adequate conception of the background and import of section 93. What obstacles in the way of national unity did the framers of this section seek to overcome? What defects did the section aim to remedy? What was the character of the compromise it sought to embody? The problem was mainly one of uniting under a federal form of government two races, professing different religious beliefs and actuated by diverse educational ideals. Before referring to the confederation debates pertaining to section 93, however, a brief account should be given of English and French relations in general.

If the rebellion of 1837-38 resulted in no other good, it at least aroused the Imperial mind to a sense of the gravity of the Canadian situation, and hence immediate steps were taken to meet the need for reform. Lord Durham was sent out from England, and in his capacity of high commissioner and "Governor-General of all the said Provinces on the Continent of North America" was vested with well-nigh plenary authority to restore order and good government in the Canadas. Certain passages from his famous report, the keynote of which was union and responsible government, shed interesting sidelights on the English estimate of the French race—an estimate still held in certain quarters. While

the prime source of the trouble was racial hatred, which time alone would remove, the imminent need for social and political reform could not, with safety, be disregarded. "They remain an old and stationary society in a new and progressive world," sums up Durham's verdict; and again, "it is to elevate them from this inferiority that I desire to give to the Canadians our English character." Kindly, frugal, honest, industrious, and courteous he admitted them to be, yet they were alleged to cling to "ancient prejudices, ancient customs, and ancient laws, not from any strong sense of their beneficial effects, but with the unreasoning tenacity of an uneducated and unprogressive people."

Durham's quasi-coercive policy, whereby the French were to be fitted into the fabric of the national structure like a brick in a wall, lay at the basis of his argument for legislative union. Had this non-British policy been capable of fulfilment, racial and separate school questions might have vanished; yet Durham's argument was fundamentally unsound as arguments advocating coercion usually are. By the legislative union of the two Canadas the English would forthwith have a voting majority in parliament and in the country which, Durham anticipated, would be annually increased as a result of English immigration. Under these conditions he predicted that the French "when once placed, by the legitimate course of events and the working of natural causes, in a minority, would abandon their vain hopes of nationality." The English in Ontario to-day must realize the futility of Durham's Utopian dream. Sec-

tionalism, not unity nor the extinction of French nationality, would be the inevitable result of such a system. And this is just what happened. As Lord Elgin later pointed out, the problem of how to govern United Canada would be solved if the French split up into two political groups and joined the corresponding English parties. A "solid Quebec," viewed in the light of the veiled threats of the Durham Report, may originally have been inspired by the interest of self-preservation.

The Act of Union, which was professedly based on the recommendations of Lord Durham, was but the prelude to the great conflict for responsible government. For the first and only time in the history of the Canadian Parliament the French language was proscribed, and English was declared by the Act to be the sole official language in both chambers. After considerable agitation, and owing largely to the influence of Lord Elgin, this clause was repealed in 1848 when French was restored to its original status.

The period from 1850 to 1867 was characterized by dual ministries, double majorities, "rep. by pop." agitations, and political deadlocks, until matters reached so critical a stage that a reconstruction of the constitution was deemed expedient, and preliminary steps were taken at Quebec and London to inaugurate a new and more glorious era in the consolidation and development of British North America. Not the least important of the momentous problems

taxing the wisdom of the fathers of confederation was the issue of separate schools.[1]

"There is a middle measure which satisfies all parties," wrote Emerson in his Essay on Politics, "be they never so many, or so resolute for their own." Section 93 of the British North America Act, 1867, it was believed, possessed the essential attributes of this "middle measure" with respect to the educational problems demanding solution. As frequent reference will be made to the several clauses of section 93 in the course of the following discussion, the import of these clauses and the reasons for their insertion should be briefly examined.

Section 93 reads as follows: "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which *any class of persons* have by law in the province at the union." Various questions arise in interpreting this subsection. The province may "exclusively" make laws affecting education only within the sphere of its jurisdiction, but if it transcends this sphere it immediately becomes subject to federal interference. What constitutes a prejudicial affection? Furthermore, the "right or privilege" referred to is not of any educational character, but only "with respect to denomina-

[1]For an able discussion of the character and development of the school system established in the Province of Canada before the Confederation Act, see "Public Education in Upper Canada" by H. T. J. Coleman, Ph.D.; also "Egerton Ryerson and Education in Upper Canada" by J. Harold Putman, D. Paed.

tional schools." Also what is meant by a "class of persons," and is this expression equivalent in meaning to "minority" as used in subsection (3)? The significance of this question will be realized when the Brophy and Regina cases are discussed in the following chapters. Also the important limitations expressed by the phrases "by law" and "at the union" are at once manifest.

Subsection (2), (see footnote) relates to dissentient or minority schools in Quebec. In this province no Protestant dissentient schools had their existence sufficiently safeguarded "by law" prior to 1867. In Ontario Roman Catholic separate schools enjoyed a legal existence before confederation. Hence subsection (2) was designed to safeguard the existence of Protestant separate schools in Quebec to the same extent as the existence of Roman Catholic separate schools would be safeguarded in Ontario under Article 45, subsection (6), of the Quebec resolutions[1]. In neither province could dissentient schools (i. e. of the Protestant or Roman Catholic minority) be abolished or otherwise prejudicially affected by the provincial legislature after 1867.

Subsection (3) reads as follows: "Where in any province a system of separate or dissentient schools exists by law at the union, or is *there-*

[1]See page 22. This clause of the Quebec resolutions became incorporated as subsection (1), section 93, of the B.N.A. Act.

Subsection (2) reads as follows: "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."

after established by the legislature of the province, an appeal shall lie to the governor-general in council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic *minority* of the Queen's subjects in relation to education." In the discussion of the Manitoba School Question an attempt will be made to bring the salient points of difference between subsections (3) and (1) into clear relief. It is manifest that the educational rights and privileges of religious minorities, when such are enjoyed "by law" either before or after the union, are effectively safeguarded by subsection (3). In discussing the import of this sub-section Sir Wilfrid Laurier (Hansard Debates) used the following words, which are quoted as best summing up the points in question:—

"If the legislature (i. e. provincial) establishes a system of separate schools, their legislative independence is inviolate; the (Dominion) government will not have the right to interfere; but if, afterwards, the legislature attempt to interfere with this creature of their own power immediately their action becomes revisable by this government and subject to interference."

Subsection (4) provides machinery for remedial legislation in the event of an appeal under subsection (3) being sustained. In the first instance a remedial order is issued to the provincial authorities in error; if this order is not carried out, resort may be had, but only in so far as the circumstances of the case warrant, to the enactment of remedial legislation by the federal parliament. The Manitoba School Ques-

tion exemplifies the potential operation of this subsection.

Such, in outline, is the import of section 93. The deeper significance of this section, as viewed in the light of pre-confederation problems, may now be examined.

Mr. George Brown, as is generally known, was bitterly opposed to any system of separate schools. In his opinion, the parent and pastor were the best religious teachers, and the home and church were the rightful places where religious instruction should be imparted. Nevertheless, while disavowing the principle of separatism, he was ready to admit that in Upper Canada, where (in 1866) about 100 separate schools out of a total of approximately 4,000 were in operation, little practical injury had resulted, chiefly because the great majority of sectarian schools were situated in cities and towns. The fact that Roman Catholic separate schools were allowed to exist, however, placed the government in an awkward position. What safeguard was there to prevent the application of this principle to other denominations? In the name of justice these denominations were surely entitled to the same sectarian school privileges as were the Roman Catholics. Thus there was grave danger, Mr. Brown alleged, that the country might gradually become "studded with nurseries of sectarianism."

Fortunately Mr. Brown was magnanimous enough to set aside his personal scruples in deference to the great scheme of confederation. "I admit," he stated, "that from my point of view, this (i.e. the compromise on education)

is a blot on the scheme before the house; it is confessedly one of the concessions from our side that had been made to secure this great measure of reform. But assuredly, I, for one, have not the slightest hesitation in accepting it as a necessary condition of the scheme of union"

The Hon. Alexander Mackenzie was also a leader of outstanding ability. In the course of an address delivered in the house on March 10, 1875, with reference to the New Brunswick School Act (explained in chapter II.), this statesman used the following words:—"For many years after I held a seat in the parliament of Canada I waged a war against the principle of separate schools. I hoped to be able, young and inexperienced in politics as I then was, to establish a system to which all would ultimately yield their assent. Sir, it was impracticable in operation and impossible in political contingencies; and consequently . . . . . when the Quebec resolutions were adopted in 1864 and 1865, which embodied the principle (that) should be the law of the land, the confederation took place under the compact then entered upon. I heartily assented to that proposition, and supported it by speech and vote in the confederation debates." It might be remarked that the North West Territories Act of 1875, which embodied the separate school principle, was fathered by Hon. Alexander Mackenzie.

Enough has been said to indicate the attitude of the fathers of confederation towards the principle of sectarian schools. The great conservative leader and statesman, Sir John A.

Macdonald, likewise entertained views on the subject even more tolerant than those expressed above, and the same is true of Sir Charles Tupper.[1]

At any rate, it is abundantly clear that the inclusion of section 93 in the confederation bill was an indispensable condition of union. Of two apparent evils—separate schools, on the one hand, and the negation of federal union, on the other—statesmen like the Hon. George Brown believed that to choose the former was to choose the lesser.

Furthermore, there is a widespread but erroneous belief to the effect that the Roman Catholics of Upper and Lower Canada were primarily responsible for the introduction of the element of separatism into our school system. Rather is the opposite conception the true one, and to the Protestants of Quebec does this distinction ultimately belong. At least in the case of subsections (2) and (3) of section 93 the matter is free from serious doubt.

Mr. A. T. Galt, finance minister in the Macdonald Government of 1864 and representative of the Protestant minority in Quebec, was likewise the able champion of the educa-

[1]Sir Charles Tupper, one of the fathers of Confederation, speaking in the Federal House, 1896, made the following statement:

"I say with knowledge that but for the consent to the proposal of Mr. Galt, who represented especially the Protestants of Quebec, and but for the assent of that conference to the proposal of Mr. Galt, that in the Confederation Act should be embodied a clause which would protect the rights of minorities, whether Catholics or Protestants, in this country, there would have been no Confederation. . . . . It is significant that but for the clause protecting minorities, the measure of Confederation would not have been accomplished."

tional rights of his fellow Protestant citizens. As already intimated, the Protestants of Quebec enjoyed liberal separate school privileges in that Province prior to confederation. These privileges, nevertheless, were not adequately protected "by law," and hence the majority might at any future time, if so disposed, become so tyrannical as even to suppress minority schools. To fortify their position and render it immune from subsequent invasion the Quebec Protestants aimed to secure two safeguards in particular: the equitable distribution of government moneys for school purposes, and, secondly, the establishment of a Protestant board of education to manage their own school affairs. Article 45, subsection (6), of the resolutions adopted at the Quebec Conference, placed education under the control of the provincial legislatures, "saving the rights and privileges which the Protestant or Roman Catholic minority in both Canadas may possess as to their denominational schools at the time when the union goes into operation." Thus the need for absolute certainty as to the state of the provincial school law, before the union was effected, admitted of no doubt.

In an address to his constituents delivered at Sherbrooke (as reported in the Montreal Gazette, October 28th, 1864) Mr. Galt dealt clearly with this subject:

"Now this (i. e. safeguarding minority privileges) applied to Lower Canada, but it also applied, and with equal force to Upper Canada and the other provinces; for in Lower Canada there was a Protestant minority and in the

other provinces a Roman Catholic minority. The same privileges belong to the one of right here as belonged to the other of right elsewhere. There could be no greater injustice to a population than to compel them to have their children educated in a manner contrary to their own religious belief."

Mr. Galt gave his pledge that, before the union was consummated, the government would bring in a measure designed so to perfect the school law of Quebec that the Protestant minority would be protected against any possible infringement of its rights at the caprice or ill-will of the majority. Such a bill was introduced in 1866 during the last session of the union parliament, but on this occasion a unique occurrence took place. A certain Mr. Bell, member for Russell County, Upper Canada, introduced a bill[1] identical with the one relating to the Lower Province, except that the words "Upper Canada," were substituted for Lower Canada. The government would have been able to carry the second bill by the Lower Canadian vote, but it was opposed by practically all the representatives from Upper Canada. Hence matters reached a crisis and the ministry had no alternative but to withdraw their measure. Mr. Galt, in deference to the pledges made to his constituents, forthwith resigned his seat in the administration.

Sir John A. Macdonald explained the dilemma as follows: "had this bill been pushed, also, the singular spectacle of a bill for Upper Canada being carried by Lower Canada, and a bill

[1]The two bills had the same wording. The minority, as is apparent, referred to a different religious sect in each case.

for Lower Canada by Upper Canada votes would have been presented. This would have been a most unfortunate occurrence. They were not like ordinary bills; if passed they would have been a fundamental part of the constitution of the country."

The matter, however, did not rest here. The government appointed certain delegates to proceed to England, whose duty it was to supervise the legislation preliminary to the completion of the confederation scheme, and Mr. Galt was a member of this commission. According to the Montreal Gazette of October 24th, 1866, Mr. Galt accepted the appointment "for the express purpose of watching over these important interests (i. e. minority school rights) as well as of lending his aid to the consummation of the measure of confederation."

As a result of the London Conference the British North America Act was evolved. In its issue of March 2nd, 1867, the Montreal Gazette made the following statement[1]:—"The main thing required in immediate practice is that the moneys collected from the taxation of Protestants shall, if required, be available for the support of separate schools. The right of appeal, as an ultimate resort, will always operate (to) the effect of affording a check. And the English-speaking Protestants of Lower Canada must not forget that their appeal will be to a preponderating majority of their own race and creed; and it is possible that if they get hurt they will make their cry known."

[1]The reference is to subsection (3), section 93, which had appeared in draft form in the issue of the previous day.

In pursuance of the provisions of section 93 the legislature of Quebec passed a statute in 1869 (32 Vict., chap. 16) establishing a dual system of schools under the control of a council composed of two committees, one consisting of Protestant and the other of Roman Catholic members, each committee to manage the schools under its jurisdiction. Suitable financial arrangements were also made, and the Protestant minority of Quebec have since had little valid reason to complain of unjust treatment at the hands of the Roman Catholic majority.

The applicability of section 93, whether in its original or in modified form, to new provinces on entering confederation is a question that has given rise to considerable controversy.[1]

[1] "What the constitution of the future provinces shall be, in view of the pledges which have been referred to, or in view of any other set of circumstances, will be for parliament to decide when it decides to create those provinces." —Sir John Thompson, July 16th, 1894, Hansard, p. 6130.

"The right of the Dominion to impose restrictions upon the provinces about to be formed, in dealing with the subject of education and separate schools, is, I think, *not* beyond question. This would require more consideration than I have been able yet to give it, and must ultimately be settled by judicial decision. I am asked, however, whether parliament is constitutionally bound to impose any such restriction, or whether it exists otherwise, and I am of opinion in the negative. It must be borne in mind that I am concerned only with the question of legal obligation." —Mr. Christopher Robinson, as quoted by Mr. Fitzpatrick, May 3rd, 1905, Hansard, p. 5336.

Mr. Clement, the author of a well-known work on the Canadian Constitution, wrote as follows:

"It follows that section 93 of the British North America Act—the clause defining the legislative jurisdiction of the provincial assembly over education—must, proprio vigore and without possibility of amendments by Federal legislation, be operative in any new province immediately upon its creation as a province."

This question is discussed in chapter IV and also in appendix I. The matter was never referred to the privy council for a final verdict.

Section 2 of the British North America Act, 1871, however, confers on the federal parliament the authority to provide constitutional machinery for new provinces on their being created out of unorganized territory, and thus it would appear that, in such cases, the Dominion Government is competent to exercise certain discretionary powers whereby it is not obliged to apply section 93, precisely in its original form, to new provinces entering confederation.

Such, in outline, are the import and background of the fundamental school law of Canada. The discussion of separate school problems in the following chapters will exemplify the application of section 93 to concrete cases.

CHAPTER II.

The Manitoba School Question, 1890-96.

When Manitoba entered the union in 1870, no "right or privilege with respect to denominational schools" existed " by law" in the area constituting the new province; hence section 22 of the Manitoba Act (a Dominion statute), while adopting almost the identical wording of section 93 of the B. N. A. Act in other respects (subsection (2) of section 93 was omitted for obvious reasons) added the words "or practice"[1], and it is chiefly on account of the presence of these words that the appeal in the Barrett case is frequently misinterpreted.

[1]Shortly after Confederation an agitation was set on foot in New Brunswick to revoke the privilege, enjoyed by the Roman Catholic minority since 1858, of giving religious instruction in their schools. In 1871 the Provincial Legislature passed a statute abrogating this privilege and making all schools, receiving government aid, non-sectarian and free. Had the minority enjoyed their separate school privileges "by law", the provincial statute would have been ultra vires. Hence it was to guard against any encroachment similar to that threatening the Roman Catholics of New Brunswick in 1870 (and carried out in 1871) that the words "or practice" were inserted in the Manitoba Act of 1870. Until as late as 1875 the Roman Catholics of New Brunswick attempted to have the B.N.A. Act amended so as to enable them to enjoy the same privileges, with respect to sectarian teaching, as were enjoyed by the minorities of Ontario and Quebec, but their efforts met with no success.

The following passage from Sir J. A. Macdonald's report of 1872 explains the New Brunswick situation: "The Act complained of is an Act relating to common schools, and the Acts repealed by it apply to parish, grammar, superior and common schools. No reference is made in them to separate dissentient, or denominational schools, and the undersigned does not, on examination, find that any statute of the Province exists establishing such schools. It may be that the Act in question may operate unfavourably on the Catholics or on other religious denominations, and if so it is for such religious bodies to appeal to the Provincial Legislature which has the sole power to grant redress."

In 1871 the legislature of Manitoba passed a statute providing for the establishment of a school system similar to that existing in the Province of Quebec or to the system created in the North West Territories by the ordinance of 1884. Thus separate schools were a distinctive feature of the new scheme. A board of education consisting of two sections, one Protestant and the other Roman Catholic, was constituted. Each section was empowered to regulate matters pertaining to the conduct of its own schools—such as the text books to be used and religious or other instruction—and to control the inspectoral, examination, and licensing standards in all schools under its jurisdiction. At first there were twenty-four school districts, corresponding to the twenty-four electoral divisions, and of this number half were to be considered Protestant and half Roman Catholic in character. Trustee boards were given the usual power to borrow money and issue debentures on the security of the district, while a legislative grant was divided between the two sections of the board of education in proportion to the number of children of school age in Protestant and Roman Catholic districts respectively. The balance of any funds required for school purposes was obtained by means of a municipal levy or by a special tax on the district. By the year 1890 there were 629 districts under the Protestant section of the board of education, while only 90 districts were subject to the Roman

Sir John Thompson frankly admitted that the Dominion Government largely financed the litigation in the Manitoba School Question. The question was a critical one and only an authoritative judicial decision would prove satisfactory.

Catholic section. It is also worthy of remark that the character of the work done in Roman Catholic schools was alleged to be woefully deficient in comparison with that of the schools under the Protestant jurisdiction. Hence the opponents of separate schools were furnished with a weapon for their abolition.

In 1890 the legislature of Manitoba passed two statutes relative to education, chapters 37 and 38, the latter of which was called the "Public Schools Act, 1890."[1] The validity of this Act, the effect of which was to establish a system of free, national schools which all classes of ratepayers were obliged to support, soon became the subject of prolonged litigation. (See City of Winnipeg v. Barrett: 1892, A. C. 445).

By the first of these statutes a department of education, consisting of the executive council or a committee of the same and of an advisory board of seven members, was created, and to this department were entrusted the powers previously exercised by the denominational sections of the board of education which now passed out of existence. While, according to the Public Schools Act, all public schools were to be free and non-sectarian, provision was made whereby, at the option of the trustees, religious exercises[2] might be held immediately before the close of school in the afternoon. A conscience clause permitted any child to withdraw before such exercises were held if the

[1] See appendix I, for remarks of Sir John Thompson.

[2] As a result of the Manitoba School Act of 1897 (discussed below) religious instruction (not merely religious exercises) was given considerable recognition in the schools of the Province.

parent or guardian so notified the teacher. After the passing of the Public Schools Act of 1890 private or denominational schools might still exist, while the children of any ratepayer were not thereby compelled to attend the public school. This Act, however, excluded from sharing in the legislative grant all schools not conducted in accordance with the terms of the Act or the regulations of the department. Thus ratepayers who desired to maintain private or sectarian institutions were obliged to do so entirely at their own expense, while, at the same time, they were required to support the national school system.

The Barrett case, which set the legal process in motion, went before the privy council in 1892 as an appeal from the judgment of the Supreme Court of Canada reversing the decision of the Court of Queen's Bench for Manitoba. The case arose out of a summons to show cause why a by-law of the City of Winnipeg, passed pursuant to the Public Schools Act of 1890, for raising taxes for school and municipal purposes should not be declared illegal on the ground that "the amounts levied for Protestant and Roman Catholic schools were therein united and that one rate was levied upon Protestants and Roman Catholics alike for the whole sum."

Mr. Justice Killam, who originally heard the case, held that the Public Schools Act was valid, and this view was upheld by the Supreme Court of Manitoba (Dubuc J. dissenting). The Court of Queen's Bench for Manitoba took the ground that "rights and privileges" included "moral rights," and that whatever

practice any class of persons was in the habit of following "with respect to denominational schools" at the time of the union could not be prejudicially affected by provincial legislation, but that none of these privileges had been infringed on by the Act of 1890. In other words, the imposing of an extra tax did not necessarily mean the prejudicial affection of rights or privileges enjoyed by a class of persons "with respect to denominational schools."

The Supreme Court of Canada unanimously reversed the order of the Manitoba Courts (19 S.C.R., 374) on the ground that the privileges enjoyed "by practice" (de facto privileges) were to be preserved, and that the inevitable result of the Act of 1890 was, either directly or indirectly, to deprive Roman Catholics of their denominational schools by compelling them to support a dual school system. Mr. Justice Patterson remarked:—"But the right or privilege may continue to exist and yet be prejudicially affected. It is not the cancelling or annulling of the right that is forbidden. The question is: Does the statute of 1890 injuriously affect the right? That it does so seems to me free from serious doubt." The following passage also appears in the judgment, and is quoted on account of its very probable bearing on the language question in the West: "There is no general prohibition which shall affect denominational schools. . . . . There is, therefore, room for legislative regulation on many subjects, as, for example, compulsory attendance of scholars, the sanitary condition of school houses, the imposition and collection of rates . . . . . and sundry other

matters, which may be dealt with *without interfering with the denominational characteristics of the school.*" However, as double taxation would render it more difficult to exercise sectarian school rights enjoyed "by practice" prior to 1870, it was held that such rights were prejudicially affected by the Act of 1890.

On appeal to the privy council the judgment of the Manitoba Courts was affirmed, and the Act of 1890 was declared intra vires of the provincial legislature. Lord MacNaughten, in giving the judgment, pointed out that, in the opinion of their lordships, "it would be going much too far to hold that the establishment of a national school 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 the one necessarily implies or involves immunity from taxation for the purpose of the other."

Thus the final decision in the Barrett Case simply meant that the rights or privileges possessed by the Roman Catholic minority in 1870, *however acquired*, were held not to have been affected prejudicially by the Public Schools Act of 1890. It was not on the distinction between rights given "by law" and rights established by "practice" that the ruling of the privy council turned. In point of fact, the only denominational school rights or privileges possessed by the minority in 1870 were those established by practice, but this state of affairs was not the turning point in deciding the issue. Any class of persons might still establish and conduct separate schools at their

own expense after 1890, and the imposition of an additional tax for national school purposes could not be considered tantamount to a prejudicial affection of such separate school privileges.

The Brophy Case, which is more directly applicable to the school issue in Saskatchewan, followed in 1895. (See Brophy v. Attorney-General of Manitoba, 1895, A.C. 202). A word of explanation as to the reason for instituting the Brophy Case (by the Dominion Government) should here be given. Section 22 of the Manitoba Act differs from section 93 of the British North America Act in the following respect: the former section[1] makes no provision whereby an appeal to the governor-general-in-council for remedial legislation is allowed in case the separate school system were established specifically *after* the union. Now the system of dissentient schools in Manitoba was, as already stated, created in 1871 or after the union, and it was this system which was alleged to be prejudicially affected by the Public Schools Act of 1890. Hence the Dominion Government was in doubt (according to the statement made in parliament by Sir John Thompson, March 6th, 1893) as to its competence to hear the minority appeal for remedial legislation, following upon the decision in the

[1]The clause in question of section 22 reads as follows:—

"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." Here it will be observed that the words "or is *thereafter* established," found in subsection (3), section 93, B. N. A. Act, are omitted.

Barrett Case, and the legal process was again set in motion to determine this point.

The leading principle involved in this case was whether the governor-general-in-council had the authority to admit an appeal from the Roman Catholic minority of Manitoba under the circumstances set out in the Barrett Case. Two specific questions were to be answered: (1) Did an appeal lie to the governor-general-in-council against the legislation set out in the Barrett Case; and (2), Whether, in the premises, had the governor-general-in-council the jurisdiction to issue a remedial order. By a majority decision the Supreme Court of Canada[1] held that no appeal lay.

Subsection (1), section 22, of the Manitoba Act, 1870, corresponds to subsection (1), section 93, of the B. N. A. Act with the addition of the words "or practice." Subsection (2), section 22, of the Manitoba Act corresponds (with a few minor changes to meet Manitoba conditions) to subsection (3), section 93, of the B. N. A. Act. Hence, where subsections (1) and (2) are used in the argument of the Brophy case, the reasoning will still hold good if subsections (1) and (3), section 93, of the B. N. A. Act were substituted. The distinction between "class of persons" and "minority" as used in the above subsections is fundamental.

In delivering the judgment of their lordships to the effect that the governor-general-in-council could entertain an appeal and issue remedial orders, notwithstanding the decision in the Barrett Case, Lord Halsbury pointed out that

[1]See appendix I for the words of Sir W. Laurier.

subsection (2), section 22, of the Manitoba Act was not designed to provide machinery for the enforcement of subsection (1). Subsection (1), imposing a limitation on the legislative powers of the province, might be directly enforced by an appeal to the judiciary, since any enactment contravening its provisions was beyond the competence of the provincial legislature, and therefore was null "ab initio." The appeal allowed under subsection (2) had reference to a different set of circumstances from those contemplated by subsection (1); the latter allowed an appeal to the courts, the former to the governor-general. "The first subsection," to quote the words of Lord Halsbury, " is confined to a right or privilege of a 'class of persons' with respect to denominational education 'at the union'. The second subsection applies to laws affecting a right or privilege 'of the Protestant or Roman Catholic minority' in relation to education. . . . . The first subsection invalidates a law affecting prejudicially the right or privilege of 'any class' of persons; the second subsection gives an appeal only where the right or privilege affected is that of the 'Protestant or Roman Catholic minority.' *Any class of the majority is clearly within the purview of the first subsection*, but it seems equally clear that no class of the Protestant or Catholic majority would have a locus standi to appeal under the second subsection, because its rights or privileges had been affected." Thus it is evident that a clear distinction must be drawn between the expressions "class of persons" and "minority" as used in sections 93 and 22 of the British North

America and Manitoba Acts, respectively. According to this authoritative decision "any class of persons" may include "any class of the majority," who conceivably might themselves constitute the majority in a community. The vital significance of this distinction was apparently overlooked when the Regina Case[1] was being argued in the courts.

The ruling in the Brophy Case means that, although a provincial legislature is competent to revoke rights or privileges it may have granted *after* the union to a religious minority "in relation to education," an appeal will lie (under subsection (3), section 93, B. N. A. Act) to the governor-general-in-council for remedial legislation. The (provincial) Public Schools Act of 1890, revoking certain rights and privileges enjoyed by the minority under the terms of the (provincial) act of 1871, was declared in the Barrett Case to be intra vires; nevertheless, according to the decision in the Brophy Case, an appeal lay to the governor-general-in-council for relief. It should be noted, furthermore, that the above provincial acts referred to a time *after* the provincial status was reached. Were the minority school rights or privileges possessed "by law" (or in Manitoba "by law or practice") *before the union*, it would have been beyond the competence of the provincial legislature to revoke such rights. Had the Public Schools Act of 1890, for instance, withdrawn the privilege, enjoyed by classes of persons in Manitoba (by practice) prior to 1870, to establish and maintain denominational schools, the Act would have been null "ab initio."

[1]Discussed in Chapter V.

After the decision in the Brophy Case was rendered, the governor-general-in-council heard the appeal of the Manitoba minority on March 5th, 6th, and 7th, 1895. On March 21st, was issued the remedial order to the Manitoba legislature calling on it to restore the following privileges to the religious minority:—the right to build, maintain, equip, and conduct Roman Catholic Schools as under the repealed statute, the act of 1871; the right to a proportional share in the legislative grant; and exemption from support of other schools. On June 19th the Manitoba legislature presented argument setting forth reasons why the order should not be made effective—to which the Dominion Government replied that, if redress was not forthcoming, remedial legislation would be enacted. In January, 1896, the Dominion Parliament convened and the remedial bill[1] was introduced. The liberal opposition, however, effectively resisted its passage; attempts to negotiate with Manitoba proved fruitless, and the "effluxion of time" spelt the end of parliament's legal existence. In the ensuing election the "no coercion" policy of Sir Wilfrid Laurier carried the Liberal party to victory. The following year saw the so-called Laurier-Greenway Compromise put into effect, and Sir Wilfrid Laurier was thus enabled to redeem his pledge to his compatriots.

As a result of this Compromise, the law was amended in 1897 to permit of the following changes: religious teaching from 3.30 to 4 o'clock, or on specified week-days, if authorized by a majority of the trustees or on petition

[1]See appendix I.

of a certain number of ratepayers; in villages and rural districts where the average attendance of Roman Catholic children is twenty-five or more, and in cities and towns where such attendance is forty or upwards, the trustees shall, on petition from the parents or guardians of such number of Roman Catholic children, employ at least one legally qualified Roman Catholic teacher—a right which is reciprocal with respect to the employment of a non-Roman Catholic teacher; separation of pupils in different rooms for religious teaching, but not for secular work; the bi-lingual system of instruction in the case of schools attended by at least ten pupils whose mother tongue is non-English. (See R.S.M., 1913, Cap. 165, Sections 249-57). The bi-lingual clause, however, has been recently repealed by the provincial legislature.[1]

[1]See Chapter III.

CHAPTER III

The Coldwell Amendments and Bi-Lingualism, 1912-16

From 1897 to 1912 the denominational aspect of school legislation in Manitoba fell into the background. The majority of the parochial schools in rural districts had come under the operation of the Public Schools Act, while a number had been de-organized. By 1894, of the ninety-one districts previously controlled by the Roman Catholic section of the board of education, twenty-four had been disbanded for lack of support or for other reasons, while twenty-seven of the districts formed prior to 1890 and nine districts formed after that date were being administered as public schools under the Act. Gradually the Roman Catholics were outgrowing their opposition, if not their resentment, to the new legislation. For several years after its creation in 1890 no Roman Catholics sat on the advisory board of education, but in 1898, following the operation of the Laurier-Greenway Compromise, a representative Roman Catholic became a member of this Board.

In the cities of Winnipeg and Brandon, however, the Roman Catholics still maintained their denominational schools at their own expense, while contributing as well to the support of the public school. In order to lighten this heavy financial burden it is alleged that the

Public Schools Amendment Act, better known as the Coldwell Amendments, was passed in the year 1912; furthermore, it has been asserted that the moral effect of these amendments materially contributed to the recent overwhelming defeat[1] of the Roblin Government. The outstanding change in the law introduced by Mr. Coldwell, Minister of Education in 1912, is limited to the interpretation of the word "school," as set forth in the following subsection (see subsection (s), section 2, Cap. 165, R.S.M. 1913): "the expression 'school' means and includes any and every school building, *school room or department in a school building* owned by a *public* school district, presided over by a teacher or teachers." This definition of a school, seems, to say the least, anomalous. There might, for instance, be fourteen or twenty "schools" in the one school building. But the purpose of the amendment was not difficult to detect. By the amended law of 1897, as stated in the previous chapter, the average attendance of forty or more Roman Catholic children "in any school in towns and cities" (see R.S.M. 1913, cap. 165, section 252) was sufficient, on the "petition of parents or guardians of such number of Roman Catholic children," to ensure the employment of one legally qualified Roman Catholic teacher in the school. Now to apply the Coldwell Amendments to a concrete case: If there were, for example, six departments in the one public school building, each of which accommodated on the average at least forty Roman Catholic pupils, the trustees would, on being duly peti-

[1]See Appendix II.

tioned to that effect, be required to engage six qualified Roman Catholic teachers. The school, of course, must necessarily be public, for no other class of school is, since 1890, recognized by law. If, therefore, by any process of legal procedure the parochial schools in Winnipeg and Brandon could be brought within the purview of "public schools," at the same time retaining their former average attendance of Roman Catholic pupils, they could, at least, have teachers of their own religious faith, while conforming to the provisions of the Public Schools Act in other respects. The position of these schools would, in effect, be very similar to that of the separate schools in Saskatchewan as discussed in the following chapter.

It should be borne in mind, however, that the Public Schools Act likewise declared that all public schools were to be non-sectarian, and that "no separation of pupils by religious denominations shall take place during the secular school work." The presence of these clauses proved an insurmountable obstacle to the efforts of those who sought relief through the application of the Coldwell Amendments.[1]

A petition was submitted in 1913, on behalf of the Roman Catholic schools of Winnipeg, requesting the public school board of trustees

[1]Certain political gossip current in the West several years since, with regard to the extension of Manitoba's boundaries, might be referred to. It was alleged that Sir Wilfrid Laurier's hands were tied by Quebec influence and that no accession of territory to Manitoba was possible until the Roman Catholic minority of the Province was granted a fuller measure of sectarian school privileges. With the passage of the Coldwell Amendments, however, the Quebec ban was alleged to have been removed and Sir Robert Borden was free to grant the territorial extension.

to take over and operate the two parochial city schools. It was maintained, however, by not a few that, on the basis defined by the petitioners, the change in the status of these schools would be of an administrative character only. The Coldwell Amendments were alleged to serve as a sort of subterfuge by means of which the schools in question might technically be brought under the operation of the Public Schools Act and share in the legislative grant, while still retaining their denominational characteristics—namely, the segregation of Roman Catholic children and sectarian instruction. The Roman Catholic school board, on the other hand, was willing to pledge not only that the Public Schools Act would be accepted for administrative purposes but that the regular public school text-books would be used and that no religious instruction would be given during school hours. The question as to whether any distinctive religious garb would be worn by Roman Catholic teachers also entered into the controversy, but on this point the petitioners were unyielding. In a letter, dated December 5th, 1913, (by Mr. James McKenty) appeared the following sentence, which is quoted as most accurately defining the position of the Roman Catholic Committee: "It (the petition) amounts to a request that you take over our schools on a rental basis and conduct them as public schools for our Catholic children and that for these schools you engage certified Catholic teachers without distinction as to garb."

An eminent legal authority, who was consulted by the city school board, expressed the

opinion that, if the petition were made effective, such action would be in violation of the Public Schools Act as contravening those sections relative to sectarian instruction and the segregation of pupils on a religious basis. On the other hand, it was maintained that denominational segregation had been made "legally possible by the Coldwell law;" in other words, a clause still found in the school act was to be considered "virtually" repealed!

As a result of these contentious amendments the electorate of Manitoba was soon divided into two hostile debating camps. By an influential section of Orangemen it was maintained that the intent of the new legislation was to extend the privileges of Roman Catholics by creating a system of publicly-supported, separate schools in towns and cities. Mr. Coldwell, himself an Orangeman, emphatically repudiated any such design on the part of the legislature and pledged himself an unswerving opponent of any legislation aiming to restore separate schools. Originally, he maintained, the Amendments were not a political issue, but had been supported by both parties. Statements bewildering in their contradictions were uttered in the press, English and French, and public opinion, as usual under such circumstances, became moulded largely along religious and racial lines. His Grace, Archbishop Langevin, expressed the determination of the Catholic Church never to "accept the neutral school or neutral university," while Orangemen adhered firmly to their decision not to support any candidate for the legislature unless he pledged himself to vote for

a programme of educational reform, including the repeal of the Coldwell Amendments and the bi-lingual clause, as well as the enactment of a satisfactory compulsory attendance law.

Events moved rapidly in 1914. At a provincial Liberal Convention, held in Winnipeg on March 26th, a series of resolutions were adopted of which number 3 pertained to education. By this resolution the Liberal party pledged itself in favor of: national schools, obligatory teaching of English in all public schools, extension of the educational facilities of the province, compulsory attendance, more liberal legislative grants to rural districts, and the repeal of the Coldwell Amendments. The summer electoral campaign, which was very bitterly contested, centered chiefly around the Coldwell Amendments, bi-lingualism, and the temperance question. In Winnipeg the public school board remained firm in its decision not to take over the Roman Catholic parochial schools on the basis asked for in the petition, while the controversy over the import of the Amendments was waged with undiminished rancour. Prominent Roman Catholics, on the one hand, Orangemen and the Protestant clergy, on the other, were the protagonists in the wordy battle. On March 24th, 150 leading French Liberals pledged their support to any party that would restore Roman Catholic minority schools, promote the teaching of the French language, and provide for the establishment of French bi-lingual schools. To these representations Mr. Norris, leader of the opposition, reiterated his determination to maintain unimpaired the national school system, as

modified by the Laurier-Greenway arrangement of 1897. The Orange Grand Lodge at its meeting in Regina emphatically declared for a repeal of the Coldwell Amendments, the annulment of the Laurier-Greenway Compromise, and the re-enactment of the Public Schools Act of 1890 in its original form. With reference to the hackneyed subject of the Amendments the Lodge put itself on record in the following words: "the clause, which makes every room a school and gives the parents of forty Roman Catholic pupils the right to demand a teacher of their own faith, removes the one insuperable barrier which existed in the past to the operation of separate schools under the Public Schools Act."

The bi-lingual question also presented varied political complications owing to the large foreign vote. In a total population of 445,614 (1911 census) in the Province there were reported to be 30,944 French-Canadians, 34,530 Germans, and 39,665 Austro-Hungarians.

In 1915 Premier Roblin retired and Sir J. A. M. Aikins assumed the leadership of the Conservative party. The Administration, however, was doomed, and in the midsummer elections the Liberals converted their narrow defeat of the previous year into an overwhelming victory. Conservatives and Liberals rose above party considerations and placed in power a government pledged to carry out a programme of thorough-going reforms. In the spring session of 1916, which is of great significance in the educational history of Manitoba, the Norris Administration proceeded to carry out the programme of reform to which it was committed.

Before concluding this discussion of Manitoba's sectarian school problems, reference should be made to the past and present status of the French language as compared with that of the English. Section 23 of the Manitoba Act, 1870, placed both languages on the same level from a judicial and legislative viewpoint. Either French or English might be used by any member in the debates of the legislature; the records and journals of the house were to be printed in both languages; either language might be used in the courts of the province; and, finally, the acts passed by the legislature were to be printed both in French and English. In 1890, however, the government of Manitoba, while in the reforming spirit, abolished the use of the French language in the above respects and thus made English the sole official language of the province. To appeals from French sympathizers, both in the east and west, the Dominion Government turned a deaf ear and refused to disallow. In the opinion of the minister of justice the question was one for the courts to decide and not of a character justifying such drastic action as federal disallowance.

The following observations from Mr. Tarte's speech on the language episode (March 6th, 1893, Hansard, p. 1766) indicated the general attitude of the French to the obnoxious legislation:

"Where is the political man who will contend that the Manitoba legislature had a right to abolish the French language? . . . . They (the people of Manitoba) prevent us from speaking the French language in the legislature

and they do not want it to be taught in the schools. In a word they say to us: we are two against one; we abolish your language, not because you have no rights, but because we are stronger than you."

In June, 1916, a case was introduced in the courts of Manitoba[1] which is calculated to test the legal status of the French language in judicial proceedings. This case arose from the fact that a statement of claim in a civil action was rejected by the Prothonotary on the ground that it was written in French, and counsel for the plaintiff in the action is seeking to secure a ruling from the courts that the statement in question must be admitted. As the Manitoba Act made no provision for the teaching of French in the schools of the province, the decision given in this case will have little bearing on the school phase of the bi-lingual question.

On January 28th, and March 10th, 1916, certain amendments to the Public Schools Act were adopted which dealt the death blow to the so-called Coldwell Amendments and to the bi-lingual system of instruction. The first of these amendments (chapter 86) repealed paragraph (s), section 2 of the Act[2]. Subsection (1) of section 252, providing for the employment of Roman Catholic or non-Roman Catholic teachers, as explained in the previous chapter, was left intact, but subsection (2) of the above section (part of the Coldwell Amendments

[1]From a Winnipeg despatch, June 16th, 1916.

[2]As previously stated, paragraph (s) of section 2 defined "school" as meaning any "school room or department in a school building owned by a public school district."

of 1912) was repealed. Subsection (2) defined the expression "teacher" as meaning "A teacher for the children of the petitioners and of the same religious denomination as the petitioners." The third phase of the Coldwell Amendments was likewise repealed, namely, section 137, which read as follows: "It shall be the duty of every public school board in this province to provide school accommodation according to the requirements of this Act, when so requested by the parents or guardians of children of school age under this Act." Thus the practical effect of the January legislation (chapter 86) was largely to revert to the conditions resulting from the adoption of the Laurier-Greenway Compromise in 1897.

Chapter 88, being "An Act to further amend 'The Public Schools Act,'" was assented to on March 10th, 1916. The effect of this amendment was to go beyond the mere destruction of the Coldwell legislation and to revoke an important concession granted to the French and other non-English languages as a result of the so-called Laurier-Greenway Compromise. Section 258 of the Public Schools Act, providing for the bi-lingual system of instruction, was thereby repealed and now English alone is the official language in all public schools of Manitoba.[1]

The right of the Roman Catholic minority to establish and support their private schools,—a right enjoyed "by practice" prior to 1870

[1]This statement of the case might be somewhat enlarged. At first it was probably intended to abolish only the *right* of non-English parents to compel the use of their language, and for the present at least the use of French, German, Ruthenian, etc., as media of instruction is allowed to continue as a *privilege*.

and confirmed by section 22 of the Manitoba Act—cannot be legally invaded by any act of the provincial legislature. The following section (section 4, chapter 97, assented to March 10th, 1916), indicates the extent to which the present government of Manitoba is prepared to go in the matter of private school inspection:

"The department of education *may*, at least once in each year, *upon the request* of the board of trustees or the authorities in control of any private school, enquire into the qualifications of the teachers and the standard of education of such school, and as often as such enquiry shall be made the department of education shall furnish to the said board of trustees or other authorities a written report of the result of such enquiry, and transmit a copy of such report to the school inspector and the school attendance officer of the school district in which such private school is situated."

Whether the provincial legislature is competent or not to make English the sole medium of instruction in private as well as in public schools apparently depends on the meaning of a "right or privilege with respect to denominational schools." If the use of French, for instance, is necessary to religious instruction in French private schools, there is good ground for argument that the legislature of Manitoba is not competent to pass legislation infringing on the teaching of French. This question will be discussed in the following pages[1].

[1]See Chapter VII, page 107, et seq., and footnote on page 110, with reference to the Ottawa bi-lingual case.

CHAPTER IV.

Separate School Law in Saskatchewan Prior to 1913.

Prior to 1875 the North West Territories did not have a separate constitution, and not until 1884 was a regular school system established. Settlers were few and isolated, hence no important educational problems required solution. By 1875, however, conditions had become such as to warrant the enactment of a federal statute, the North West Territories Act, section eleven[1] of which empowered the local council to pass all necessary ordinances relating to education, subject to the following proviso: "A majority of the ratepayers of any district or portion of the North West Territories . . . . may establish such schools therein as they may think fit, and make the necessary assessment and collection of taxes therefor; and further, that the minority of ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and that, in such latter case, the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they may impose upon themselves in respect

[1]The House of Commons, under the leadership of the Hon. Alexander Mackenzie, adopted the separate school clause of the Act after little discussion and less opposition by opponents of the Mackenzie Administration. The separate school principle was apparently well established.

thereof." Thus it is manifest that the N.W.T. Act of 1875 contemplated the establishment of separate schools with powers quite as plenary as those exercised by the separate schools of Ontario or Quebec at the present time or of Manitoba prior to 1890. From 1884 to 1892 such a system did exist in the Territories, and moreover the N. W. T. Act remained in force (but after 1892 not enforced) until superseded, in part, by the Saskatchewan Act of 1905.

The ordinance passed by the North West Council on August 6th, 1884, known as "An Ordinance providing for the Organization of Schools in the North West Territories," established a system in which separate schools constituted an important element. A public school district was not to exceed thirty-six square miles, nor could it be organized unless four (or more) heads of families, with at least ten children between the ages of five and sixteen, resided within the prescribed area. Separate school districts might be organized out of one, two, or more adjoining public school districts, a provision apparently considered necessary owing to the small number and sparse settlement of minority school adherents. Protestants and Roman Catholics were liable for taxes only to their respective schools; but, by an amendment passed in 1886, no owner of real property in any district was enabled entirely to escape taxation. Provision was made for religious instruction during the last hour in the afternoon, and, subject to the sanction of the trustee board, school might be opened with the Lord's Prayer.

One of the most important provisions of the Ordinance was that establishing a board of education, composed of two sections, one Protestant and the other Roman Catholic. Each section passed regulations for the conduct of its respective schools, prescribed the subjects of study and text-books, and regulated such matters as the training, licensing, and inspection of teachers. Thus the school system established in the Territories by the Ordinance of 1884 bore a very close resemblance to that existing in the Province of Quebec.

During the years that elapsed between the passing of this Ordinance and the reorganization of the system in 1892, several important amendments, tending to diminish denominational control, were passed. In 1887 all candidates for the teacher's license were examined by a board of examiners composed equally of Protestants and Roman Catholics. The two sections of the board might still prescribe the texts in science and history or require any additional subjects from their own candidates; otherwise the subjects of the examinations were identical. Four years later (1891) the lieutenant-governor-in-council assumed control over the licensing of teachers and the appointment of inspectors for all schools of the Territories.

In 1892[1] and 1901 the Territorial Assembly passed ordinances (of doubtful validity) which

[1]See Appendix I for Sir John Thompson's reasons for not disallowing the ordinance of 1892.

Archbishop Tache, Mgr. Grandin, and Father Leduc affirmed that separate schools did not exist in the North West Territories after 1892 except in name. This matter is somewhat fully discussed in Appendix I.

radically curtailed separate school privileges and established, or rather substituted, a system in most respects identical with that existing in Saskatchewan at the present time. After the establishment of a public school district, a separate school district, Roman Catholic or Protestant, might be organized within the same area; in other words, the boundaries of the two districts were to be co-terminous. Furthermore, uniform academic training and certification of teachers, uniform inspection, the use of uniform texts (with a few minor exceptions), and uniform examination standards applied to all schools receiving government aid. The ordinance of 1901 placed the administration of all schools under the control of a commissioner of education who was also a member of the executive council. The only remaining vestige of the former board of education, with its Protestant and Roman Catholic sections, was the educational council composed of two Roman Catholics and three Protestants whose powers were advisory only. Religious instruction, as directed by the board of trustees, might be given during the last half hour of the day, but only to those children whose parents or guardians offered no objection. In addition, the use of the English language as the medium of instruction in the school was made compulsory, although provision was also made for the teaching of a primary course in French. The language question, however, will be discussed more fully in another connection.

Reference should now be made to another link in the educational chain; namely, the issues raised by the Saskatchewan Act of 1905.

For several years prior to the granting of provincial autonomy in 1905, the Territorial premier, Hon. (now Sir) F. W. G. Haultain, made repeated representations to the federal authorities urging the necessity of proceeding immediately with the erection of the Territories into a single province. Neither in the negotiations that passed between the two governments nor in the territorial and federal elections held in 1902 and 1904, respectively, did the separate school question become an issue. To Mr. Haultain the right of the new province to complete control of its school system from the beginning apparently admitted of no question. His draft bill (prepared in 1902), relative to the proposed provincial constitution, would convey the impression that section 93 of the B. N. A. Act should apply in toto to the new province, but presumably he considered that the application of this section would not restrict the operation of provincial autonomy in the matter of school legislation. In certain sections of the country, moreover, it was alleged that the delay in conferring the provincial status upon the Territories was due to clerical dictation at Ottawa, which was reported to insist that provision be made in the proposed legislation for the establishment of separate schools in the new province or provinces.

When the autonomy acts providing for the erection of two provinces, Alberta and Saskatchewan, were introduced in the House, the school clauses, now contained in section 17, proved the most prolific source of controversy. As originally introduced by Sir Wilfrid Laurier,

these clauses provided that section 93 of the B. N. A. Act was to apply to the new provinces. The minority was to be guaranteed the right of establishing and maintaining separate schools, in which case they were not to be liable for any public school assessments; nor was there to be any discrimination between the two classes of schools in the appropriation and distribution by the provincial legislature of school moneys. Sir Wilfrid maintained that the aim of the school clauses was simply to crystallize the existing law, as set forth in the school ordinances of 1901, and that the type of separate schools contemplated by the bill was practically of a national character. The western members at Ottawa, however, were doubtful of the interpretation the proposed clauses might bear should litigation, similar to that involved in the Manitoba School Question, arise. The new provinces, it was admitted, were empowered to exercise such control over separate schools as the ordinances of 1901 had warranted, but conditional upon the following ominous proviso: "subject to the provisions of the said section 93 and in continuance of the principle heretofore sanctioned under the North West Territories Act." The significance of this proviso will be more fully appreciated in the light of the discussion of the provincial election issues of 1905. It should be remembered in this connection that the principle sanctioned by the North West Territories Act was consistent with the establishment of sectarian schools in the complete sense of the term, and furthermore, that the ordinances of 1901, as infringing on the act

of 1875, were of doubtful validity. Unless, therefore, the territorial school ordinances of 1901 were definitely confirmed by federal authority and reference to the Act of 1875 omitted, the case appeared precarious to the opponents of sectarian schools.

Early in March, 1905, Hon. Clifford Sifton resigned from the cabinet[1] and a crisis within the government was but narrowly averted. Resolutions of protest were passed by various social, fraternal, and religious organizations; protracted debates followed at Ottawa[2], while sectarian animosities assumed a threatening aspect. Happily a compromise was effected. An amended section, validating the Territorial Ordinances of 1901, was substituted for the contentious clauses proposed by Sir Wilfrid and the political storm subsided.

On September 1st, 1905, the Saskatchewan Act, providing a constitution for the newly-created Province, came into effect. Section 17 of this Act reads as follows:

[1]In stating his reasons for resigning (March 24th, 1905, Hansard, page 3119) and the extent to which one is justified in compromising one's convictions to prevent a political crisis, Mr. Sifton spoke, in part, as follows:—

"I do not think they (the Laurier Government) would be able to convince me that it would not be better that the legislature of the Northwest Territories should be free. . . . . There is a certain distance I am prepared to go in the way of compromise. . . . . To the extent which is embodied in the proposition before this House I am willing to go (i. e. To accept the amended section, the present school law). I am willing to go that far because I believe that the essential principles of a first class, thoroughly national school system are not impaired, and the taint of what I call ecclesiasticism in schools, and which in my judgment always produces inefficiency, will not be found in the school system of the Northwest under this legislation, unless the people of the Northwest choose to have it, in which case it is their business and not ours."

[2]See Appendix I and the footnote at the end of Chapter I.

"Section 93 of the British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93, 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 separate school as provided for in the said Ordinances." Subsection (2), relating to the equitable distribution of school moneys, is quoted in full below. Subsection (3) enacts that the expression "by law," as used in paragraph (3) of section 93, shall mean the law as set out in chapters 29 and 30 above, and that the expression "at the union," as used in paragraph (3) of section 93, means "at the date at which this Act comes into force," i. e. September first, 1905.

By comparing section 93 of the British North America Act and section 17 above, the significance of the education clause of the Saskatchewan Act will be readily seen. The rights and privileges of the religious minority, Roman Catholic or Protestant, in any district were defined and limited by the terms of chapters 29 and 30 of the ordinances of 1901, and thus such additional minority rights and privileges as had been enjoyed under the North West Territories Act of 1875, or under any Territorial ordinances passed prior to 1901, were definitely excluded.

After the passing of the Saskatchewan Act, Mr. Walter Scott, liberal member at Ottawa for the Regina constituency, was forthwith called on to form a government, and an intensely exciting election campaign followed from which the liberals emerged victorious by a majority of seven (16 liberals, 9 conservatives).

"Down with coercion" was the opposition slogan. Why had the liberal party been so solicitous for minority rights in 1896 and yet so ready to exercise the hand of coercion in 1905? By the new provinces alone, contended the opposition, should all matters pertaining to education be decided;[1] and although the system crystallized by section 17 of the Autonomy Act had proved quite satisfactory in the past, nevertheless, it was asserted that this fact did not justify the federal government in infringing on the provincial domain.

Certain members of the opposition also advanced the argument that the date of the union was not 1905 but 1870—when the Dominion Government purchased the North West Territory from the Hudson's Bay Company—and that, since no school system existed "by law" in 1870, it therefore followed that section eleven of the N. W. T. Act, 1875, would not be applicable to the new province. Hence Saskatchewan could begin her career unrestricted by any constitutional entanglements or alleged obligations to separate schools.

In reply to the above arguments the liberal party pointed out that the B. N. A. Act of

[1]For important contributions to the discussion of the educational issues, see the extracts from Hansard, Appendix I; also Appendix II.

1871 (section 2) vested in the federal parliament complete power to legislate with respect to "the constitution and administration" of future new provinces on their being established out of unorganized territory and admitted to the union. Furthermore, supposing a test case were successful and that section 17 of the Saskatchewan Act were declared ultra vires of the Dominion Government; in this event, it was alleged, section 93 of the B. N. A. Act, 1867, would necessarily apply in its entirety to the new province, and under this section there could be little doubt as to the school system legally in force. The problem for their Lordships to determine, in such case, would be: What school system was in force on September first, 1905, in Saskatchewan if section 17 is annulled? The N. W. T. Act of 1875 (a federal statute) would, it was argued, assuredly hold precedence over the Territorial Ordinances of 1892[1] and 1901, with the result that the province would have thrust upon it a system of clerically-controlled, sectarian schools. In support of the contention that section 93 would be applicable to the new province, under the circumstances stated, the recorded opinions of statesmen from 1867 to 1875, including that of Lord Carnarvon who introduced the B. N. A. Bill at Westminster in 1867, were invoked by the advocates of the liberal cause.

[1]"In my opinion there can be no doubt whatever that the legislation which has been passed in the Northwest Territories, and which is now in force, has been somewhat at variance with the principles laid down by the organic law of 1875."

Sir W. Laurier, June 29th, 1905, Hansard, page 8502. Also see Appendix I, for Sir John Thompson's opinion.

[2]With reference to this point see the footnote at the end of Chapter I.

That the union took place in 1870 was challenged as a most extravagant supposition. To assume that the following words of section 93, "by law in the province at the union" would bear the construction, "by law in the uninhabited prairies in 1870 when the Northwest Territory and Rupert's Land were acquired by Canada," rather than the presumably more natural meaning, "by law in force in the area at its union as a province in the confederation of provinces," i. e. in 1905,—to assume the former interpretation would be adopted by the privy council was, in the opinion of the Liberals, to take a desperate gambling chance from which disastrous consequences might ensue. Such, in outline, were the main arguments advanced by the two political parties in 1905.

Turning now to a consideration of the more strictly legal phases of the subject: With reference to matters of administration and assessment the state of the law is set forth in the following (Section 45, Cap. 29, 1901):

"After the establishment of a separate school district under the provisions of this Act, such separate school district and the board thereof shall possess and exercise all rights, powers, privileges, and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.

"(2) Any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein." It was in connection with the import of this subsection that a bitter controversy, discussed in the following pages, was waged in Saskatchewan. The question is now before

the courts and in due course a final verdict will be given.

Section 93 of the ordinances (being Section 42, Cap. 25, R. S. S., 1915), relative to the taxation of companies holding property in village and town (including city) districts wherein separate schools are also established, provides that a company "*may* by notice in that behalf," given to the authorities specified in the section, require part of its real property subject to taxation to be assessed for separate school purposes only; "but all other property of the company shall be separately entered and assessed in the name of the company as for public school purposes." The section further provides that the portion of property to be assessed for separate school purposes shall bear the same ratio to the total property assessable as the paid or partly paid-up stock of the company, held by Protestants or Roman Catholics, as the case may be, "bears to the whole amount of such paid or partly paid-up shares or stock of the company." For instance, if one-third of the paid-up stock of a company were held by Roman Catholics, then one third of the real property of such company would, if due notice were given, be assessable for Roman Catholic separate school purposes, and the remaining two-thirds would be assessable for the purposes of the public school. But if notice were not given, all the property in question would be assessable for public school purposes only.

Hence, under section 93 which is still on the statute book, any company desiring to have a share of its taxes devoted to the separate

school was required to give notice; but, according to the reasonable interpretation of the section, it was apparently intended that a company could not give valid notice unless at least one of its shareholders belonged to the faith represented by the separate school. Thus the companies contemplated by the law were of three classes. (The judgment of the trial judge, Brown, *re* Regina Public School Trustees v. Grattan Separate School Trustees, discussed below, is illuminating in this respect):

(a) Companies whose shareholders were all Protestants and whose taxes would be available only for public school purposes (assuming the separate school to be Roman Catholic); for, since no shares or stock were held by Roman Catholics, valid notice could not be given and therefore no portion of the taxes levied on the property could be devoted to the separate school.

(b) Companies whose shareholders were all Roman Catholics. Such companies could give notice requiring all their property to be assessed for separate school purposes (where the separate school was Roman Catholic); but, in the event of no such notice being given, all their taxes were devoted to the public school.

(c) Mixed companies, or those whose shareholders were partly Protestant and partly Roman Catholic. Companies of this class could give notice requiring a certain portion of their taxes to be devoted to separate school purposes, but if, as was frequently the case, no such notice were given the public school again became sole beneficiary.

When the above section 93 is regarded from an independent and equitable viewpoint, it is at once apparent to the average, fair-minded person that its provisions operated unfavourably with respect to separate schools. As Mr. Justice Brown significantly pointed out, there were two outstanding reasons why a company, especially of class (c), would not be likely to give notice. A company has no religious convictions to satisfy nor children to educate, and hence, while not indifferent as to the amount of its taxes, it would probably be so with respect to the mode of their distribution; and, secondly, for business reasons a company would not be disposed to discriminate on a religious basis. The Regina Case (following chapter) well illustrates this point; of the 159 companies whose taxes were in dispute not one had given the notice specified under section 93. To remedy this apparent defect the amendment known as section 93 (a) was passed in January, 1913.

In the light of the above conditions the question naturally arises; was it contemplated by the framers of the constitution that the separate school, Roman Catholic or Protestant, since its existence was protected, should be an efficient institution on an equal footing with the public school? The answer is clearly in the affirmative, notwithstanding section 93 above. Section 45 of the ordinances (already quoted), which was affirmed by section 17 of the Saskatchewan Act of 1905, could scarcely convey any other impression, and the same is true of the several subsections under section 93 of the B. N. A. Act discussed in the first

chapter. Subsection (2) section 17 of the Saskatchewan Act reads as follows: "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 thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29." No comment on the meaning of these words is necessary. Furthermore, Mr. Justice Anglin of the Supreme Court of Canada (in giving judgment *re* the Regina Case on appeal) uses these words: "equality of treatment and equal rights and privileges for public and separate schools would appear to be the spirit of the school law of Saskatchewan;" and the same opinion is expressed by Chief Justice Fitzpatrick.

Reverting to the storm-centre of the recent controversy in Saskatchewan, which has but temporarily subsided, the critical question at issue was the following: Did the individual ratepayer have, under section 45 of the Territorial Ordinances and prior to the amendment of 1913 (since repealed), the option of supporting either the public or the separate school? The amendment respecting company taxation has also been challenged and will be considered in the following chapter. If no such option legally existed prior to 1913, the repealed amendment[1] relative to the des-

[1]The amendment in question (passed in January, 1913, and repealed in February, 1916,) made it obligatory for all minority ratepayers,—i. e., of the religious faith represented by the separate school,—to support the separate school where such school existed; while all ratepayers of other denominations were obliged to support the public school. See pages 78 and 79.

tination of the individual ratepayer's taxes (section 3, cap. 35, January, 1913, discussed in chapter V) was merely declaratory of the existing state of the law.

The following considerations[1] may throw some light on the import of the original section 45 (see page 60):

(a) In certain published correspondence (see Regina Leader, January 18th, 1916,) that passed between Rev. A. A. Graham of Moose Jaw and Hon. J. R. Boyle, Minister of Education for Alberta (where the original section 45 also applies), an opinion is expressed which directly contradicts the contention of the late Scott Government. The following question appears in Rev. Mr. Graham's letter: "If I were a Roman Catholic elector, living in any village in your province where a separate school is established and in operation, would I have the option of supporting the public school if I choose to do so?" Under date of December 23rd, 1915, Hon. J. R. Boyle replied as follows: "Referring to your favor of the 17th inst., making inquiry regarding the interpretation to be placed upon assessment where both the public and separate school exist in the same district, ... I may say that the Department of the Attorney-General of this province has looked into this matter very carefully, and is of the opinion that reading together various sections of the Act, the intention is that there shall be perfect freedom of choice with respect to which school

[1]Although the above discussion (pages 65-77) took place, for the most part, since 1913, it but serves to illuminate the import of section 45, passed in Territorial days, and hence is included in this chapter.

district the ratepayer shall become a supporter." If this opinion be sound, "perfect freedom of choice" in this respect should also exist in Saskatchewan.

(b) On the other hand, there is the equally authoritative statement of ex-Premier Scott that, for a period of twenty years prior to the decision given by Judge McLorg in 1911, there was but one opinion in the matter; and that opinion was crystallized in the amendment passed in January, 1913, (see chapter V), which, accordingly, was only declaratory. Judicial decisions, departmental interpretations, and the common practice followed during two decades —all pointed, it was alleged, to the same conclusion. If the spirit of the school law in Saskatchewan was to be observed the separate school must stand on the same footing as the public school; and hence it was never contemplated that the security for debenture indebtedness was to be at the mercy of the capricious and fluctuating type of ratepayer. The McLorg decision (see below), it was contended, gave rise to such a chaotic condition and possible conflict of opinion with respect to the state of the assessment law that it clearlybecame the duty of the legislature to set out in unmistakable language the intent of section 45— and hence the amendment (repealed in February, 1916,) was passed.

(c) The McLorg decision of 1911,[1] as already intimated, proved the cause of the legislation which threatened to divide the people of Saskatchewan into two hostile debating camps. To counteract the probable effects and alleged

[1]See Appendix IV.

palpable defects of this decision, one of the amendments of 1913 was passed, and soon after a bitter controversy arose. It might be added that, while the amendments were under consideration in the assembly, the opposition offered no serious objection and the impression apparently prevailed on both sides of the house that the new legislation (except that applying to company taxation) was simply declaratory. Thus it can scarcely be said that the amendments have become a clearly defined political issue, although the leader of the opposition is reported to have made the public declaration prior to February, 1916, that, were the Conservative party returned to power at the next provincial election, the offending legislation would be repealed. Certain leading Protestant clergymen, however, have denounced the action of the Scott Government in no uncertain terms, nor did the premier hesitate to measure swords with his adversaries. In the controversial letters appearing in the public press frequent reference was made to the McLorg Decision given September 14th, 1911; hence the more relevant clauses of this decision should be noted.

The question at issue was whether certain Roman Catholic taxpayers of the town of Vonda, where both a public and a separate school are in operation, must necessarily be classed as supporters of the separate school rather than, if they so desired, of the public school. Judge McLorg based his opinion on sections 279 and 293 of the Town Act. Subsection (4) of the latter section, which proved the deciding factor, reads as follows: "The assessor shall accept the statement of any ratepayer, or the

statement made on behalf of any ratepayer by his written authority, that he is a supporter of the public school or the separate school, as the case may be, and such statement shall be *prima facie* evidence for entering opposite the name of such person, the letters P. S. S. or S. S. S. etc." Commenting on the above subsection, the learned judge used, in part, the following words: "Now this section appears to me to contemplate that the option of supporting either school rests with the ratepayer . . . . . It would have been the easiest thing in the world, had the legislature intended it, to make a provision that Roman Catholics should be assessable to the separate school and Protestants to the public school or vice versa. It could have been expressed in a few words, and I think, were I to give effect to the appellant's contention, I should be simply legislating, and legislating in a most drastic manner; I can conceive numberless reasons why the ratepayer should be entitled to choose the support of his school quite independently of any religious connection, distance, teaching and so on."

It will be observed, in the first place, that this opinion of a district court judge is based on two sections of the Town Act, rather than on section 45 in dispute; furthermore, while section 293 of the Town Act should be illuminating as expressing, in some degree, the intention of the legislature with respect to the general question of school assessments, it is somewhat difficult to understand the process of legal reasoning from which the learned judge deduces his conclusion. It would appear, on the other

hand, that subsection (4) of section 293 is strong evidence to the effect that the ultimate decision in the matter does not necessarily rest with the ratepayer—and the words "prima facie" seem to support this contention. In the great majority of cases the statement of the ratepayer would not be open to question; few ratepayers of the faith represented by the separate school would support, or desire to support, the public school. If the ratepayer's statement were protested, however, such statement was merely "prima facie" (not conclusive) evidence, and hence would be subject to revision by a higher authority; and if a higher authority was competent to decide, where was the ratepayer's option? Had the word "conclusive" been inserted, instead of "prima facie," no contested cases could possibly arise and the learned judge's decision would not be open to question.

(d) His Honor, District Court Judge A. G. Farrell, Moosomin, in a memorandum to the Department of Education[1], dated January 25th, 1913, states from memory (no written judgment was given) the grounds underlying his decision in the case of a certain ratepayer, Farley, who appealed from the decision of the court of revision refusing to enter his name as a separate school supporter. The case was heard in the summer of 1911, and for several years prior to this date Farley had been rated as a supporter of the Public School District of Lemberg, wherein the separate school in question is situated. The learned judge's decision was based on sections 42 and 43 of the School

[1]See Appendix IV.

Act, on sections 88 to 94 of the School Assessment Act and also on subsection 4 of section 293 of the Municipal Act. The inference to be drawn from this decision is that a Protestant, at least, has not the option of supporting the Roman Catholic separate school. To quote from Judge Farrell's memorandum: "I told him that if he became a member (bona fide) of the Roman Catholic Church I would place him on the separate school list, but not till then. He appealed again last year, but was no nearer being a Roman Catholic then than the year before."

While the balance of authoritative, legal opinion in Saskatchewan, so far as the writer has been able to ascertain, appears to support the contention of ex-Premier Scott, the question of the ratepayer's option under section 45 of the ordinances must remain speculative until a final judicial decision in the matter has been handed down. And there is good prospect that such a decision will be rendered at no distant date.

(e) A case which promises to decide this issue is McCarthy v. The City of Regina, now pending in Saskatchewan. Judgment was rendered by the Local Government Board, April 10th, 1916, to the effect that "all resident ratepayers of a separate school district of the religious faith of the minority establishing the district should be assessed as separate school supporters whether they voted for such establishment or not." In due course this case should go to the judicial committee of the privy council.

Mr. A. Bartz, a Roman Catholic ratepayer of the City of Regina, was assessed as a separate school supporter in 1915. Upon his written request he was assessed as a public school supporter for the year 1916, and on appeal to the court of revision this assessment was upheld. The case was then brought before the Local Government Board by Mr. McCarthy, appellant on behalf of Gratton Separate School District, which is Roman Catholic.

The argument is lengthy, and as the judgment of the Board is not final but merely sets the legal process in motion, as it were, only the main point at issue need be stated. By the respondent it is contended that, according to section 41 of the School Ordinance[1], (now section 39 of the School Act), only ratepayers who signed the petition for the establishment of a separate school, or, at most, those who voted in favour of such establishment are liable for separate school taxation; and that in the case of the other ratepayers of the minority faith, as represented by the separate school, it is optional whether they support the separate or public school. The appellant, on the other hand, contends that no choice exists, but that the test to be applied in all such cases is that of the religious faith of the ratepayer.

[1]"The minority of the ratepayers in any district, whether Protestant or Roman Catholic, may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessment of such rates as they impose upon themselves in respect thereof." Subsection (2) of section 45 of the School Ordinance (now subsection (2), section 45 of the School Assessment Act) reads as follows: "any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein."

The Bartz case was carried on appeal to the Supreme Court of Saskatchewan en banc, and on January 6th, 1917, their lordships handed down a practically unanimous judgment[1] confirming the decision of the Local Government Board. Without going to the Supreme Court of Canada the Regina Public School Board, with the approval of the Provincial Government which offered to defray all expenses arising out of the appeal, has decided to carry this case "per saltum" to the Judicial Committee of the Privy Council. The Neida case, which came before the Supreme Court of Saskatchewan as a counter appeal made by the Regina Separate School Board, does not involve any new legal principles and, as in the Bartz case, was unanimously dismissed with costs by the six Supreme Court judges; hence only the main judgment in the Bartz appeal, as given by Chief Justice Sir Frederick W. G. Haultain, need be considered.

The gist of the Supreme Court decision is to the effect that the minority in any public school district may secede for the purpose of establishing a separate school, but that such right of secession carries with it the obligation of stability in maintaining the separate school when once legally established. In other words, as ex-Premier Scott avowed, the minority ratepayer must support the separate school where such exists, while all other ratepayers are obliged to devote their taxes to the support of the public school. The religious affiliation of the ratepayer is held to determine the des-

[1]See Appendix IV for text of the judgment given by Chief Justice Sir Frederick W. G. Haultain.

tination of his taxes whether he originally voted for the establishment of the separate school or not. Hence the practical import of the Supreme Court judgment seems to imply that there can be in reality no public school embracing all classes of the community in those districts where separate schools are also established.

Two questions were involved in the appeal case before the Supreme Court: firstly, the validity of the decision given by the Local Government Board in the Bartz case, which was confirmed; and, secondly, assuming the judgment of the Local Government Board to be a correct interpretation of the statutes, the competence of the Dominion Government to insert section seventeen 17[1] in the Saskatchewan Act of 1905 was challenged. The latter point was not, however, strongly urged by the appellants.

Reading together the various sections of the School Act, the School Assessment Act, and the City Act pertaining to taxation for school purposes, Chief Justice Sir Frederick Haultain could not agree with the contention of the appellants that the following words of section 39, i. e. "the ratepayers establishing such separate school" meant only the ratepayers voting for the erection of the separate school but not those voting against its establishment.

The relevant sections of the above acts were all alleged conclusively to point "to an

[1]In so far as section 17 gave the Provincial Legislature power to enact legislation depriving the ratepayer of the alleged right to support either the public or separate school, or in so far as this section debarred the Provincial Legislature from enacting legislation requiring all ratepayers to support the public school—to this extent section 17 was challenged as beyond the competence of the Dominion Government.

intention of the legislature to establish majority rule within a minority, either Protestant or Roman Catholic, establishing a separate school." Whatever option the ratepayer might have legally enjoyed prior to 1908 in the matter of supporting either school, Chief Justice Haultain held that the provincial legislation passed in that year, as re-enacted in 1915, and the legislation passed in 1915, placed the matter beyond all reasonable doubt. In a word, the "right or privilege with respect to separate schools" (Section 17, subsection 1, Sask. Act, 1905) was held not to mean the right of the minority to pay taxes to the public instead of to the separate school, but rather the right "to establish a separate school and be liable only to taxation in respect thereof."

Considerable of the argument relevant to the second point raised, that is, the competence of the Dominion Government to insert section 17 in the Saskatchewan Act of 1905, has been discussed in the preceding pages and the reader is referred to Appendix IV for Chief Justice Sir Frederick Haultain's opinion on this question. The point was apparently raised (but not urged) by the appellants in order that a final decision in the matter might be obtained on appeal to the Privy Council; hence the opinions so far expressed on the validity of section 17 are probably more significant from a purely academic than a legal viewpoint.

The character of the privy council's decision in the matter of the ratepayer's alleged option lends itself to the most interesting speculation. If the verdict rendered is to the effect that, under the terms of the School Ordinance,

the ratepayer legally has the option of supporting either school it is altogether likely that agitation will cease. The Protestant leaders will be satisfied and the minority, though reluctantly, will no doubt accept the fortunes of war. But should the decision be otherwise, that is, if it is decided that the distribution of taxes is determined by the religious faith of the ratepayer, the writer has good reason to believe that a certain influential section of the community will put forth every effort to assert, as they maintain, the British principle of individual freedom. From a legal viewpoint, however, their case appears hopeless; nothing short of an amendment to the British North America Act could off-set the decision of the privy council.

An examination of the British North America Act, 1871, section 2, reveals the fact that, with the passing of the Saskatchewan Act in 1905, the federal government exhausted its jurisdiction in the matter of regulating the provincial constitution. It would also be absurd to argue that the federal government could legally enact remedial legislation even if it so desired. In the first place, the alleged grievance (of the Protestants)[1] would be on the part of the majority, not of the minority; furthermore, as the law in question existed at the time of the union and was confirmed by the Dominion Government in passing the Saskatchewan Act, the remedial clauses of sec-

[1]Assuming the Privy Council interpreted the school law to admit of no principle other than the religious faith of the taxpayer as governing the payment of his taxes to the public or separate school.

tion 93 of the British North America Act would be quite irrelevant.

Nor would the provincial legislature have greater jurisdiction in the matter. Assuming the privy council interpreted the school law to admit of no option on the part of the individual taxpayer, it would be little short of folly for the legislature to pass a statute granting such an option. Subsection (1), section 17, of the Saskatchewan Act would be directly contravened thereby, and, applying the ruling of Lord Halsbury in the Brophy Case[1], such legislation would be null "ab initio" and could, therefore, be set aside by a reference to the courts. To allow the minority taxpayer to support the public school would assuredly tend to injure the financial status of separate school districts throughout the province, and under the conditions stated such action could be interpreted only as a prejudicial affection of a right "with respect to separate schools" legally enjoyed by a class of persons "in the province at the union." To argue that such option would be as likely to prove beneficial as detrimental to separate schools is to ignore the facts. The cases involving litigation have shown that the exodus of ratepayers (even when the state of the law was uncertain) was not from, but towards, the public school.

Another point of purely academic interest arises in the remote contingency of such provincial legislation being enacted. The minority (Roman Catholics) would have no ground

[1]Lord Halsbury's opinion had reference, in part, to subsection (1), section 93, (B. N. A. Act), but equally applies to the education clause of the Saskatchewan Act.

on which to appeal for remedial legislation by way of offsetting the provincial statute. It will be remembered (Brophy Case) that subsections (1) and (3), section 93, of the British North America Act refer to different sets of facts, and that remedial legislation may be granted only when the provincial statute causing the grievance is valid. If, however, as explained above, the terms of subsection (1) were contravened, the offending statute would be null from the beginning, and therefore subsection (3) of section 93, B. N. A. Act, would not be applicable.

Thus the only source from which relief might be obtained, no matter which way the decision of the privy council goes, would appear to be an amendment to the British North America Act by the Imperial Parliament and the enactment of provincial legislation in pursuance of such amendment. The assumption, moreover, that the Canadian authorities would take the necessary preliminary steps to effect this object seems too extravagant for serious discussion.

The present chapter has been chiefly devoted to an examination of questions arising out of the separate school law in force in the Territories and Saskatchewan up to the end of 1912, more particularly of sections 45 and 93 passed in Territorial days and which still apply. Some attempt will be made in the following chapter to examine the import and validity of the amendments to the school law, passed in January and December, 1913, with special reference to company taxation.

CHAPTER V.

The Amendments of 1913 and the Regina Case.

At the outset of the discussion it may be well to emphasize a few general principles which should not be overlooked. Section 93 of the Territorial Ordinances was affirmed by section 17 of the Saskatchewan Act (1905); and, hence, if it can be established that the amendments of 1913 prejudicially affected "any right or privilege with respect to separate schools" enjoyed by "any class of persons" in 1905 under the provisions of the above section 93, then the conclusion appears irresistible that the amending legislation is ultra vires, in whole or part, of the provincial legislature. Furthermore, it should be pointed out that the prevalent conception, or misconception, of the law on the subject appears to be that the powers conferred on separate school supporters by the B. N. A. Act, 1867, (section 93) and by section 17 of the Saskatchewan Act, 1905, may be indefinitely enlarged, even though the rights and privileges enjoyed by other sections of the community be thereby prejudicially affected. Such an interpretation, it will now be apparent, is scarcely in harmony with the argument underlying Lord Halsbury's definition of "any class of persons," as laid down in the Brophy Case.

The amendment relative to the destination of the individual ratepayer's taxes, which is now only of historic interest, was as follows:

"Subsection (2) of section 45 of the said Act (i. e. section 45 quoted in the previous chapter) is amended by adding thereto the following proviso:

"Provided that in the case of any separate school district having heretofore been, or hereafter being established, within which a separate school is maintained in operation, the ratepayers of the religious faith of the minority supporting it, shall *hereafter* be assessable for separate school purposes only, and the ratepayers of the religious faith of the majority constituting the public school district, within which such separate school district is established, shall be assessable for public school purposes only."

This amendment[1] would have removed all doubt in the matter and rendered impossible another decision similar to that given by Judge McLorg. Largely owing, however, to a strong outburst of resentment on the part of certain leading Protestant clergymen the amendment was, as already intimated, withdrawn in February, 1916, and an appeal now lies from the decision of the Canadian courts to the judicial committee of the privy council.

On January 11th, 1913, section 93 (a) (section 3, cap. 36, 1912-13) received the assent of the provincial legislature. This section, which admittedly modified the law governing the assessment of companies (i. e. section 93 already quoted) reads, in part, as follows:

[1]The amendment in question was passed in January, 1913, and hence is introduced in this chapter. It should, however, be considered in connection with the original section 45, which is somewhat fully discussed in Chapter IV.

"In the event of any company *failing to give a notice* as provided in section 93 hereof, the board of trustees of the separate school district may give the company a notice in writing in the following form, or to like effect, ..." The form of the notice is then set out. Subsection (2) provides that "unless and until any company, to which notice has been given as aforesaid, gives notice as provided in section 93," the taxes shall be collected by the public school district, whereupon the money so collected shall be divided between the public school and the separate school in shares corresponding to the ratio between "the total assessed value of assessable property assessed to persons other than corporations for public school purposes and the total assessed value of assessable property assessed to persons other than corporations for separate school purposes respectively." In other words, the taxes of corporations "failing to give a notice" were to be divided between the two classes of schools on the same basis as obtained with respect to the distribution of taxes paid by other persons (Roman Catholic or Protestant) in the district.

To illustrate: If notice regarding the distribution of its taxes were given by a corporation or company situated within a separate school district (and hence necessarily within a public school district), such notice would be in accordance with section 93, and the taxes would be divided between the two classes of schools on the basis of the amount of paid-up or partly paid-up shares or stock held by Protestants and Roman Catholics, respectively,

in the company. But if notice were not given by the company, there would not be sufficient information available to make the above scheme feasible; hence section 93 (a) provided a new solution. The taxes of companies "failing to give a notice" were not, as formerly, to be available only for public school purposes, but the separate school was to receive its share. Assuming, for example, that "the total assessed value of assessable property" assessed to Roman Catholic ratepayers (not including corporations) in a Roman Catholic separate school district were one-third of "the total assessed value of assessable property" assessed to all non-Roman Catholic ratepayers (not including corporations) in the district, then, under section 93 (a), the Roman Catholic separate school would receive, if it gave the necessary notice, one-fourth[1] of the taxes collected from all companies (whether Protestant, mixed or Roman Catholic) "failing to give a notice" as set out in the old section 93, and the balance of such taxes would go to the public school. It is assumed that, where the separate school is Roman Catholic, the terms "non-Roman Catholic" and "Protestant" are synonymous for the purposes of the act, and vice versa where the separate school district is Protestant.

The second amendment pertaining to companies, 93 (b) (section 14, cap. 50, 1913) was

[1]For every dollar going to the separate school three dollars would go to the public school. In other words, out of every four dollars collected one dollar (one-fourth) would go to the separate school.

If Roman Catholics were assessed for one-third of the *total* assessable property in the district (excluding corporations) their share of company taxes would be one-third.

assented to on December 19th, 1913, and was presumably intended to remedy certain anticipated defects in 93 (a), which were later pointed out by a number of the judges of the Supreme Courts of Saskatchewan and of Canada. During the time the Regina School Case was before the courts, section 93 (b) was on the statute book, but, not being retro-active, did not apply to the point at issue. The question arose as to whether "any company" included each and every company liable to assessment, which certain judges contended to be the case; on the other hand, it was asked, how could "any company" be interpreted to include those companies, none of whose shareholders were of the faith represented by the separate school, since such companies could not give valid notice under section 93. Hence to speak of such companies as "failing to give a notice" was a superfluous use of language. Subsection (5) of section 93 (b) was intended to overcome the above defect by providing that any company, whose shareholders are wholly Protestants or wholly Roman Catholics, may within a specified time file a duly verified statement to that effect with the clerk of the municipality, whereupon section 93 does not apply to the company in question, but its taxes are to be applied wholly for public school or separate school purposes as the case may be.

Furthermore, an obvious defect in section 93 (a) with respect to companies, such as the C. P. R., who could scarcely be expected to obtain a census indicating the religious faith if its shareholders, was remedied by the first

four subsections of 93 (b)[1], which provide that any company may, within a specified time, notify the municipality "that it is practically impossible, owing to the number of shareholders and their distribution in point of residence, to ascertain the proportions of stock held by Protestants and Roman Catholics respectively." On the serving of the above notice and the observance of a few other simple matters of procedure, the company is not subject to the provisions of section 93, but may direct the distribution of its taxes as it sees fit.

In the case, Regina Public School Trustees v. Gratton Separate School Trustees, the validity of section 93 (a) was attacked.[2] Gratton Separate School (Roman Catholic) is established within the Regina Public School District, and the issue giving rise to litigation was the fact that one hundred and fifty-nine companies, holding assessable property within the above district, did not give the notice specified under section 93; whereupon each company was served with the notice set out in section 93 (a). The Regina public school trustees contended that they were entitled to all the taxes collected, whereas the defendant separate school board claimed a share.

[1]According to a decision given April 3rd, 1917, by Honourable Mr. Justice Elwood (Western Weekly Reports, 1917, Vol. 2, page 565), "any company which has not given the notice required by Section 93 of that Act (i. e., The School Assessment Act) or has not complied with the provisions of section 93 (b), is liable to be compelled to give a notice under section 93 (a), and the results provided by section 93 (a) for non-compliance follow."

"The notice provided for by section 93 (a) must be given before the completion of the assessment roll."

[2]See Western Law Reports, Vol. 29, at pages 221 and 399; also Reports of the Supreme Court of Canada, Vol. 50, page 589 et seq.

The case was heard before Mr. Justice Brown, before the Supreme Court of Saskatchewan en banc, and before the Supreme Court of Canada. Two questions were at issue: (1) the validity of section 93 (a), and (2) whether the separate school board had the right to receive a portion of the taxes in question. The import of the judicial decisions was, in brief, as follows. With respect to the validity of section 93 (a), the trial judge and the Supreme Court of Saskatchewan unanimously decided that this section was intra vires of the provincial legislature. Two judges of the Supreme Court of Canada (Fitzpatrick C. J., and Anglin, J.) also came to the same conclusion; two judges[1] (Davies and Duff, J. J.) expressed no opinion on this question; while one judge (Idington J.) held that 93 (a) was ultra vires. In regard to the second question at issue, the Supreme Court of Saskatchewan (Newlands J. dissenting) decided in the affirmative. Two judges of the Supreme Court of Canada (Fitzpatrick C. J. and Anglin J.) also decided in the affirmative, while three judges (Davies, Duff and Idington, J. J., the latter of whom held 93 (a) ultra vires) decided in the negative. The judgment of the Supreme Court of Saskatchewan, with respect to the apportionment of the taxes in question, was accordingly reversed. It should be remembered, however, that section 93 (b) of the amendments, while on the statute book, was not applicable to the case at bar.

[1]The import of the decision handed down by the Supreme Court of Canada undoubtedly branded section 93 (a) as *defective*, although only one justice specifically held the section to be ultra vires.

For an adequate understanding of the legal points involved it will be necessary to follow the main thread of the argument before the various courts.

(a) The learned trial judge, Brown, (judgment dated May 16, 1914) admitted that section 93 (a) would tend to operate prejudicially against the public school. Mixed companies especially, for reasons already stated[1], were not apt to give the notice under section 93; and whereas, formerly, if no such notice were given, all the taxes of the company were available for public school purposes, now, under section 93 (a), a portion of the taxes of these companies must be handed over to the separate school. For this reason, however, it did not follow that section 93 (a) was ultra vires; section 17 of the Saskatchewan Act did not mean, it was alleged, "that no legislation shall be enacted in the interest of separate schools which prejudicially affects the public school or the public school supporter; it means, rather, that no legislation shall be passed which shall in any way curtail the rights or privileges which *any class of persons* have to or in separate schools. In other words, *it is separate school protective legislation*, affording protection for, but not protection against, separate schools."

With regard to the significance of the words, "failing to give a notice," in section 93 (a), the opinion of the trial judge practically coincided with the judgment of the majority of the Supreme Court en banc stated below.

(b) Supreme Court of Saskatchewan (July 15, 1914).

[1]See page 63.

Mr. Justice Lamont gave the judgment of the majority of the court. "A right or privilege," reads the judgment, "with respect to separate schools is some special right or claim belonging to, or immunity, benefit, or advantage enjoyed by a person or *class of persons* with reference to separate schools, over and above the rights enjoyed at common law or under statutory enactments by the inhabitants of the province at large. *It is some private right or privilege as opposed to the rights possessed by the community.* It follows, therefore, that the only *classes of persons* who can have rights or privileges with respect to separate schools are those who, at the date of the passing of the Saskatchewan Act had the right, under the ordinances, *of establishing separate schools*, that is the *minority* in any school district. The majority in a district under the ordinances had no rights with respect to separate schools, because the school of the majority, whether Protestant or Roman Catholic, in any district is always the Public School." In this connection it will be observed that the expressions "classes of persons" and "minority" are used as if practically equivalent in meaning.

With respect to the second point at issue, the learned judge did not agree with the interpretation that the words of section 93 (a) "in the event of any company *failing to give* the notice in section 93" referred to "only such companies as under section 93 could give the notice." The wording of the section was admittedly defective ("omitted" being suggested as a better term); nevertheless, considering the language used and the defect in

section 93 which 93 (a) was intended to remedy, the natural inference was that the legislature contemplated giving the separate school the right to serve notice on "each and every company who failed to give a notice."

It is important to bear in mind the words of section 93 (a) i. e. "*failing to give a notice*," since it was largely on the interpretation of this phrase that the appeal case before the Supreme Court of Canada turned. In this respect the finding of Mr. Justice Newlands (Supreme Court of Saskatchewan) was upheld. The above words, according to the learned judge, "could only refer to such companies as could give such a notice and failed to do so, that is companies, some of whose shareholders were of the religious faith of the separate school. These words cannot, in my opinion, be applied to a company that could not give notice under that section. No such company could be said to have *failed* to give notice . . . . ." The word "fail" primarily involves the idea of duty; hence, to speak of companies that could not give valid notice as "failing to give a notice" would scarcely be a consistent use of language.

(c) The Supreme Court of Canada covered much of the ground traversed by the lower court, hence only a few of the more significant passages from the finding of their lordships are noted.

Mr. Justice Davies contended that, while section 93 (a) was somewhat crudely drawn, its real meaning was clear, and the words "any company *failing to give a notice* as pro-

vided in section 93," necessarily had reference "to such companies only as possessed the knowledge necessary to enable them to give the notice requiring the proportional division of their taxes and yet failed to give it. It could not have reference to companies in which none of the shareholders were of the 'same religious faith' as that of the separate school seeking the division of the taxes." Hence it could not have been intended "that companies not coming within section 93 at all, and not having the knowledge requisite to give the notice, should have their taxes diverted from the public to the separate school as a penalty for not giving a notice they could not legally give." In this connection it might be asked how companies—which the writer will attempt to prove are a "class of persons"—could be penalized unless they enjoyed some rights or privileges "with respect to separate schools."

With reference to the term "failing" used in section 93 (a), Mr. Justice Anglin pointed out that this was not "the word most apt to express the intention of the legislature," since it suggests the idea of omitting to discharge an obligation. However, in the learned judge's opinion, the expression "*failing to give*" might be interpreted to mean "*not giving*"; hence there was alleged to be no reason for holding that section 93 (a) did not apply to all companies. The significance attached to the word "failing" throughout the argument is apparent from Mr. Justice Anglin's closing sentences: "Since the fact that no duty or obligation is imposed by section 93 on any company precludes our treating the word "failing" as used in section

93 (a) in what is, perhaps, its primary sense, viz., neglecting or omitting to discharge an obligation, I see no reason why we should not give to it a secondary meaning with which it is frequently employed, especially when, by so doing, we can effectuate the apparent purpose of the legislature."

In view of the fact that a prominent clergyman in Saskatchewan charged the government with having "manipulated"[1] the amendments after the decision of the courts was handed down, the fate of the expression "failing to give a notice" will be more fully investigated.

The validity of section 93 (a) seems open to question. Mr. Justice Lamont's interpretation of a "right or privilege with respect to separate schools" was acquiesced in by a majority of the learned judges who expressed an opinion on this point, and therefore must carry considerable weight. The opinion of a higher authority, Lord Halsbury, (Brophy v. Attorney-General of Manitoba [2], 1895, A. C., 202, above) is scarcely in accord with such an interpretation, however, and hence there is room for doubt as to whether the ruling of the Canadian courts would be sustained if a test case were brought before the privy council. As already stated, Lord Halsbury pointed out that the words "class of persons," as used in ss. (1), section 22 of the Manitoba Act, and "minority" in ss. (2) of the same section (corresponding to ss. (1), sec. 17 of the Saskatchewan Act,

[1]The charge did not specify wherein the alleged "manipulation" consisted. See the Regina Leader of January 13, 1916.

[2]The Brophy Case was a stated case, but this fact does not detract from the validity of the opinion expressed.

and ss. (3), sec. 93 of the B. N. A. Act, respectively), were not identical in meaning, nor intended to be so. According to his opinion, "any class of persons" may include "*any class of the majority*," who might conceivably be a majority[1] of the majority or even a majority of the community! Might not companies be a "class of persons" in this sense? In any event, the application of the expression "class of persons," according to this interpretation, could not be limited to the Protestant or Roman Catholic minority in a school district.

In reference to Mr. Justice Lamont's opinion (quoted in part above) the following significant sentence should be read in close connection with the context:—"It follows, therefore, that the only *classes of persons* who can have rights or privileges with respect to separate schools are those who, at the date of the passing of the Saskatchewan Act, had the right, *under the ordinances, of establishing separate schools*, that is the *minority* in any school district." Here the words "classes of persons" and "minority" are regarded as practically co-extensive in meaning. The expression, "under the ordinances," adds a shade of meaning, but when the case of companies is considered it is doubtful if even this saving grace will remain; in any case, there would appear to be a direct conflict of opinion between the learned judge and Lord Halsbury.

[1]The point is that "any class of persons" is *not* restricted to a religious minority.

The writer does not contend that Lord Halsbury's obiter dictum that "any class of the majority is clearly within the purview of the first subsection" could be stretched to mean that the majority itself (as ordinarily inderstood) may go to law to prevent the minority over-riding it!

The question arises as to which of the above two classes, if either, companies belong. Clearly companies could not be a religious minority. They have no religious convictions, no children to educate, nor could they possess any right of "establishing separate schools," a right which, according to the learned judge last quoted, is characteristic of the "minority." Companies, however, following the definition of a "person" given in both the Imperial and Dominion Interpretation Acts (Dom. Sec. 34, ss. 20, R. S. C., 1906, C. 1; Imp. 52 and 53 V., C. 63, S. 19, respectively, according to which a company is a "person"), must come under the purview of "any class of persons," designated in ss. (1), sec. 17 of the Saskatchewan Act. Thus, according to the above section, the rights or privileges (if any) companies may enjoy "with respect to separate schools" are rights of a "class of persons" protected from invasion.

A further question emerges at this point as to what is the nature of a "right or privilege with respect to separate schools," and whether Mr. Justice Lamont's interpretation is sufficiently comprehensive to cover the requirements of the case. A company being a person, and companies a "class of persons,"[1] what could be said of their rights or privileges in this respect? Fitzpatrick, C. J. (Supreme Court

[1]Hence only "companies," not "a company," could enjoy the right alleged; mixed companies, for instance, would, according to the above interpretation, be a "class of persons."

The writer does not mean to contend that every class of persons must have some right re separate schools, nor does he hold that "a right with reference to" is necessarily equal to "a right against." All the circumstances affecting the case at issue must be taken into consideration.

of Canada), in giving judgment in the Regina Case, pointed out that "the minority in a school district comprises a class of persons who enjoy some benefit, immunity, or advantage with reference to private schools" not enjoyed by other residents of the district, etc. . . . . an opinion coinciding with that of Lamont, J., of the lower court. Furthermore, the Chief Justice maintained that a company "has not and cannot have any rights with respect to education and nothing done in the distribution of the school taxes levied on its property can be held to be a prejudicial affection of its right with respect to separate schools." Authoritative as the source may be, this opinion cannot be accepted without question. If companies are a "class of persons," what peculiarity is there about their constitution which would debar them from the protection of ss. (1), sec. 17 of the Saskatchewan Act? The fact that they differ from the individuals of whom they are composed would make them none the less a "class of persons" within the meaning of this section.

Reverting to Mr. Justice Lamont's opinion: the word "privilege," from its derivation, connotes something of a peculiar or private character which is essentially limited to a section of the community. The definition of "right," however, as meaning the right, under the ordinances, "of establishing separate schools" appears altogether too narrow. If companies are a "class of persons," a supposition which seems very reasonable, and, furthermore, if companies possessed any "right" under the ordinances (in the writer's opinion section

93 re assessments did confer a right on companies) such a "right" could not have been that of "establishing separate schools." The absurdity of such a statement is apparent on the surface. Moreover, according to Lord Halsbury's view, a "class of persons" may include "any class of the majority," who might even be a majority of the community,[1] and it is quite inconceivable that section 17 of the Saskatchewan Act ever contemplated that a majority of the community should have the right "of establishing separate schools." Hence the learned judge's interpretation of the expression "right with respect to separate schools" is open to serious question, and there would appear to be a fair show of reason—having regard to Lord Halsbury's opinion—for extending the meaning of this term to include the right, which many companies undoubtedly possessed under section 93 of the ordinances, of determining whether or not any portion of their taxes should be devoted to the support of the separate school. Such an option would appear to be "a right . . . . with respect to separate schools." The trial judge, Mr. Justice Brown, said in reference to ss. (1), sec. 17 of the Saskatchewan Act "it is separate school protective legislation," a view which is clearly inconsistent with the opinion stated in the Brophy Case. Furthermore, Mr. Justice Idington (Supreme Court of Canada) held that the phrase "any class of persons" (ss. (1), sec. 17, Saskatchewan Act) may be sufficiently broad to include public school as well as separate school supporters.

[1]Such a contingency is very remote but not impossible.

We are now in a position to examine more closely the validity of section 93 (a). There is good ground for argument that under the provisions of section 93 of the ordinances those companies, for instance, whose shareholders were partly Protestants and partly Roman Catholics, possessed a "right or privilege with respect to separate schools." Such companies, if they so desired, by giving notice to that effect could direct that a portion of their taxes was to be applied to separate school purposes; or, if their desire were to support only the public school, they might refrain from giving such notice, in which case their taxes were available only for public school purposes. Section 93 (a) undoubtedly imposed a restriction on these companies, and the question arises: Were the rights of a "class of persons" thereby prejudicially affected? The issue thus resolves itself into one of prejudicial effect; and if it can be established that section 93 (a) did prejudicially affect the rights or privileges of these companies "with respect to separate schools," and, moreover, if the argument is sound that such companies are a "class of persons," it therefore follows, according to ss. (1), sec. 17 of the Saskatchewan Act,[1] that section 93 (a) is ultra vires of the provincial legislature.

As already stated, the companies contemplated by the law are of three classes, only one of which, however, need be considered in the argument, i. e. mixed companies, or those composed partly of Protestant and partly of

[1]The expression "class of persons" is used in this subsection as in subsection (1), section 93, of the B. N. A. Act.

Roman Catholic shareholders. Prior to 1913 it was optional with such companies, under section 93 of the ordinances, as to whether any portion of their taxes was to be applied to separate school purposes. By giving proper notice to that effect a company could direct that a certain portion of its taxes was to be devoted to the separate school, and such notice was given only with respect to separate school assessments. Were notice not given, all the property of these companies was assessable for public school purposes only.

Section 93 (a) of the amendments of January, 1913 (being section 43, cap. 25, R. S. S., 1915, with a verbal alteration) withdrew the above option and infringed on the discretion of these companies. Since 1913 the law provides no machinery whereby mixed companies can secure the payment of their taxes for exclusively public school purposes. If the company[1] gives notice, such notice must be according to section 93, whereby a portion of its taxes is devoted to separate school purposes; if no notice is given by the company, then section 93 (a) of the amendment applies, whereby a certain portion (if the separate school serves the notice specified in 93 (a)), is devoted to separate school purposes. The basis of distribution of the taxes under the above two sections varies somewhat, but the principle is the same; since 1913 a portion of the taxes of any mixed company must be devoted to separate school purposes (if the separate school exercises its powers under 93 (a)), and this was not the case prior to 1913.

[1]Any "mixed" company.

In withdrawing the above option, which the companies in question might for good reasons desire to exercise, there would appear to be little doubt that a right or privilege of such companies "with respect to separate schools" was prejudicially affected; moreover, (if the argument is sound that companies fall within the purview of "class of persons") the conclusion appears irresistible that a "right or privilege with respect to separate schools," enjoyed under the ordinances by a "class of persons" at the union, has been prejudicially affected by section 93 (a) of the amending legislation, which, accordingly, is ultra vires of the provincial legislature.

Certain verbal changes were made in the school law after the Supreme Court of Canada had given its decision. The chief amendments to the school law passed in January and December, 1913, are designated as follows:—section 3 of cap. 35, which was incorporated in section 45, cap. 25, R. S. S. 1915; and sections 93 (a) and 93 (b) which were incorporated as sections 43 and 44, respectively, cap. 25, R. S. S., 1915. A few minor verbal changes and one significant alteration of the wording of the original amendments are found in the consolidated statutes for 1915. The expression "may notify" (section 93 (b)) becomes "shall notify" (Section 44, cap. 25, 1915). In section 3, cap. 35, 1913, the word "hereafter" appears in the phrase "shall *hereafter* be assessable," from which the inference might reasonably be drawn that a change in the law was contemplated and, therefore, that the

amendment was not merely declaratory.[1] In the corresponding section 45 of the R. S. S. 1915, the word "hereafter" is omitted. These changes may have been made from the viewpoint of literary form; in any event, it would require a stretch of the imagination to detect any ulterior purpose on the part of the legislature in making them.

One verbal alteration, however, is deserving of careful scrutiny. It will be remembered that in section 93 (a) of the amendments the words, "*failing to give a notice*" are found; and in this connection the importance attached to the meaning of the word "*failing*," when the Regina Case was being argued before the Supreme Courts of Saskatchewan and Canada, need not be further considered. The corresponding section of the statute (section 43, cap. 25, R. S. S. 1915) contains the substitution, "in the event of any company *not giving* the notice." To maintain that the change made was in the nature of a coincidence or calculated to improve the literary form of the section would be a most extravagant assumption. There would appear, on the contrary, to be some ground for concluding that the wording was designedly changed to meet certain of the objections of the courts.[2] In reply to a charge that the

[1]Ex-Premier Scott contended that this amendment was only declaratory of the existing state of the law. See page 66.

[2]It might be argued that the verbal alteration was immaterial, since the defect in section 93 (a) was remedied by subsection (5), section 93 (b). This position is open to question. There would appear to be ground for the contention that, if section 93 (a) in its original form was defective, section 93 (b), being supplementary and subsidiary to 93 (a) rather than an independent enactment, would also be equally void. By changing the words, "failing to give a notice," the validity of the legis-

government had "manipulated" the amendments subsequent to the finding of the courts, ex-Premier Scott declared (Regina Leader, January 13th, 1916,) "the last amendment to the assessment law was made in December, 1913," i. e. 93 (b) already referred to. One thing, at least, is certain: A significant change was made in the wording of section 93 (a), and this change was necessarily made after December, 1913. That the legislature was competent to make whatever verbal alterations it desired is not open to question; but it is also clear that the late Scott Government must accept full responsibility for the wording of the last revised statutes. Whether the handful of opposition members objected to, concurred in, or were ignorant of the verbal alteration is quite irrelevant so far as the responsibility of the late Scott Government is concerned.

lation was placed beyond all doubt. Moreover, it will be remembered that section 93 (a) was passed in January, 1913, and section 93 (b) in December, 1913. Apparently, however, the party or parties responsible did not consider section 93 (b) sufficient to remedy the defect in 93 (a), as is evidenced by the fact that the change in the wording of section 93 (a) (i. e., "failing to give a notice" changed to "not giving the notice") first appears in the consolidated statutes of 1915.

The writer has been unable to find any public record, in the nature of an amendment sanctioned by the legislature, authorising this change.

CHAPTER VI.

The Separate School Situation in Alberta.

Practically all that has been written in the previous chapter regarding the conduct and administration of separate schools in Saskatchewan holds equally true with reference to the separate school system of Alberta. Only a few lines of divergence between the school laws of the two provinces are discernible. Prior to September 1st, 1905, when the autonomy acts were passed, all public and separate schools in the area (the North West Territories) now constituting the two provinces were subject to the same school ordinances (chapters 29 and 30, 1901) and departmental regulations. And since 1905 the educational policies adopted by Saskatchewan and Alberta have been as nearly identical, with probably one important exception mentioned below, as local conditions appeared to warrant. Section 17 of the Alberta Act is identical with the corresponding section of the Saskatchewan Act, and thus the sister provinces set out upon their provincial careers subject to the same federal heritage "with respect to separate schools."

Subsequent to the passage of the Alberta Act Hon A. C. Rutherford (Liberal) of Edmonton was called on to form an administration, while Mr. R. B. Bennett, Calgary, was chosen leader of the Conservative forces. In the ensuing electoral campaign the arguments already discussed in connection with Saskatchewan

issues formed the chief stock in trade. By the Liberals the terms of the Alberta Act were defended on the ground of their alleged splendid liberality. The political stability of the province and the development of its resources could not be secured, it was maintained, until racial and religious agitation was allayed and the policy of promoting litigation for political ends was given its quietus by an overwhelming vote of the electorate. The leader of the conservative opposition was also accused of being the representative of the C. P. R. monopoly[1] and the subservient advocate of corporate interests. The conservatives, on the other hand, energetically attacked section 17 of the Autonomy Act and demanded that the province should be given complete control over its educational system from the beginning. If the party were elected to office a test case to determine the validity of section 17 was promised. The conservative candidate in Edmonton was reported to have gone even so far as to propose the abolition of separate schools; nevertheless, although this constituency was strongly Protestant, he was defeated by a majority of 693, the largest majority obtained by any candidate in the Province. Separate school privileges to the limited extent sanctioned by the territorial ordinances, and affirmed by section 17 of the Alberta Act, were enthusiastically endorsed by the electorate as preferable to an alleged policy of litigation which, it was asserted, had nothing to offer but a legacy of racial and sectarian rancour.

[1]Mr. Bennett was C. P. R. counsel in Calgary.

Only six separate schools existed in Alberta in 1905 (there are ten now[1]); hence the situation in the province was not considered serious. In the fall of 1905 there were five[2] separate schools in Saskatchewan, three Roman Catholic and two Protestant (there are seventeen separate schools now), out of a total of approximately 850 districts for the Province. It will be remembered that the law of both Saskatchewan and Alberta provides that a public school district must first be organized before a corresponding separate school can be established and that the boundaries of the two districts shall be co-terminous. The following words of Hon. J. A. Calder, minister of education for Saskatchewan, were perhaps equally applicable to conditions in Alberta. "There are scores, yes, probably hundreds, of such (namely, public school) districts," said Mr. Calder in the fall of 1905, "in which the majority of ratepayers are Roman Catholics."[3] Yet, it was asserted, no attempt had been made in these cases to establish separate schools.

The result of the elections held November 9th, 1905, meant an overwhelming victory for the Rutherford Government. Only two conservatives were elected in the twenty-five constituencies of the province, while Mr. Bennett, leader of the opposition, was defeated in Calgary by a margin of twenty-nine votes. Premier Rutherford also expressed the opinion that the Liberal party had secured seventy

[1]See Chapter VII, pages 114 and 115.

[2]Canadian Annual Review, 1905.

[3]Canadian Annual Review, 1905.

per cent. of the total vote cast throughout the province.

From 1905 to 1910 no important separate school legislation was passed in Alberta. In 1910, however, the legislature adopted certain amendments to the school assessment law pertaining to the distribution of the taxes of corporations between separate and public schools, respectively,[1] and these amendments were copied by the legislature of Saskatchewan in January, 1913. The litigation arising from this action on the part of the Saskatchewan legislature has already been discussed, and it is obvious that the decision of the Supreme Court of Canada would be applicable in Alberta should the amendments of 1910 be contested. The contentious words, "in the event of any company *failing* to give a notice . . . . .," have not been changed by the Alberta legislature (as was perhaps somewhat irregularly done in Saskatchewan)[2] in order to bring the subsection containing them into stricter conformity with the finding of the Supreme Court. Corporations in Alberta must, therefore, be considered legally to possess the same option with regard to the division of their taxes as they enjoyed prior to 1910.

In one other respect, perhaps, the legislature of Saskatchewan has manifested a more radical disposition in the matter of drawing a dis-

[1]See subsections (5) and (6), section 9, cap. 105, office consolidation of the N. W. T. Ordinances in force in Alberta, 1915.

[2]No change has been made at the time of writing; nor has a clause equivalent to subsection (5), section 93 (b) (already referred to in connection with the Saskatchewan legislation) been inserted in the Alberta law to overcome the defect in the words "failing to give a notice."

tinct line of demarcation between the two classes of school supporters than has been evinced by the legislature of the sister province. As already stated, the amendment to section 45 of the school law in Saskatchewan, passed in January, 1913, removed any alleged option on the part of the individual ratepayer to support either the public or separate school. No such amendment was passed in Alberta nor did the attorney-general of the latter province concur in the interpretation given to section 45 by the Scott Government. The amendment in question was repealed in February, 1916, and section 45 now reads the same in both provinces. By a recent decision of the Local Government Board and Supreme Court of Saskatchewan, nevertheless, the religious faith of the ratepayer determines the destination of his taxes, whereas, in Alberta, "perfect freedom of choice"[1] to support either school prevails. Such an anomalous state of affairs is, fortunately, to last only for a comparatively brief period of time. As soon as final judgment has been rendered in the case now pending in Saskatchewan[2] a precedent will be available from which uniformity of opinion as to the legal import of section 45, when applied in either province, must result.

It might be incidentally remarked before closing this brief survey that, from more than one viewpoint, the legislature of Saskatchewan displayed considerable wisdom in repealing the contentious amendment to section 45.

[1]See Chap. IV, page 65, correspondence between Rev. A. A. Graham and Hon. J. R. Boyle.

[2]See McCarthy v. City of Regina, page 70.

The validity of this amendment was never open to question, and while it remained on the statute book there would have been little possibility of obtaining an authoritative decision on the import of the original section. Furthermore, certain influential leaders of the community as well as the attorney-general of the sister province had taken issue with ex-Premier Scott's contention that the amendment in question was merely declaratory of the existing state of the law. If, therefore, chaos and discord were to be removed, only the course adopted could prove effective: namely, reference to the courts of a case involving section 45 in its original form. But, as a result of the decision ultimately rendered, the Roman Catholic minority in Saskatchewan may have valid ground on which to appeal for remedial legislation. This point will be briefly discussed in the following pages.

CHAPTER VII.

Incidental Problems and a Comparative Survey.

The present chapter will be mainly devoted to a comparative survey of certain outstanding features governing the western school systems and to the consideration of several incidental questions suggested by the discussion in the previous pages.

From the viewpoint of assessment and taxation the school law of Saskatchewan is largely the converse of that existing in Manitoba. In the latter province all ratepayers, irrespective of religious affiliations, are obliged to support the national or public school; and since 1890 no separate school system has been known to the law. Private or denominational schools may be maintained by any section of the community at its own expense, but the support of such schools does not relieve any ratepayer of his obligation to support the national school. In Saskatchewan, on the other hand, all ratepayers of the faith represented by the minority school are (according to the decision of the Local Government Board and of the Supreme Court of Saskatchewan) obliged by law to support such school, and, in so doing, they are not liable to assessment for public school purposes. In Alberta the ratepayer presumably has the option of supporting either the public or separate school; with respect to

company taxation, however, the law is intended to be substantially the same as in Saskatchewan.

Anomalous as the statement may appear, it is nevertheless true that, subject to the conditions mentioned below, religious teaching may be conducted in the public schools of Manitoba to the same extent as in the separate schools of Saskatchewan. In both provinces such teaching is limited to the last half hour of the school day. In Manitoba either a resolution passed by a majority of the trustees or a petition signed by the parents or guardians of at least ten or twenty-five children, as the case may be, attending school in rural and town districts respectively, is sufficient authority to warrant religious teaching during the period prescribed. Furthermore, as already stated, when the average attendance of Roman Catholic pupils is forty or upwards in town and city districts, or twenty-five or more in the case of rural and village schools, the trustees shall, on petition of the parents or guardians of such number of Roman Catholic children, employ at least one duly qualified Roman Catholic teacher; and a reciprocal provision applies with respect to the employment of a non-Roman Catholic teacher. No separation of pupils by religious denominations is permitted during the time devoted to "secular school work," nor may religious instruction be given to any pupils unless the parents or guardians so desire. (Sections 249 to 257, Cap. 165, R. S. M. 1913).

In Saskatchewan, on the other hand, religious instruction in the school of any district, public or separate, is limited to the last half

hour of the day. During this period such instruction may be given as the trustees direct, but only to those children whose parents or guardians offer no objection. (Sections 178 and 179, Cap. 23, R. S. S. 1915). In Alberta the same law applies to religious instruction in schools as in Saskatchewan.

Reverting to that perennial source of agitation, the dual language question: in the case of those schools that come under government control and inspection the law in Alberta and Saskatchewan reads, in part, as follows: "all schools shall be taught in the English language, but it shall be permissible for the board of any district to cause a primary course to be taught in the French language." (Sec. 177, Cap. 23, R. S. S., 1915).

In Manitoba alone of the three prairie provinces was the bi-lingual system legally authorized. According to the statutes (Sec. 258, Cap. 165, R. S. M., 1913): "when ten of the pupils in any school speak the French language, or any language other than English, as their native language, the teaching of such pupils *shall be* conducted in French, or such other language, and English, upon the bi-lingual system."[1]

[1]See Chapter III, for repeal of this clause.

"Some years ago the school district of St. Francois de Salle, St. Norbert, was a French bi-lingual school. The Ruthenians began to settle in the district, and as soon as they had a majority at the annual meeting they secured control of the school board. They wanted to employ a Ruthenian bi-lingual teacher instead of a French bi-lingual teacher, and they had the necessary number of children, having some 40 or 50 of school age. The French still had some 15 children attending the school, and the two factions came to an agreement to build a two-roomed school, one room being operated as a French bi-lingual school, and the other as a Ruthenian bi-lingual school. A year or so later

Considerable light is thrown on the moral claim of the French language to recognition in the North West Territories by the debates in the House of Commons, February, 1890. By Dominion legislation passed in 1878 the Territorial ordinances were to be printed in French and English which, accordingly, were both recognized as official. In 1890 Mr. Dalton McCarthy introduced a bill in the federal house, the effect of which would have been to make English the sole official language in the Territories. Speaking to this bill Sir John A. Macdonald used, in part, the following words:

"I believe that it (the suppression of the French) would be impossible if it were tried, and it would be foolish and wicked if it were possible . . . . Why, Mr. Speaker, if there is one act of oppression more than another which would come home to a man's breast, it is that he should be deprived of the consolation of hearing and speaking and reading the language that his mother taught him. It is cruel. It is seething the kid in its mother's milk."

Mr. Laurier, speaking to the same bill, February 18th, 1890, struck a tone characteristic of his utterances on the recent Lapointe resolution:

the French room was closed." From the speech of Hon. R. S. Thornton, Minister of Education for Manitoba, in the legislature, January 12th, 1916.

As section 258 was mandatory, the words "*shall be conducted*" being used, the department of education was impotent in such cases. Mr. Thornton also stated that on June 30th, 1915, there were 2,727 school departments in operation in Manitoba with a total enrolment of 100,963 pupils; of this number, 421 were bi-lingual schools (French, German, Ruthenian and Polish) with a total enrolment of 16,720, or, approximately one-sixth of the total school population of the province.

"Any policy which appeals to a class, to a creed, to a race, or which does not appeal to the better instincts to be found in all classes, in all creeds, and in all races, is stamped with the stamp of inferiority." In each of the antagonistic elements there was, said the speaker, "the common spark of patriotism," and to this alone must any true policy appeal. "It is imperative for us French Canadians to learn English," continued Mr. Laurier, "but . . . if I were to give any advice to my Anglo-Canadian friends, it would be that they would do well to learn French too."

Similar opinions were expressed in eloquent terms by Mr. N. F. Davin, Sir Richard Cartwright and others, while Sir John Thompson brought the debate to a close by moving the following amendment which was carried by a vote of 149 to 50: "That the legislative assembly of the North West Territories should receive from the parliament of Canada power to regulate, after the next general elections of the assembly, the proceedings of the assembly and the manner of recording and publishing such proceedings." The final solution of the language question is set forth in Appendix III.

The competence of the provincial legislature to restrict the teaching of language in publicly supported schools to English alone is scarcely open to question. On the basis of the historic past the argument is frequently advanced that French is entitled to exceptional recognition over other non-English languages, and thus the question resolves itself into one of equity and public policy. From a legal viewpoint it would appear an untenable assumption

to maintain that the teaching of French, or of any other non-English language, is a "right or privilege with respect to separate schools." Some ground for this contention would doubtless exist if it could be established that French, for instance, is essential and fundamental to religious instruction; but on this basis as strong a case could probably be made out for Latin. In the case referred to, City of Winnipeg v. Barrett (1892, A. C. 445), Mr. Justice Patterson of the Supreme Court of Canada used the following words in giving judgment: "There is no general prohibition which shall affect denominational schools. The prohibition relates only to the rights and privileges of classes of persons and to legislation which injuriously affects such rights." Hence, as already quoted, it would be competent for a provincial legislature to pass legislation regulating many subjects, e. g. "compulsory attendance of scholars, the sanitary condition of school houses, the imposition and collection of rates . . . . and sundry other matters which may be dealt with *without interfering with the denominational characteristics of the school.*" (See also ex parte Renaud, 1 Pugsley (N. B. R.) 273.) That the "denominational characteristics" of a school are dependent on, or inseparable from, the use of any particular non-English language is surely an assumption involving a wide stretch of the imagination.[1]

[1]The Privy Council decision re the validity of regulation 17 (Ottawa Separate School Board and others *v.* the Ontario Department of Education) has been recently given. This decision, which settles the question for Ontario (and presumably for the other provinces where separate schools exist), is to the effect that the teaching of French is not a "right or privilege" attached to denominational instruction.

Another question has frequently been asked: Is it not within the power of the Saskatchewan legislature to abolish the separate school system as Manitoba practically did in 1890? The two cases, however, are not analogous. In 1890 Manitoba repealed a statute passed by the province itself *subsequent to the union* and, in doing so, no Dominion statute was infringed on. According to the decision of the privy council (Barrett Case above), the Public Schools Act, in providing for a system of national schools, did not preclude the establishment of denominational schools. The fact that the minority ratepayer would be saddled with an additional financial burden was not sufficient to invalidate the Act; had the Manitoba legislature prohibited the establishment of denominational schools, for instance, such legislation would have been null and void on the ground of repugnancy to the Manitoba Act of 1870, a Dominion statute. In Saskatchewan, on the other hand, separate schools existed both by law and practice in 1905, the date of the union, and this system was confirmed by section 17 of the Saskatchewan Act. Hence any act of the provincial legislature abolishing separate schools, as established by the ordinances, would be nugatory and the same is true with respect to the Dominion government. There is little doubt that, under the authority of the B. N. A. Act, 1871, the federal parliament was competent, when providing constitutions for the two western provinces, to deal as it saw fit with the subject of education; but such power could be exercised only "at the time of such establishment" (section 2, B. N. A.

Act, 1871) i. e. in 1905. With the passing of the Saskatchewan Act, however, the Dominion Parliament exhausted its jurisdiction, and section 17 is now a "fait accompli." Unless, and until, section 93 of the B. N. A. Act, 1867, is amended by the Imperial Parliament separate schools must be a fixture in Saskatchewan.

Two questions are suggested by the foregoing discussion: in the first place, may there be a "minority within a minority" whose rights or privileges "with respect to separate schools" or "in relation to education" may be prejudicially affected by the act of a provincial legislature? For instance, in the case of a public school district wherein a separate school also exists, a certain section of the minority ratepayers might object to supporting the separate school and demand to be rated as public school supporters. A state of facts very similar to this is what gave rise to the Vonda case. Assuming that the option of supporting either school existed prior to January, 1913, would the position be tenable that the rights of a "minority within a minority" were prejudicially affected by the amendment to section 45 respecting the individual taxpayer? A section of the minority ratepayers could scarcely be classed as "the Protestant or Roman Catholic minority" [B. N. A. Act, sec. 93, subsec. (3)], hence such a dissentient group would presumably come under the purview of "any class of persons,"[1] [Sask. Act, sec. 17, subsec. (1)], and, if so, the above argument relative to the taxation of companies would apply.

[1]That scattered dissentients might be considered a *"class* of persons" would seem a somewhat strained interpretation.

Again, what means of redress, if any, might be open to a religious minority in the event of the amendments of 1913 (assuming the same are intra vires) being repealed by the act of a Saskatchewan legislature (as has been done in the case of the amendment to section 45) and with what probable results? For such an eventuality the Manitoba precedent affords an excellent parallel. A separate school system, established by the provincial legislature after the union and conferring certain privileges on the minority ratepayer, was virtually revoked by the Public Schools Act of 1890, also a provincial statute. As already stated, the outcome of the matter on reference to the privy council was the decision that the provincial legislature was legally competent to pass the Public Schools Act, from which, nevertheless, an appeal lay to the governor-general-in-council for remedial legislation. And only the "effluxion of time" prevented the Tupper Government from enforcing its remedial orders. In Saskatchewan the question raised is identical with the Manitoba School issue, since the provincial government has revoked the amending legislation[1] (assuming the same to be more than declaratory and also to be intra vires) and reverted, in part, to the order of things prior to 1913. Only as a last resort would the Dominion Government interfere, but it is conceivable that the last resort might be considered the only one. Furthermore, separate schools existed "by law . . . . at the union" (1905)[2] in the area which became

[1]The amendment to section 45 only.

[2]The question relative to the date of the union is discussed in Chapter IV.

the Province of Saskatchewan, and thus subsection (3), section 93, B. N. A. Act, 1867, would be clearly applicable to the case stated. It is undoubtedly true that the privileges of a Protestant or Roman Catholic minority " in relation to education" may be indefinitely enlarged by the provincial legislature, if, in so doing, the provisions of subsection (1), section 17 of the Saskatchewan Act (safeguarding the rights of "any class of persons" etc.) are not infringed on; but it is quite another matter for the legislature to revoke such privileges when once legally granted.

Up to the present time the number of separate schools established in Saskatchewan and Alberta has not exceeded more than about one-half of one per cent. of the total number of schools in these provinces. In January, 1916, there were in Saskatchewan, 14 Roman Catholic separate school districts (using 17 school houses) and 3 Protestant separate school districts out of a total of 3,703 districts for the province. The number of private schools,[1] i. e. those not under departmental jurisdiction and not receiving government aid, has not been definitely ascertained by the writer, but it is considerable. In Alberta the separate school situation is analogous to that in Saskatchewan. On January first, 1915, there were 9 Roman Catholic separate schools in the province containing 71 departments with a total enrolment of 2,950 pupils. One Protestant separate school has recently been established for which, however, no returns were available. Approximately 50

[1]Premier Martin announced in the House in February, 1917, that the number of private schools in Saskatchewan is fifty-three (53).

private and parochial institutions, less than half of which prepare candidates for the departmental examinations, are also found in Alberta. In Manitoba no separate schools are recognized by law, but, as already stated, a large number of private and parochial schools are in operation in this Province.

Before concluding this chapter reference should be made to certain Anglo-French Canadian relations in general, which reflect on an enlarged scale the racial and religious conditions prevailing in the Prairie Provinces.

The first decennial census of Canada was taken in 1871, when the population stood at 3,689,257. The figures for Quebec and Ontario were 1,191,516 and 1,620,851 respectively; in other words, Quebec comprised about 33 per cent. and Ontario 44 per cent. of the total population of the Dominion. The census of 1911 placed the population of Canada at 7,206,643, of whom 2,054,890, or about 28 per cent. were French, and 3,896,985 or nearly 54 per cent. were British (English, Scotch, Irish and Welsh). The British in Ontario numbered 1,927,099 of a total population of 2,523,274 and 316,103 in Quebec of a total population of 2,003,232; the French, on the other hand, numbered 1,605,339 of the population of Quebec and 202,442 of the population of Ontario. In 1911 there were 2,833,041 Roman Catholics in the Dominion while the five leading Protestant denominations numbered 3,850,763. Fourteen smaller sects and 32,490 unspecified made up the remainder. The ratio of Protestants to Roman Catholics in Quebec was roughly 1 to 7, the figures being 250,000 and

1,725,000 in round numbers; while in Ontario the ratio was reversed, the Protestants outnumbering the Roman Catholics by 4 to 1, with the figures in round numbers at 2,000,000 and 485,000 respectively. It is also worthy of remark that practically four out of every ten Canadians of all nationalities are Roman Catholics.

Several conclusions obviously follow from the above data. With the Roman Catholics ardently championing religious instruction in schools, the separate school factor in our national life appears to be a comparatively permanent one. Also the Protestant minority in Quebec, who promise to remain the religious minority to the end of time, will presumably continue to demand the protection afforded by separate schools; and since there should be no discrimination in this respect against religious minorities in other provinces (to the extent that separate school privileges were protected "by law in the province at the union"), the significance of the Quebec influence is at once apparent. The problem is further complicated by the fact that Quebec seems willing to allow the Protestant minority in that province to do largely as it pleases in the matter of language and religious instruction in schools, and then expects that similar indulgence should be granted to Roman Catholic minorities in other provinces. The recent Ottawa school embroglio partly illustrates the point. This view of the question, however, apparently overlooks two important considerations: the minority is entitled only to such rights and privileges "with respect to separate schools" as it enjoyed "by law in the

province at the union." If the Quebec legislature, for instance, enlarges the separate school privileges of the Protestant minority in that province, it does not follow that the Roman Catholic minority of Ontario is entitled, legally or morally, to a similar extension of privileges. Secondly, bi-lingualism does not appear to be a legal phase of the distinctly separate school question, and, if this is the case, Ontario or any other province is unfettered by the B. N. A. Act in regulating language instruction so long as the denominational characteristics of separate schools are not thereby prejudiced. Theoretically, it may be true that Quebec can exercise similar powers with respect to English,[1] but it would scarcely venture on so absurd and fatuous a course as to impose restrictions on the leading language of the Dominion.

It is also obvious from the above statistics that, owing chiefly to the effects of immigration, the British have made more rapid strides in increase of population than have the French. The relative increases, however, are not so disproportionate as Lord Durham appears to have anticipated, and there is no indication that the French will abandon "their vain hopes of nationality." The British Empire has been developed on the principle of mutual trustfulness; each racial division has, wherever possible, been encouraged to work out its own destiny in its own way. And Quebec is probably the most truly Canadian of all the provinces of the Dominion. Already it has made, and

[1]So far as the writer has been able to ascertain, the English minority in Quebec have always received just and liberal treatment at the hands of the majority.

is making, a unique contribution to our Anglo-Saxon civilization. Brilliant statesmen and brilliant writers are numbered among its sons. But Quebec has added to our national life in an indirect and probably more important way: it has insisted on minority rights and been unwilling to yield to the majority. If, indeed, "the essence of freedom is found in the treatment of minorities," Quebec has indirectly played the part of liberator. "Quebec has had to be listened to," said an eminent Canadian, "and the rest of the Dominion has learned the lesson of toleration." The query arises: Has this indulgence never been overdone, and has it always proved to be in the best interests of Quebec itself? And yet before the time of Lord Elgin's arrival in Canada the French had probably experienced sufficient political disabilities to compensate for any concessions granted since.

The aim of the present thesis has been to give a somewhat critical account of the development and import of separate school legislation in Manitoba, Saskatchewan, and Alberta. That this treatment of the subject is far from perfect the writer readily admits. He has, however, endeavoured to adopt an impartial viewpoint in the discussion of the constitutional problems involved and acknowledges that the pitfalls of erroneous judgment and faulty induction have been numerous and, for him, unavoidable. While, in the writer's opinion, the separate school laws of the Prairie Provinces are, like every product of human ingenuity, not above criticism, he has no reason nor desire to impugn the good intentions of the different legislatures

in passing them. If the great problems of racial fusion are to be satisfactorily solved in the West, there can be no place for personal animosities, religious prejudice, nor yet for bitter controversy. Not until the leaders in thought and public life in Western Canada are actuated by a spirit of tolerance and good will towards all classes and creeds can there be any hope of the banner agricultural provinces of the Dominion rising to the level of their potential greatness.

APPENDIX I.

Sir John Thompson, March 6th, 1893, Hansard, p. 1794. Re Disallowance of the Manitoba Public Schools Act of 1890.

"Why should we (the Dominion Government), by the exercise of the strong hand of disallowance, destroy a provincial statute on the ground that it was null and void, and thus invoke an immediate conflict with the provincial legislature upon a subject and for a reason which could be dealt with by a tribunal in which the people of the province would have confidence, when they might not have confidence in the executive of the country, actuated, as it might appear to be, by political motives or religious sympathy?"

Sir J. Thompson took the ground that, if the courts decided the Act was "intra vires," it should not be disallowed, but the question of remedial legislation and redress might then be considered; whereas, if the Act were declared by the provincial tribunal to be "ultra vires" it would not need to be disallowed.

* * *

Sir W. Laurier, March 8th, 1893; Hansard, p. 1982. Re Reference by the Dominion Government of the Manitoba School Question to the Supreme Court of Canada.

"I say that the reference to the Supreme Court under such circumstances is most dangerous, because, if the Supreme Court should decide that the Government have the power to interfere with the legislation of Manitoba, and the Government should not obey the legal mandate which they themselves had sought, there would be a powerful and a rightful agitation in some parts of the country against the Government."

* * *

Re Remedial Legislation—Manitoba School Question.

Mr. W. Laurier, July 15th, 1895, accused the Government of a record of "unfulfilled promises, a record of broken engagements, a record of decisions adopted and abandoned, a record of conflicting determinations and of retrograde modifications." He diagnosed the Government's case as an affection resulting from "some cerebral malformation which, as soon as they have taken any course upon any question, crowds upon their attention all the objections against that course, and impels them to undo that which they have done. Looking at their course it would seem that their nights and their days are haunted by the demon of doubt and vacillation." Their policy was alleged to be "bullying in language and weak and meek in execution."

And again on March 3rd, 1896, the leader of the opposition spoke as follows: "The argument seems to be overwhelming, that, if this bill were to become law, while it would afford no protection whatever to the suffering minority in Manitoba, it

would be a most violent wrench of the principles upon which our constitution is based."

Sir Richard Cartwright on March 11th, 1896, struck a like note: "The best thing they (the Government) can offer to us is that if we pass this bill . . . we will be opening an era of fighting and wrangling, and arguing, not only 'de die in diem' but 'in saecula saeculorum'."

Mr. Foster accused the leader of the opposition with incapacity, carelessness, and cowardice in not committing himself and the liberal party to a definite policy and assisting the Government in the alleged crisis, which, as Laurier maintained, was shaking confederation to its foundation and disintegrating the country.

Mr. Laurier announced his policy in 1893 to the following effect which he again proclaimed in 1895: the "question which was to be solved was not a question of law but simply a question of facts (i.e., were the schools in Manitoba Protestant); facts to be ascertained in order to lay down the law." Furthermore, if the facts showed that the grievances of the minority were valid and the schools were Protestant, sufficient grounds for interference existed. The Government, he alleged, saw fit to ignore his advice, and hence he was justified in waiting to see what policy it had to offer.

* * *

Re N. W. T. Ordinance of 1892.

In Hansard, April 26th, 1894, p. 2042, the Government's reasons for not disallowing the N.W.T. Ordinance of 1892 are set forth in a speech by Sir John Thompson.

Various petitions had been received by the Government, praying that the Ordinance be disallowed on the ground that actual grievances existed as a result of this legislation. Apprehension was likewise expressed in regard to the inviolability of minority school rights in the future. Especially was objection taken to the compulsory professional training of teachers and to the prescribed texts [1] to be used in separate schools. On investigation by the Dominion Government it was found that a positive disagreement as to the facts of the case existed, and, in the face of such contradictory evidence as was offered, disallowance was deemed inexpedient.

The Federal Government requested the legislature of the Territories to re-examine the whole subject with a view to inquiring both into the complaints that grievances actually existed and into the allied complaints that grievances might arise owing to the absence of security as to the nature of subsequent legislation.

(1) The ordinance of 1892 caused no immediate change in the prescribed texts. A circular issued by the secretary of the council of public instruction, September 30th, 1893, contained the following: "In school districts, where French is the vernacular, the school trustees may, upon obtaining the consent of an inspector in writing, use the Ontario series of bi-lingual readers, part I, II, and the second reader, instead of the Dominion series or the Ontario readers. In all standards above the second the Ontario readers are prescribed after 1st of January, 1894."

The question of disallowance is clearly set forth by Sir John Thompson: "disallowance takes place from the moment of its being proclaimed . . to the legislature, and, therefore, it follows that what has been done under the disallowed act in the meantime remains in full force and vigour. If . . . the ordinance disallowed has been void as being ultra vires, of course everything is null and void from the beginning. . . . It is said that while disallowance could not have nullified the regulations which existed before, it would have restored to the Separate Schools control by the Catholic section of the Board of Education and that the Catholics would, therefore, have been able to get redress against any regulations which were objectionable."

Sir John Thompson also pointed out that the jurisdiction of the Dominion Government for redressing grievances in the Territories was not the same as obtained with respect to the provinces, that is, limited to one year. The Federal Government could, on the other hand, from day to day or from year to year remove any substantial hardships imposed by the Territorial legislature. Hence there was no need for immediate disallowance, more particularly as the evidence was so conflicting.

Furthermore, the case was not on a par with the issues of the Manitoba School Question, and hence, it was alleged, should not be submitted to the courts. The question was simply one of fact, not of law, i.e., were Separate Schools actually swept away by the Ordinance of 1892? On this phase of the question the leader of the opposition (Mr. Laurier) expressed agreement with the Government.

The following extract is typical of the opinion expressed by the opponents of the Ordinance in question, who maintained that it was the duty of the Government to resort to disallowance. Mr. Tarte (quoting the Hon. T. C. Casgrain) used the following words:—

"No one had the right to deprive the Catholics of the North West Territories of their Separate Schools. The Hon. Mr. Haultain . . . understood that pretty well. That is why he went in a roundabout way. He overhauled all the Ordinances relating to schools; and while the new Ordinance re-affirms the rights of Catholics to Separate Schools, it makes these dependent on such conditions that they are virtually suppressed. So that Mr. Haultain has done indirectly what he could not do directly."

* * *

Re Alberta and Saskatchewan Acts—1905. Extracts from Hansard Debates.

Mr. W. Scott.—March 31st, 1905, Hansard, p. 3614.

"I want to say, speaking as a Protestant, not as a member of the minority, that in view of the history of this matter I would be ashamed of myself as a Protestant and ashamed of the Protestant majority, if we would wish now, merely because

we have the power, to deny the very thing which we as Protestants stood out for when a Protestant minority was affected." It was rather expected by the Federal Parliament of 1875, according to Mr. Scott, that the minority in the North West Territories would be Protestant.

Sir Wilfrid Laurier.—March 15th, 1905, Hansard, p. 2506.

"Mr. Haultain took the ground that section 93 of the British North America Act applied mechanically to those provinces. The ground we (the cabinet) took was that section 93 of the British North America Act did not apply mechanically, but that it should be made to apply in the legislation we offered to the House, subject only to such modifications as the circumstances of the new provinces would warrant."

Hon. R. L. Borden.—March 22nd, 1905, Hansard, p. 2975.

"The very basis of confederation, contemplating the inclusion of all British North America, provided for Separate Schools in Ontario and Quebec only. But no restrictions on provincial powers were contemplated in the Northwest. None were mentioned in the Quebec resolutions. . . . Why then should they (the people of the Territories) not receive the same rights which were conferred upon the people of Nova Scotia, New Brunswick, and Prince Edward Island, and which are now enjoyed by them?"

On June 28th, 1905, Mr. Borden spoke as follows (Hansard, p. 8292): "I believe that the application of section 93 of the British North America Act will leave the new provinces the right to deal with the question of education. I have said already that this is a question about which honourable gentlemen in this House have differed and that I do not claim to be infallible." Mr. Borden moved in amendment (July 5th, 1905, Hansard, p. 8804) that part of section 16 of the bill before the house be struck out and the following inserted: "that the provisions of section 93 of the British North America Act, 1867, shall apply to the said province in so far as the same are applicable under the terms thereof."

* * *

Re Applicability of section 93 of the B.N.A. Act to the new provinces. July 5th, 1905, Hansard, p. 8810.

Mr. Fitzpatrick, speaking in the House on the subject of education, as governed by the Saskatchewan Act and the Federal jurisdiction to insert section 17 in the Act, made the following statements: "My honourable friend (Mr. Borden) says, however, that these Territories are not provinces and consequently this section (section 93, B.N.A. Act) does not in terms apply to the new provinces. Conceivably that is true. There is a doubt in my mind as to whether or not these Territories, not being provinces, come within the wording of section 93; and in the technical meaning of the term, the minority might not have those rights and privileges which they enjoy under the School Ordinance. That is the letter of the law, but what is the spirit?"

Mr. Borden interrupted as follows:—"If we had power under the Act of 1871, to absolutely disregard section 93 of the British North America Act, then of course there is no further question. We cannot make a new section 93. If, on the other hand, we are bound to observe section 93, it does not seem to me that we can increase our power by passing any act restricting the powers of a Territorial legislature, and then, the following year, when creating a province, say: "there you have restrictions operating upon the Territorial legislature and the Provincial legislature must be governed thereby."

Mr. Fitzpatrick replied:—"Proceeding on the assumption that we are dealing with these Territories, under the Act of 1871, as Manitoba was dealt with and British Columbia and Prince Edward Island and every province brought into the Dominion since confederation, we are applying to these new provinces the same principle we applied to those provinces. If these Territories were coming in as provinces, created previous to this time, there would be no question as to the application of section 93, and all the rights and privileges guaranteed the minority under existing legislation would be continued; but because they do not come within the word 'province' my honourable friend says: your door is barred and section 93 of the British North America Act does not apply. My answer is that when these Territories were brought into confederation, they were brought in under a compact entered into between the people of Canada and the Imperial authorities. We find in the petition to the Imperial authorities the following language:—

'That the welfare of the sparse and scattered population of British subjects of European origin, who inhabit these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as the circumstances will admit, to those that exist in the several provinces of the Dominion."

This petition was granted and, in the words of the Imperial order-in-council, as quoted by Mr. Fitzpatrick, ". . . from and after the 15th day of July, 1870, the said North West Territories shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited address."

APPENDIX II.

(The writer is indebted to ex-Premier Scott for this Report.)

Report of proceedings when delegation from Grand Orange Lodge of Saskatchewan waited upon Government, 11 a.m., Thursday, January 20th, 1916.

PRESENT.

Hon. W. Scott.....Premier.
Hon. J. A. Calder.....Minister of Railways and Highways.
Hon. A. P. McNab.....Minister of Public Works.
Mr. Isaac Dawson.....Deputy Grand Master.
Mr. W. H. G. Armstrong..Grand Organizer for Saskatchewan.
Mr. M. L. G. Armstrong...Grand Master of Saskatchewan.
Mr. Robert Dawson.....Worshipful Master.

Mr. Armstrong, Sr. (Spokesman).—If you are ready to hear us Mr. Scott we will proceed with what we have to say and inform you as to why we are here and what we desire.

Hon. W. Scott.—Yes.

Mr. Armstrong.—We, as you already know, represent the Orange Association of Saskatchewan. We are an institution composed of both political parties. We are not a partisan institution by any means, although some people think we are; we do not seek to rob any class of citizens of their constitutional rights or their right to worship God according to the dictates of their conscience. These were never the objects of our association and never will be. We exist as a matter of fact to protect all loyal subjects in the enjoyment of their constitutional rights, whether they are Roman Catholics or Protestants.

We are deeply interested in the question of education, believing as we do, that one national school system is the ideal system for this new country. We have always advocated that principle and, therefore, we think that this is an opportune time when the question of education, we understand, is to be gone into by the government. We think the time is now opportune to present our views and impress upon the Government as earnestly as possible, the measures which we think are in the interests of this new province, and necessary to settle this question once and for all.

Now, we believe that Separate Schools are not in the best interests of this country. We say furthermore that the people of Saskatchewan have never had the privilege or right to say what system of schools they prefer or desire. The Northwest Territories were purchased from the Hudson's Bay Company, and became part of Canada in the year 1870. No schools at that time existed in the Territories, but in the year 1875, when we had 500 white people living in the Territories, the Federal Parliament passed an Act granting to the people of the North-

west Territories limited legislative powers. According to that statute, passed by a Parliament in which we had no representation, we had to have a dual system of schools. I mention this to show that Separate Schools were not established by the sovereign will of the people of the Northwest Territories. It was contended by recognized constitutional lawyers in Parliament that when autonomy was granted to the Territories, the people would be given the right to decide for themselves as to what system of education they would have. The late Dalton McCarthy in 1894, in the Federal Parliament introduced a resolution, conferring upon the Assembly of the Northwest Territories the power to establish whatever system of schools they deemed in the best interests of the Territories, and also to abolish the dual language. Hon. David Mills,—I am not certain whether or not he was at a later date a Judge of the Supreme Court of Canada—(interruption—he was)—at all events recognized as a great constitutional lawyer, took the stand that when autonomy was granted to the Northwest Territories when new provinces were erected, the people should be given the right, under the constitution, to establish whatever system of schools they preferred. Sir John Thomson, then Chief Justice of Canada, took the same stand. Hon. Sir L. Davies who is now a Judge of the Supreme Court of Canada took similar ground. But in 1905 legislation was enacted, establishing two new provinces in the Territories, and because a system of Separate Schools existed in the Territories, established by virtue of a Federal Statute passed by a Parliament in which we had no representation, that system was made perpetual.

Sub-section 1 of section 93 of the British North America Act provides that, "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

"1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union."

The Government interpreted this to mean that the system of schools which then existed in the Territories had to be perpetuated. Now I grant, and we all grant that if the province had been a sovereign-entity and if Separate Schools had been established by the sovereign will of the people inhabiting the Territories, as the British North America Act is meant to apply automatically to new provinces coming into the Union as well as those originally forming Confederation in 1867, I am free to admit that Separate Schools would be fastened upon the province for all time to come, but we were not a sovereign-entity at the time we came into the Union, and never had the right to decide for ourselves what our education should be. The Territories were given a limited power only by the Federal Parliament, and we had not the right to establish one national system of education, but had to abide by conditions imposed in 1875 by the Federal Parliament. So long as we were in a territorial position, we were willing to submit to these conditions,

but as soon as we were created a province, we should have been given the same rights as other provinces to decide for ourselves what system of education we should have. It never was intended, in our opinion, by the framers of the British North America Act or by the Fathers of Confederation, or by the Imperial Parliament which passed the British North America Act, that because a system of education was established in the Territories by a delegated authority from the Parliament of Canada, in which the 500 inhabitants of the Territories had no voice, that that system should be forced upon us for ever, and that our rights as a province should be shackled and our Provincial Constitution be circumscribed as it was by the autonomy legislation of 1905. Clause 93 of the British North America Act referred to two of the provinces that came into the Federation in 1867, namely Ontario and Quebec, because they were the only provinces that had separate or minority schools.

Separate Schools in these provinces were established by their own independent legislatures before the Union. Clause 93 only perpetuated rights established by the people themselves. But the people of the Territories never acted, because they had no authority to do so, and the minute we became a province we should have been given full authority to deal with the matter as seemed to us best.

The question of the abolition of Separate Schools is a big one, and we do not ask the Government to bring that about immediately, we know it cannot be done in six months or in a year, but we think that at the first opportunity it should be referred to the people, and if the Government will make that a plank in their platform at the next general election we will guarantee that so far as we are concerned (although we are composed of both Liberals and Conservatives), we are united on this question and will support the party which does as we ask. I come in contact with people in all parts of the province, and I know that there is a tremendous feeling prevalent that one national system is the best for us. As a people we say the province has the right to abolish Separate Schools. We have the opinion of three eminent lawyers to the effect that the province has that right.

Mr. Scott.—Would you let us have the opinion? It is in writing?

Mr. Armstrong.—Yes, it is in writing and I have no personal objection and think the committee may favorably consider your request.

Mr. Scott.—You see the immediate significance of a public statement that three eminent lawyers have given it as their opinion that the Province of Saskatchewan has the right legally and constitutionally to establish and maintain a national system of schools, that is to say, to abolish the Separate School system which exists—you see the significance of the statement.

Mr. Armstrong.—Yes.

Mr. Scott.—I think the public should have the names of the lawyers and their opinion and the line of reasoning by which they arrive at that conclusion.

Mr. Armstrong.—We have not discussed it in committee but I will take it up with them. Personally I would be willing to let you have a copy of the opinion.

We think that when the war is over we will have a large foreign immigration to our shores and either we will have to lift these foreigners up to our level or they will drag us down to their level, and this is the time in our opinion to consider establishing one system of national non-sectarian schools. We are willing to leave the decision to the people, and we agree that we will support any party, Liberal or Conservative, which makes this question a plank in their platform.

Mr. Scott.—Before you deal with that I should like you to indicate more clearly the course which the provincial legislature should follow in doing what you suggest.

Mr. Armstrong.—Well, I would suggest that either at the next provincial election the Government should make that a plank in their platform or—

Mr. Scott (interrupting).—What should the plank say?

Mr. Armstrong.—The abolition of Separate Schools.

Mr. Scott.—That is a very indefinite expression. The real point is this, can the legislature do it without any precedent action?

Mr. Armstrong.—We have the precedent in Manitoba.

Mr. Scott.—I mean *preparatory* action. The three eminent lawyers have given their opinion that the legislature can abolish Separate Schools and establish National Schools and have it sustained in the Courts. Your suggestion is that the Government and the political party which supports the Government should go before the people with the plank of National Schools without any preparatory action to ascertain our powers in the matter?

Mr. Armstrong.—Yes, that is our suggestion. To put it in short form, the suggestion is that the Saskatchewan Act, so far as it relates to education, and deprives us of our educational rights, is ultra vires of the British North America Act.

We think those amendments to the Educational Act and the School Assessment Act passed during the session of 1913 should be repealed. We see no reason why that should not be done as soon as possible and before an election takes place. We think any law which makes dogma and not volition the determining factor as to whether the individual should support a Public or Separate School is a bad law and contrary to all principles of British law and freedom. So far as I know Saskatchewan is the only province in Canada which has a statute of that kind in operation. We do not know of any other province which compels citizens, because of their religion, to support a certain system of schools.

Mr. Scott.—Certainly Alberta does.

Mr. Armstrong.—That is just with reference to the School Assessment Act.

Mr. Scott.—It is clear enough, that is to say Roman Catholic or Protestant stock holders in companies belonging to the faith of the minority are required in Alberta to pay their taxes to the minority school.

Mr. Armstrong.—I have not gone into that matter but have noticed a statement by the Minister of Education of Alberta that the Attorney-General of that province has given it as his opinion that citizens are free to support any school they like.

Mr. Scott.—Speaking of the School Act, yes; but their Assessment Act unquestionably and beyond any dispute requires the taxes of company shareholders in districts where there is a minority school to be paid according to the shareholder's religious faith, that is, if it is a Protestant minority school all the taxes of Protestant shareholders in taxable companies are to go to the minority school. The Alberta law specifically requires this. It is a matter of fact, not one of opinion at all.

Mr. Armstrong.—I was under the impression and was led to believe that there was such a law as regards companies, but as regards individual citizens they are given the liberty I think in the Province of Alberta to choose their own school.

Mr. Scott.—I may say that I don't think so. We have received an expression of opinion from the Minister of Education in Alberta and he purports to give the Attorney-General's opinion on the subject. What does that bind?

Mr. Armstrong.—I made the assertion that it was so far as I knew.

Mr. Scott.—So far as I know the situation in Alberta is just the same as it is here in relation to the School Act and it has always been the same.

Mr. Armstrong—The law is not quite the same. They have passed no amendment to the School Act having the same object in view as the Saskatchewan amendments.

Mr. Scott.—They have not been required to so far as I know, that is, no confusion arose between judgments of Assessment Revision Courts which has happened unfortunately in Saskatchewan.

Mr. Armstrong.—Granting, for the sake of argument, that what you say is correct. It is immaterial to us whether or not Alberta has a law on the statute books to that effect.

Mr. Scott—You will understand again though the significance on the minds of the people of a statement such as yours to the effect that "there is no province other than Saskatchewan," when there is the adjoining province of Alberta which does require it and passed the law two years before we did with regard to companies.

Mr. Armstrong.—The law as it affects citizens, individuals, has not been altered—you agree with that Mr. Premier?

Mr. Scott.—Yes, but I should not let you go on without saying that the law here has not been altered.

Mr. Armstrong.—There is a difference of opinion there.

Mr. Scott.—Speaking officially as Minister of Education, advised by the officials of the Department including the Superintendent, also speaking as head of the Government, and making a statement of that kind, well to say the least, I submit that my statement is worthy of some attention.

Mr. Armstrong.—Yes, but because the Province of Alberta has a law to that effect surely that is no reason why we should place ourselves in such unfavorable light before the world that by reason of his faith a man is bound to support a Separate School which he does not believe in. I know there are English speaking Roman Catholics very much opposed to our dual system of schools and a compulsory law of that kind. We could have had a delegation of English speaking Roman Catholics come here with us to-day and present the same views as we are advocating now, but as it was arranged for this meeting to be for the Orange Association and as we are representing exclusively the Orange Association we didn't think it wise to act in conjunction with anybody else.

We think then that these amendments should be repealed.

We think further that the French language should be put on the same basis as any other foreign language in this province so far as its teaching in our schools is concerned. There is a prevalent idea I know that the French language has a standing in the province which no other foreign language has. We fail to discover anything in the constitution to that effect. If there is I should like to know it. Any superior standing it has must have been conferred by the legislature of the province.

Then we say there should be a compulsory education law enacted. Of course we have one now but it is a dead letter. We don't want any drastic measures. We find children are being brought up in this province who are receiving no education whatever—kept on farms and other places working, and are not receiving that education to fit them for the battle of life and then for future citizenship in this province, and something should be done to remedy this state of affairs.

We think, also, that what is known as the Educational Council should be abolished altogether. We see no reason for its existence. If an Educational Council is absolutely necessary, however, then we think it should be free from all religious tests. We see no reason why two members out of five should be Roman Catholics. We think that is altogether out of proportion to the Roman Catholic population of the province. It is a bad policy to build up our institutions on a sectarian basis. But only 18½% of the population of the province is Roman Catholic; they are not even entitled to one member out of the five composing the Council. We say abolish it altogether, but if that is not expedient, then abolish all religious tests. A man's religious views surely cannot qualify him for this or any other position in the state.

Now I think that covers everything that we ask.

Mr. Dawson.—(Reminded Mr. Armstrong of another matter with the remark "English in schools").

Mr. Armstrong.—Yes, I was nearly forgetting. We think English only should be taught in our schools and that it is in the best interests of this province to have every child on leaving school able to read, write and speak English.

Mr. Calder.—There is no difference of view about that. Excuse me just a moment—(addressing Mr. Armstrong) do you go so far as to advocate that the provision in the law allowing a foreign language to be taught for half an hour should be taken out, or simply conduct the school in English up to when that half hour begins.

Mr. Armstrong.—We contend that no foreign language should be taught in our primary schools at any time.

We think something should be done also in regard to Private Schools. I don't know, we have not gone into the situation, but surely the Government of the province has some authority to compel these people to employ duly qualified teachers and to teach the English language in Private Schools. Compel them to get organized into school districts in order that children in the foreign settlements may have the same advantage as others with regard to a knowledge of the English language. It is estimated that there are 1,500 children attending schools in the province who never hear a word of English. Some take the stand that as we have invited these people here, and in some cases paid $5.00 a head to get them here, we would be doing them an injury by depriving them of the use of their own language. We take the stand, however, that although we invited them to come, and we are glad to have them, we want to make good Canadian citizens of them. We are not dealing wih these people in a fair way if we do not see to it that they get an education in the English language. We did not ask them to come here to remain Germans, Austrians, Galicians, and so on, but to be Canadian, and get accustomed to our free institutions, learn our language, and become good British subjects.

Doctor Black, speaking at a convention in this City last September mentioned that he met a young fellow, a Mennonite, I think, who said he was only a child when he came to the West and his parents didn't see the necessity of his learning English. "They were ignorant people and I cannot blame them" said he, "but I must blame the Government for not seeing to it that I received a knowledge of English, because I am handicapped as long as I live because of my imperfect knowledge of it." That is the way I think we should look at the matter.

Without taking up any more of your time, Mr. Premier, as I realize you are busy and have other matters of great importance to attend to, we believe these matters are very, very, important. We are not interested in the advancement of one political party more than another. We hold ourselves aloof

from both parties, but we are united on one thing, viz., the establishment of a purely national school system. We have succeeded in turning Governments out of office because they tampered with the national system of education existing in certain provinces.

Mr. Scott.—Just on that point, as a matter of interest, not to argue the matter, would you mention the Governments you refer to?

Mr. Armstrong.—I have no objection at all but as I have said I don't want what I say to be misconstrued into anything of a partisan character. The late Robin Government passed what is known as the Coldwell Amendments and after we had endeavored in vain to get them repealed the members of the Orange Association almost unanimously voted against that Government and their majority was reduced to such an extent that they resigned almost immediately afterwards.

Mr. Scott.—I am not advancing this either by way of contention because there is a great deal of truth in what you say, but there was another tremendous consideration in Manitoba apart altogether from the educational question.

Mr. Armstrong.—Yes, I am quite willing to concede that, but Mr. Roblin made the statement on the night of the election that he attributed his defeat to the Orange Association.

Mr. Scott.—To that he attributed his narrow majority?

Mr. Armstrong.—Yes.

Mr. Scott.—Any other Government?

Mr. Armstrong.—Tupper.

Mr. Scott.—I would remind you that Tupper carried Manitoba and Ontario but was defeated by Quebec.

Mr. Armstrong.—I would like to have that in black and white. I do not now dispute your word, but there is evidently a misunderstanding. The late Hon. N. Clark Wallace, Grand Master of the Orange Association then held the position of Comptroller of Customs in the Government of Sir Mackenzie Bowell, but resigned his office rather than sacrifice his principles on the educational question when the Govenment attempted to bring about the restoration of Separate Schools in Manitoba and he appealed to the Orangemen to do what they could to defeat the Government. He worked himself to defeat it, and it was defeated.

Mr. Scott.—I may be wrong. There was to the best of my recollection a very narrow majority in Ontario and a distinct majority in Manitoba for Tupper. If the result had depended upon the Protestant provinces of Manitoba and Ontario Tupper's policy would have been endorsed. It was Catholic Quebec that defeated the coercion policy.

Mr. Armstrong.—I will look further into it. I cannot give the exact figures at present but do know that the Orange Association took a strong stand against the Governments of that day and we claim it was through their work that the Government was defeated.

We have always stood for this principle, the one school system. We don't care what party promises to bring about the adoption of that principle, we are prepared to support them. A non-sectarian Public School is what we advocate.

Mr. Scott.—We have that in this province already. All our schools are non-sectarian schools with the privilege enjoyed of closing the school at 3.30, after which religion may be taught. That is a privilege which applies equally to Protestants as well as Roman Catholics, equally in Public as in Separate Schools.

Mr. Armstrong.—Granting you that, but if you divide children because of their faith and educate them in hostile camps, there are bound to be misunderstandings and suspicions between them as citizens in future years. The only way to make the people united and build up a homogeneous nation is to educate them altogether.

We hear it said to-day by political leaders, that after the war is over, after the Irish Roman Catholics and Protestants have fought side by side on the battlefields of Europe, the questions which have divided them in the past will no longer exist. I grant there may be something in that but how much more strongly will that apply to children brought up and educated altogether at the same school?

Mr. Scott.—This might be a fair question—If you were a resident of Belfast now, would you advocate laws and principles which you are advocating here this morning?

Mr. Armstrong.—Yes.

Mr. Scott.—You would find yourself in opposition to the Presbyterian Church there. They have demanded guarantees just in the same way as did the Quebec Protestant minority before 1867, and as a matter of fact when the guarantees were offered by Redmond these were refused and Belfast threatened rebellion before accepting Home Rule, because Home Rule meant a Catholic majority controlling the Government.

Mr. Armstrong.—Conditions are altogether different there and it is hardly an analogy with the Province of Saskatchewan.

Mr. Scott.—Anyway the stand of the Irish Protestant is enlightening even if the conditions there and here are not identical.

Mr. Armstrong.—The children of all nationalities should be educated together.

Mr. Scott.—The minority in the North of Ireland would not agree to it. If left to be governed by the Catholic majority in Ireland they demanded a separate system.

Mr. Armstrong.—In the United States there is only one system.

Mr. Scott.—That brings up a question I was going to ask you. How do you propose to safeguard against the dangers of the situation existing in the United States of America? The State there has lost control of an increasing number of children owing to the rigidity of their national school system. Rather more than one and a half million children, more Protestants

than Catholics, [1] are educated in parochial schools in which, so far as I know, there is no Government control. These Protestants are mainly Lutherans. How do you propose to safeguard against that here under the system you propose?

Mr. Armstrong.—Is there no way of dealing with the inspection of Private Schools, qualifying of teachers and so on?

Mr. Scott.—Our law already provides for this, that it leaves the parent punishable if he does not abide by the truancy feature of the law and send his children to the Public School unless his child is receiving an efficient education at home or elsewhere. I may say to you (to give an inkling of the fact that it is not a simple question), in one instance the parent of Mennonite children was taken before Court three times, convicted, and fined under our law, but it did not change his ways. We might take all the Mennonites (speaking generally) to Court and convict them day after day but it would not change their conduct at all. Would you proceed further and put them in jail? That would not change their conduct. They have religious convictions about the matter. Further than that they will come to the legislature and submit a document which was given to them by the Government of Canada guaranteeing full liberty should they come to Canada, both in matters of religion and education. That certainly complicates the situation as regards Mennonites, and the Mennonite problem in regard to parochial schools is the only serious problem.

We have some parochial schools in Roman Catholic districts, but I have reason to believe that the English taught in all Roman Catholic private schools is efficient. At Muenster where most of these schools are, English is as well taught as in the Public Schools. The children going to these schools are children of American-German parentage. The parents speak English very well and their children are taught it. There is no serious problem with them. More serious is the Lutheran condition, as with them they don't run the school regularly the year round. The school starts say this month and runs for several weeks, and it disorganizes and dismantles the Public School by taking away its children but not permanently. Public School Boards in a few cases have found the Lutheran School troublesome on this account. Our law is substantially the same as Alberta's in the matter of truancy, but they have gone further in administration, and in that direction I think we may wisely follow Alberta's lead. I cannot speak so confidently with regard to the Lutheran Schools as of the Roman Catholic Parochial Schools. The Mennonite problem is one of exceeding great difficulty on account of the facts stated.

Mr. Calder.—The Province of Alberta has within recent years passed a separate Truancy Act and the new Act provides administration machinery which we have not. This is a matter for us to consider. It provides means by which they can secure better administration and I think while we are dealing

1. For an authoritative statement of the parochial school situation in the United States, see Appendix V.

with the general question of education the law may be amended and we will then try to secure better attendance at schools.

Mr. Armstrong.—Glad to hear that.

I have endeavored to put the views of the Orange Association of the province before you in as frank a way as possible. We do not want to use any harsh measures, make threats, enter politics, but we are deeply interested in the question of education. Holding the views we do we say it is more important than many other questions which take up time. We think the national or Public School system ought to be considered, and is as much a Government institution as the Post Office. We believe all citizens should be compelled to support the Public School system. If they want Private Schools of their own let them do as in the United States of America. They have the Public School system which must be supported and that is the system we are advocating.

I thank you on behalf of the committee present and on behalf of the Orange Association for granting us the privilege of presenting to you our views. We do not ask that all these things be done at once, immediately, but we do ask that gradually the system of national schools should be established and the abolition of Separate Schools be brought about eventually.

I thank you for listening to me.

* * *

Hon. Walter Scott—I am sure that I speak for my colleagues when I say that I appreciate very much the exceedingly clear and also moderate way in which you have made the representations on behalf of the Orange Order. Quite a number of the things which you have contended I am in thorough agreement with. At present I am not disposed to enter into discussion about Separate Schools because I am so thoroughly convinced that the province has not the power to abolish the Separate School system. I will be interested in examining the legal opinions which you have, and something which you said later on, indicates to me the line of the opinion which is this: that in 1905 the Canadian Parliament did not have full authority in granting our constitution, that is to say that their authority was limited by the scope of the British North America Act of 1867. I am not a lawyer, but I have listened to a good deal of legal discussion on the point and I am of the opinion that the contention has not a single leg to stand on. The contention is that the Canadian Parliament was bound to follow strictly the line of the British North America Act and did not have the right to make any variation. In 1870 Parliament granted the constitution of Manitoba and it did make variations and particularly made a variation on this very subject.

Mr. Armstrong.—Pardon me. Was that Act not validated afterwards by the Imperial Parliament?

Mr. Scott.—Yes, and the validating Act went further and gave full authority to the Canadian Parliament to do again in the case of any future new provinces what was done in the case of Manitoba. So I think the contention falls down im-

mediately. The Canadian Parliament in 1870 thought that possibly their power was limited and that they had exceeded it in the case of Manitoba, and to make quite certain went back to the Imperial Parliament to have their work validated. The Imperial Parliament therefore passed a Validating Act, which is referred to as the British North America Act 1871, isn't it? Besides declaring valid the Manitoba Act, this British North America Act 1871 goes on and gives the Canadian Parliament complete and absolute power to legislate for future new provinces. To illustrate, Parliament in 1905 had legal power to fix it that all Saskatchewan schools forever should be controlled by Ottawa. No doubt at all about it. There is no limitation now upon the power of Parliament in making a constitution for new provinces. Don't you think your contention falls down?

Mr. Armstrong.—I don't see it that way.

Mr. Scott.—Let me grant for the moment that the contention is good, it does not help the case. (Here Mr. Scott cited section 93 of the British North America Act.) He said—"If section 17 of the Saskatchewan Act is found invalid owing to Parliament possessing no power to pass it, then certainly section 93 British North America Act takes its place. What then? Would Saskatchewan have a free hand as regards Separate Schools? I think not. I think section 93 would turn out to impose the sectarian school, the clerically-controlled school, that we did have in accordance with the 1875 Northwest Territories Act from 1884 to 1891. It is indisputable that under that 1875 Act Roman Catholics here did enjoy the right to separate, to set up the Separate School and also to control it. The 1875 Act would be necessarily and certainly held to be superior to the Haultain School Ordinances, and it would be the minority rights and privileges as defined in the 1875 Northwest Territories Act instead of the Haultain School Ordinances which section 93 would fix upon Saskatchewan.

Mr. Armstrong.—We take the stand that it was in 1870, when the Territories were purchased, that the union took place, and not when the provinces were erected in territory already a part of Canada.

Mr. Scott.—That argument is exceedingly doubtful. I think there is one chance in a thousand of its holding good. If it did not hold good, we should have thrown away the substance in grasping after the shadow, we should have lost our non-sectarian school and would have got instead a full-fledged clerically-controlled sectarian school, as Ontario has it. To risk what we have on this slim chance of getting absolute freedom looks to me too much like taking a desperate gambler's chance, because if we lost on the chance we should lose the large measure of freedom which section 17 (Saskatchewan Act) gives us, that is, the power to absolutely control the conduct of the Separate School.

If section 17 be abrogated and if then the effect of section 93 were being determined by the Privy Council, the Privy Council

in examining your contention that the minority under it possessed only such rights as existed in 1870 (which were nil) would naturally look to see what the statesmen had had in their minds. The words "by law in the province at the union" might mean "by law in the uninhabited prairies in 1870 when the Northwest Territory and Rupert's Land were acquired by Canada" (when no law existed)—I say the words might be held to carry the meaning of your contention, but I think it is only a one in a thousand chance I think the 999 chances are that the words "by law in the province at the union" would be held to mean rather "by law in force in the area at its union as a province in the confederation of provinces" and when the Privy Council looked at the recorded minds of the statesmen they would find that Lord Carnarvon, mover of the British North America Bill at Westminster, in 1867, announced clearly and definitely that the curious Separate School policy in the Bill (section 93) was intended to apply upon future provinces as well as upon the provinces then being united. Then the Privy Council would find nearly all the Canadian statesmen dealing in 1870 with Manitoba, a part of the same territory as Saskatchewan, declaring explicitly and emphatically that such Separate School rights as existed "in practice" as well as law, should be guaranteed, showing that it was not alone in the provinces that as free agents united in 1867 where section 93 was to apply. Then the Privy Council would find the same Canadian statesmen, the Fathers of Confederation who made the compact and thus knew what it was intended to mean, dealing in 1875 with another part of the new area, and passing the Northwest Territories Act. They would find Sir John Macdonald saying or voting that the new Territories must have Separate Schools, and that Alexander MacKenzie, Edward Blake, George Brown (the latter as strong an enemy of Separate Schools as ever lived) and others declaring and voting that in accordance with the Confederation agreement Separate Schools must be imposed in the new territory, and they would find that the Northwest Territories Act was passed in harmony with what all these statesmen said. Blake said that he voted then for Separate Schools because it was urgent that conditions should be plainly fixed at the outset so that immigrants would know what laws they should have to live under before they moved. The Privy Council would find that every single Canadian statesman in 1875, those voting against as well as those voting for Separate Schools in the Northwest Territories, believed that they were deciding the matter for all time, and that the Separate School rights created then in the Territories would continue under the Canadian Union scheme for all time to come.

I am very clear in my mind that Saskatchewan is saved from the sectarian school by the fact that in 1891 or 1892 the people of the Territories by and through their Legislative Assembly made a new school law to their own liking and largely regardless of the Northwest Territories Act of 1875, by the fact that for fourteen years this system of Separate but non-sectarian Schools

operated satisfactorily, and by the fact that according to the views of the majority in Parliament in 1905 the spirit of the Confederation Act would be met by safeguarding only the rights and privileges in this non-sectarian system, because for fourteen years this system had been the only separate system existing in fact and practice in the area.

Your contention is too slim to be risked. I think it would be in the last degree unwise, if not positively criminal, to risk losing the very good thing we enjoy for that extremely narrow and unlikely chance of full freedom, with the chances 999 to one that we should instead lose our freedom and have to submit to sectarian schools.

I think Parliament had complete authority in 1905. If I am wrong it would be unfortunate for our freedom, because if I am wrong then section 93 is our education constitution, and there is no question in my mind but section 93 would impose sectarian schools.

I am convinced that the Saskatchewan Legislature has no power to abolish the Separate School system which we have, and until that conviction is changed you will agree that it is useless for me to enter on a discussion of the Separate School itself.

I have colleagues who perhaps agree with you about national schools and that it would be far better that no separation should exist, and I do not say that I disagree, but this is not the point. You agree with this, if we are bound and cannot do away with the Separate School system except by consent of the Imperial Parliament, it is useless for you and me to discuss it.

Mr. Armstrong.—Why not take steps to find that out?

Mr. Scott.—How would you find it out?

Mr. Armstrong.—Refer it to the Courts.

Mr. Scott—In 1906 we did all that we could as a province towards steps to have a case stated and how far did we get? Show me the method of going to the Privy Council, and, whilst not speaking for the Government, I will seriously consider it if you will indicate the method. You recollect the decision of our House in 1906 on the resolution of Mr. Sutherland of Saskatoon.

Mr. Calder.—The matter came up in the House on several occasions. Back in the 1905 elections the chief argument was that we should contest the case and have it taken to the Privy Council. Now as you can understand during the sessions that followed that was the main point which arose out of the election. We were repeatedly asked in the House—"How are you going to get this case to the Privy Council?" So far as my recollection goes no practical method has ever been suggested how it can be done.

Mr. Scott.—We cannot send a stated case beyond our own Courts. In reality it is almost impossible to get our own Court, notwithstanding the law, to decide a stated case. The Courts do not like abstract questions; they have said so repeat-

edly. We tried it in the Saskatchewan and Western Land Co. case, but did not get a decision.

Mr. Calder.—We have a statute to enable us to submit to our Supreme Court any question of interpretation of the law but we cannot go beyond that. We have no power to require the Supreme Court of Canada or the Privy Council to consider any question as to the interpretation of the law.

Mr. Armstrong.—Did not the Privy Council in the case of Barrett v. City of Winnipeg decide that the minority in the Province of Manitoba had no right to Separate Schools either by law or practice?

Mr. Scott.—That decision in effect was that there were no Separate School rights either by law or in practice [1] when Manitoba was made a province.

That is as I view it—until it is established that the hands of this province are free to abolish Separate Schools, it is useless for us to discuss their abolition. But there are matters which you have presented, say the Truancy Law, that will be considered and I think it may well be dealt with in the general educational enquiry now under way. The present law can be strengthened, I think; at all events, our administrative methods and machinery can be strengthened so as to procure better attendance in our schools. On the language question there is not very much difference between us. Our law already practically requires English to be exclusively taught until 3.00 p.m., leaving a one hour permission for other languages. I am not prepared to say that the Government would be willing to do away with that privilege It has stood for a long time, it existed in the old order of things, and the question will require some consideration. I put in one sentence yesterday in speaking in the debate on the address, a point which I intended our people to look at by referring to the situation in South Africa. I mentioned the wonderful things done by the people fighting for us there who until a few years ago were fighting against us. If the British authorities had hewed to the line in South Africa as some want to do here in dealing with the non-English, do you think for a minute that the situation would have been such that Botha could have done what he has done in this terrible crisis? I think it shows the advantage of not always hewing to the line but of dealing generously.

With regard to parochial schools that is a serious matter for consideration and already has had some discussion. My mind is open with regard to it. At present, I merely say this, that while inspection of parochial schools of an indirect character exists in other provinces (in Alberta only of an indirect character under the Truancy Act and simply to ascertain whether the child who is not in the Public School is receiving efficient education) I do not think there is any constitutional limitation on us with regard to parochial schools. We have power to prohibit all parochial schools and have nothing but Public and Separate Schools. It is a matter of policy whether it should be done.

1. This statement of the case is misleading.

We have the right to say to the Presbyterian or Methodist Colleges "close up." Should we adopt such a policy?

My daughter at the present time is going to a school in Montreal. What would you think of a law which said to me, "Bring your daughter back and place her in the State school here." The State may say to me, "you have no right to send her to Montreal;" we have a university in Saskatoon, where of course a different class of instruction is given from that given in Montreal where she is.

You see the point. The State may in its policy go too far and we should, I think, be guided by what other countries have found it advisable to do. If there is any country which believes in the single system of national schools it is the United States of America. Why have they not closed parochial schools? Their system is based on democratic principles—the principle that my interest depends upon my neighbour being educated, trained, etc., so that he can vote intelligently on the questions of Government under which I live, and in the United States of America they say, therefore, that the State should control the education of every child. And what is the outcome of their rigid non-sectarian system? Does it achieve the object? No, you know that some one and a half million children do not go to the State school at all. The Lutherans teach education and religion as they choose in parochial schools. So do Roman Catholics in the United States of America. These are things we have to give consideration to. It is a matter for very careful consideration. In reality except with regard to the Mennonites it is a question that has not been forced upon my attention or upon the attention of the Department of Education until very recently.

The Mennonite question, like the Doukhobor question, has received the attention of the Department for a number of years, and we have been trying to find some persuasive method by which to get the Mennonites to see things differently and come under the Public School system. I doubt if the Mennonite problem will be best settled by any application of coercive methods.

Mr. Calder.—Just one moment if I may be allowed to intervene, there is only one sect among the Mennonites opposed to the Public School; the great majority are in favor. The minority you can punish as you like and they will stand pat, so you can see the difficulties of the problem. So far as the Doukhobors are concerned, there was only the one class under the control of Peter Veregin who opposed the Public Schools, and a large number of his followers have gone to British Columbia. The officials there are having the same problems which arise from purely religious convictions and the difficulty is to know how to deal with them. There are though only two religious sects who stand out very strongly against the Public Schools.

Mr. McNab (addressing Mr. Armstrong).—You know the districts where the Mennonites are—between Warman and Hague. Once you get past Hague they have Public Schools, and there are also some round Rosthern.

Mr. Scott.—I think I have said all that I wish to say now. These are matters which we are considering very earnestly and we are glad to have your representations which will doubtless be an aid to us in our consideration.

The only question on which I cannot at present, at least in some measure, agree with you is the constitutional position of the province in relation to Separate Schools.

It so happens that I have just completed another letter to Mr. MacKinnon and will read you the paragraphs bearing on this point.

(Here Mr. Scott read various paragraphs of his letter to Mr. MacKinnon which was made public January 22nd).

APPENDIX III.

Extracts from the "Saskatoon Daily Star," May 8th and 11th, 1916.

(1). SASKATCHEWAN SCHOOLS.

The French Language.

Before coming to a consideration of the use of the French language in the schools, it is necessary to consider in its more general aspect of the use of French as a privileged language in the debates of the Legislative Assembly, its use in the printing of the legislative journals, its employment in the Saskatchewan Gazette and its status before the Courts. To understand its use in Saskatchewan it is necessary to briefly refer to its position in the Dominion at large.

The Quebec Act sought to satisfy the French in Canada by safeguarding to them the free use of their religion and the maintenance of their customs. It did not, as such, make French an official language of Quebec.

The Act of Union of 1840 definitely prescribed that the proceedings and reports of the Legislative Council and of the Legislative Assembly should be in the English language only. Translations might be made in French but no such documents were to be kept among the records or have the force of an original record. This provision, demanding the exclusive use of English was repealed in 1848 and the law which now governs the Dominion status of French is section 133 of the Confederation Act of 1867. This provides for the use of both the English and French languages in the Houses of Parliament of Canada, in the Legislature of Quebec, the Courts of Quebec and in any Court of Canada.

Turning to the situation in Western Canada we see that the Manitoba Act of 1870 provided for the use of both English and French as official languages in Manitoba and this continued to be the case from 1870 until 1890 when the French language was abandoned in the proceedings of the Manitoba Legislature and an Act was placed on the statute book of Manitoba, which still stands, in which English is definitely named as the official language of the province.

Turning to the Northwest Territories, the charter of the province is really the Act of 1875. This Act made no reference whatever to the languages to be used. The Dominion Parliament, however, took up the question and in 1880 introduced certain legislation which set forth the following:—

"Either the English or the French language may be used by any person in the debates of the Council or Legislative Assembly of the Northwest Territories and the proceedings before the Courts; and both these languages shall be used in the records and journals of the said Council or Assembly; and all

ordinances made under this Act shall be printed in both these languages."

In 1890 the Canadian House of Commons declared it expedient and proper that the Legislative Assembly of the Northwest Territories should have, after the next general election of the Assembly, the right to decide for itself the question of the continued use of French, and in 1891 the Dominion Parliament enacted the following legislation:—

"Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the Courts and both these languages shall be used in the records and journals of such Assembly, and all ordinances made under this act shall be printed in both those languages; provided, however, that after the next general election of the Legislative Assembly, such Assembly may by ordinance or otherwise regulate its proceedings and the manner of recording and publishing the same; and the regulations as made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant-Governor in conformity with the law and thereafter shall have full force and effect."

What occurred then in the Territories? Ever since December 8th, 1883, the Northwest Territories had been published in French as well as in English and the Gazette continued to be so published until August 15th, 1895. On January 19th, 1892, Sir Frederick (at that time Mr.) Haultain took up the question of the publication of the journals of the House and in the records of the first session of the second Legislative Assembly, it is recorded in the journal (Northwest Territories 1891-2, p. 110).

"Moved by Mr. Haultain, seconded by Mr. Tweed:—

"That it is desirable that the proceedings of the Legislative Assembly shall be recorded and published hereafter in the English language only.

"And the question being proposed it was moved in amendment by Mr. Prince, seconded by Mr. Mitchell:—

"That whereas in the election districts of North Qu'Appelle, South Qu'Appelle, Moose Jaw, Red Deer, Edmonton, St. Albert, Battleford, Prince Albert, Cumberland, Mitchell and Batoche there is a large population of French-speaking Canadians,

"And whereas the French language has been recognized as an official language in the Northwest Territories in consideration of the services rendered to this country by the first Canadian voyageurs and missionaries who evangelized, civilized and settled there at the cost of many lives,

"And whereas the French speaking population is increasing every day and in the interests of the cause of immigration in the Northwest Territories no act should be done tending to make it appear that the people of the Northwest Territories are lacking in justice, liberality or political tact in regard to the national interest of every Canadian;

"Therefore, be it resolved that it is not in the public interests that any change be made in the system of public printing in the Northwest Territories as far as the use of the French language as an official language is concerned."

No journals can be found in any department of the legislature or in the Provincial Library, that were ever published in French but it may have been the case that they were translated and perhaps sent to Quebec for printing. In any case neither the Gazette nor the journals are now published in that language and French has no official status in debates in the legislature, or for the Gazette, or for the journals or in any Provincial Court that is not accorded to any other non-English language.

English is, as a matter of fact, the official language of the province although there does not exist as in the case of Manitoba a precise statute so defining it and there is no ground in the historial past or in the present condition of the province for making any other language than English the official language of the province.

* * *

(2). Turning now to the status of French in schools the legal aspect of the question is indicated in the following educational clauses:—

In the Ordinances of the Northwest Territories of 1887, section 83 reads:—

"All schools shall be taught and instruction given in the following branches, viz: reading, writing, orthography, arithmetic, geography, grammar, history of England and Canada, English literature; and such other studies as may be deemed necessary, may be authorized by the trustees of the district. Instruction shall be given during the entire school course in manners and morals and the laws of health and attention shall be given to such physical exercises for the pupils as may be conducive to health and vigor of body as well as mind and to the ventilation and temperature of school rooms."

In the Ordinance of 1888 two small but by no means unimportant changes were made to the above quoted provision. Section 82 of the Ordinances, Northwest Territories, 1888, omits the words "and such other studies as may be deemed necessary may be authorized by the trustees of the district." In addition to this the following sub-section is added:—

"It shall be incumbent on the trustees of all schools, organized under this Ordinance, to cause a primary course of English to be taught."

The next change takes place in the Ordinances of 1892, when section 83 reads as follows:—

"All schools shall be taught in the English language and instruction may be given in the following branches, viz: reading, writing, orthography, arithmetic, geography, grammar, history of Britain and Canada, French and English literature in accordance with the program of studies prescribed by the Council of Public Instruction. Due attention shall be given during the

entire school course to manners and morals, and the laws of health and to such physical exercises as may be conducive to health and vigor of body as well as of mind and to the ventilation and temperature of school rooms.

"It shall be permissible for the trustees of any school to cause a primary course to be taught in the French language."

In the Ordinances of 1896, section 106 reads as follows:—

"All schools shall be taught in the English language but it shall be permissible for the trustees of any school to cause a primary course to be taught in the French language."

It will be seen from the above extracts from the Ordinances that when the educational system of the Territories was established, considerable latitude was allowed the trustees of a district in shaping the course of study, but that in the first Ordinances English literature was made a compulsory subject for all.

In 1888, it was made compulsory that in all schools there should be taught a primary course in the English language. That is to say that the teaching of English was compulsory in the primary courses.

In the year 1892, at the conclusion of the famous struggle for Home Rule or equal rights, a re-organization of the educational department took place. A Superintendent of Education was appointed and the uniform inspection of schools was instituted. The language question takes on a new form. All schools must be taught in the English language, but instruction may be given in a number of branches in which are included English and French literatures, and to these is added a section which has since become stereotyped, namely:—

"It shall be permissible for the trustees of any school to cause a primary course to be taught in the French language."

As Dr. Oliver indicated in his paper on "The Public Schools in the non-English Speaking Communities," the Ordinances of 1892 and 1901 together with the regulations of the Department of Education have been the determining factors in the situation. The relative sections of the Ordinance of 1901 are as follows:—

(1). "All schools shall be taught in the English language, but it shall be permissible for the board of any district to cause a primary grade to be taught in the French language.

(2). "The board of any district may subject to the regulations of the Department employ one or more competent persons to give instruction in any language other than English in the school of the district to all pupils whose parents or guardians have signified a willingness that they should receive the same, but such course of instruction shall not supersede or in any way interfere with the instruction by the teacher in charge of the school as required by the regulations of the Department and this Ordinance.

(37). "The board shall have power to raise such sums of money as may be necessary to pay the salaries of such instructors, and all costs, charges and expenses of such course of in-

struction shall be collected by the board by a special rate to be imposed upon the parents or guardians of such pupils as take advantage of the same." I understand that the Attorney-General's department has ruled that the instruction in French provided for by this Ordinance is not subject to the regulations of the Department of Education.

The status of French in our Public Schools may be summed up as follows:—

(1). "There is no historical past for French in Saskatchewan, and there were no educational rights of the French to conserve in 1870.

(2). "In 1888 it was made compulsory to teach a primary course in English in the schools.

(3). "Not until 1892 did the question of French teaching arise and then it is provided that 'all schools shall be taught in the English language' . . . but it is permissible to allow a primary course to be taught in French.

(4). "That the French language occupies a privileged position as compared with other non-English languages is entirely due to legislative enactment both of the Territories and of the province, and that its continuance in this position remains entirely with the Legislative Assembly.

(5). "The Saskatchewan Act of 1905 placed no restriction on the competence of the Legislature in dealing with the language question."

APPENDIX IV.

Vondo, Sask., Sept. 15th, 1911.

THE TOWN OF VONDA APPEAL FROM COURT OF REVISION.

"The grounds taken in this appeal are very broad indeed, they are to the effect that the various parties assessed being by religion Roman Catholics must of necessity be supporters of the Separate School.

"Mr. Mundie for the appellant admitted that there was no direct legislation on the point, but he relied on section 279 of the Town Act which is as follows:—

" 'If any person named in the said Roll thinks that he or any other person has been assessed too low or too high, or that his name or the name of any other person has been wrongly inserted in, or omitted from the Roll or that any person who should be assessed as a Public School supporter has been assessed as a Separate School supporter or vice versa, he may within the time limited, etc. . . .'

"I cannot bring my mind to the conclusion that this section has any such result. It gives a right of appeal, and one of the grounds that may be taken is that set forth in the latter part of the section, but by section 293, sub-section (4) 'the assessor shall accept the statement of any ratepayer, or a statement made on behalf of any ratepayer by his written authority that he is a supporter of Public Schools or Separate Schools as the case may be, and such statement shall be prima facie evidence for entering opposite the name of such person, the letters PSS or SSS, etc. . . .'

"Now this section appears to me to contemplate that the option of supporting either school rests with the ratepayer, and the latter part of the section I first quoted appears to me to have reference to the latter portion of the section, that is if no statement has been made by the ratepayer and the assessor assesses him to the Separate School, he may make the provisions of section 279 to show that he is a supporter of the Public Schools or vice versa.

"It would have been the easiest thing in the world had the legislature intended it to make a provision that Roman Catholics should be assessed to the Separate Schools and Protestants to the Public Schools or vice versa. It could have been expressed in a few words and I think were I to give effect to the appellant's contention I should be simply legislating, and legislating in a most drastic manner; I can conceive numberless reasons why the ratepayer should be entitled to choose the support of his school quite independently of any religious connection, distance, teaching and so on.

"The use of the word 'Supporter' in the section confirms me in my opinion . . . the appeal will be dismissed with costs."

14th Sept., 1911,

(Judge McLorg.)

* * *

Moosomin, Jan. 25th, 1913.

A. H. Ball Esq.,
Deputy Minister of Education,
Regina.

Dear Sir:—

In reply to your telephone enquiry re my refusal to place a man on the assessment roll of the Roman Catholic Separate School District at Lemberg, I report the facts as follows:—

"A year ago last summer a man named Farley, who had come up that year from his home near Brighton, Ont., appealed to me from the decision of the Court of Revision refusing his application to be designated a Separate School supporter instead of a Public School supporter as he had been, if I remember rightly, for some years prior to that date, although during the former period he had been a non-resident. Through some misunderstanding of the parties themselves, no counsel appeared for either of them and I went on without counsel.

"The facts as given by Farley himself were that his mother was a Methodist, that his father did not belong to any church but if he went anywhere he went to the Methodist church. He said he believed, or his mother had told him, that he himself (Farley) had never been baptized and in Ontario be belonged to no church. After coming to Lemberg Farley got to know the parish priest very well, who had visited him while he was laid up with a broken arm. I think this priest's house was either on a part of Farley's farm or at any rate in very close proximity to Farley's dwelling place. Farley said he contributed to the support of the Catholic church and gave no support to any other church. He did not say how much this was. He was not prepared to swear that he was a Roman Catholic or that his parents were. Under these circumstances and facts I refused to have him changed from a Public School supporter to a Separate School supporter. My reasons for so holding were given at the time, (I gave no written judgment), and were based on my interpretation of sections 42 and 43 of the School Act and also sections 88 to 94 of the School Assessment Act and sub-section (4) of section 293 of the Municipal Act. Section 42 says that the petition for a Separate School district shall be signed by three resident ratepayers of the *religious faith* indicated in the name of the proposed district. Then they must be Roman Catholics. Then section 43 fixes the qualifications of those qualified to vote for or against the Separate School to be ratepayers of the same *religious faith*, namely, there, Roman Catholics. I held that these words '*same religious*

faith' meant bona fide members of the Roman Catholic church, i.e., members of that church by the usual method of confirmation and performance of religious duties, or children of Roman Catholic parents, or as a former Protestant they had been properly received and adopted by the Roman Catholic church as a member of their church according to their rites which among other things, in Farley's case, would require baptism and an attendance on mass and confession. None of these things Farley had done, nor was he prepared to do them, and I held that he was not a bona fide member of the Roman Catholic church, would have had no right to petition or vote for a Separate School and therefore was not entitled to be placed on the list of Separate School supporters at that time. I told him that if he became a member (bona fide) of the Roman Catholic church I would place him on the Separate School list, but not till then. He appealed again last year but was no nearer being a Roman Catholic then than the year before.

"When this Lemberg case was being heard last, Mr. Farley was present and spoke to Hector McDonald about the matter. 'Well,' Hector said, 'did you go to confession and take communion last Easter?' Farley said, 'No.' 'Well,' he said, 'you are no Catholic.' Farley's whole ground for the appeal was that he made occasional contributions to the Roman Catholic funds. If I had agreed to this qualification, every Protestant would have contributed a quarter (25c.) to the Roman Catholic funds and become a Separate School supporter to get out of the rather heavy Public School rates of that place."

Yours truly,

(Sgd.) A. Gray Farrell.

DECISION OF THE SUPREME COURT OF SASKATCHEWAN EN BANC IN THE BARTZ CASE.

Judgment of Chief Justice.

Following is the judgment (in part) of Chief Justice Sir Frederick Haultain in the Bartz case. The judgment of the Chief Justice is concurred in by Hon. Mr. Justice Brown, Hon. Mr. Justice Elwood and Hon. Mr. Justice McKay:—

"The first question to be considered is whether the provisions of the several acts above cited leave it optional with a ratepayer of the same religious faith as the minority of ratepayers establishing a Separate School to support that school or not.

"It was argued on behalf of the appellant that section 39 of the School Act does not give a majority of the minority in any district the power to compel the minority to support a Separate School. The foundation of the right to separate, he says, is conscientious objection or religious scruple, and the individual conscience must be the final arbiter.

"It was also argued that 'the ratepayer establishing such Separate School' mentioned in section 39 means the ratepayers voting for the erection of the Separate School district under section 41, and do not include the ratepayers voting against it.

"We are fortunately not left to decide this point on the bare language of section 39. The various provisions of the City Act, the School Act and the School Assessment Act as amended by section 11 of chapter 25 of the Statutes of 1915, relating to assessment and taxation for school purposes, all, in my opinion, point conclusively to an intention of the legislature to establish majority rule within a minority, either Protestant or Roman Catholic, establishing a Separate School. Sections 41, 44 and 45 of the School Assessment Act, and sections 390, 394 and 409 (4) of the City Act all seem to me to impose an unqualified liability to taxation for Separate School purposes upon every ratepayer in the municipality who is of the same religious faith as the ratepayer who established such Separate School. Section 394 of the City Act gives a right to appeal to the Court of Revision to any ratepayer 'who thinks that any person who should be assessed as a Public School supporter has been assessed as a Separate School supporter or vice versa.' Section 409 (4) of the same Act provides that the assessor 'shall accept the statement of any ratepayer or a statement made on behalf of any ratepayer by his written authority that he is a supporter of Public Schools or of Separate Schools as the case may be, and such statement shall be sufficient prima facie evidence for entering opposite the name of such person on the assessment roll the letters PSS or SSS, as the case may be, and in the absence of any such statement the assessor shall make such entries in accordance with his belief.'

"Section 394 first appeared on our statute book in its present form in the City Act of 1908, the right of appeal with regard to assessment for school purposes being then given specifically for the first time. That statute also provided for the first time for a column in the assessment roll to indicate whether a ratepayer was a Public or Separate School supporter, and sub-section (4) of section 409 of the present (1915) City Act was first enacted as sub-section (4) of section 301 of the City Act of 1908. Whatever argument might have been founded on the school and municipal legislation prior to 1908, it seems to me to be quite clear that the legislation of that year, as re-enacted in 1915, and of 1915, made the support of a Separate School incumbent upon every ratepayer belonging to the minority on whose behalf the Separate School was established.

"I, therefore, concur with the decision of the Local Government Board on this point.

"The next point raised by the appellant is stated in his notice of appeal as follows:—

" 'Further, and in the alternative, if, in the opinion of this honorable Court, the said judgment (i.e., the judgment of the Local Government Board) is a correct interpretation of such statutes, and such statutes are within the competence of the Saskatchewan Legislature under the provisions of 'The Saskatchewan Act,' being 4-5, Edward VII., chapter 42, and particularly section 17 thereof, then it is submitted that such last mentioned Act, insofar as it purports to give to the Legislature of the Province of Saskatchewan jurisdiction to enact legislation depriving any ratepayer whose lands are situated 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, insofar 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 under the provisions of the Imperial Statutes and Order-in-Council by which that portion of the Dominion of Canada, now comprising the Province of Saskatchewan, was admitted into and became a part of the Dominion of Canada on July 15th, 1870; namely, the British North America Act, 1867, 30 Victoria, chapter 3, Rupert's Land Act, 1867, 31-32 Victoria, chapter 105, and the Imperial Order-in-Council passed in pursuance thereof, and dated the 23rd day of June, 1870, admitting Rupert's Land and the Northwest Territory into the union; or under the provisions of the British North America Act, 1871.'

"The question whether the statutes under consideration are within the competence of the Saskatchewan Legislature under section 17 of the Saskatchewan Act (45 Edward VII, chapter 42) was not argued.

"Section 17 enacts that section 93 of the British North America Act, 1867, shall apply to the province with certain modifications. (Section 17 is here inserted).

"As the point was not pressed, it will be necessary for me to do little more than to express the opinion that nothing in any of the provincial statutes under consideration prejudicially affects any right or privilege with respect to Separate Schools which any class of persons had at the date of the passing of the Saskatchewan Act, the 20th July, 1905, under the terms of the Ordinances mentioned therein. The School Ordinance, No. 29, of 1901, sections 41-45, is identical in language with sections 39, 40, 41, 42 and 44 of the School Act of 1915, with the exception that sub-section (2) of section 45 of the School Ordinance is taken out of the School Act and re-enacted in the School Assessment Act (section 45, sub-section (2)).

"The sources of the rights or privileges with respect to Separate Schools in Saskatchewan are the Ordinances above mentioned, and the class of persons to which such rights or privileges are reserved is the minority of the ratepayers, whether Protestant or Roman Catholic, within any Public School district. The right or privilege is to establish a Separate School and to be liable only to taxation in respect thereof. The right to pay taxes to the Public School instead of to the Separate School is not a right or privilege reserved to the minority. Even if that right existed on the 20th July, 1905, the taking of it away by later provincial legislation is not an invasion of any of the rights or privileges reserved by the Saskatchewan Act. 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 section 93 of the British North America Act, 1867. (Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa v. Machell (1916) 33 L.T. 37.)

"The further question raised under this branch of the case is that section 17 of the Saskatchewan Act is beyond the powers of the Parliament of Canada.

"This raises an interesting question as to the power of Parliament under the British North America Act, 1871, to establish a province with more restricted or different powers from those granted to a province under the original Act of 1867. As Mr. Justice Clement in the last edition of his work on the Canadian Constitution says, this is perhaps a debatable question so far as the restrictive clauses in the Alberta and Saskatchewan Acts are concerned. But, in my opinion, it is not necessary for us to consider this question, because if the appellant's contention is correct, he has no basis upon which to found any objection to the legislation now under review.

"What right or privilege with regard to denominational schools did any class of persons have by law in the area included in this province on the 15th July, 1870? At that date there was no law or regulation or ordinance relating to education in force in the Northwest Territories. There were, therefore, no rights or privileges with respect to denominational schools existing by law at the union which could be prejudicially affected by subsequent provincial legislation. On this assumption

then, the province started out with an absolutely free hand with regard to education, and the legislation under review is clearly within its powers and cannot be attacked in the Courts under sub-section (1) of section 93.

"This conclusion seems to be supported by the opinion expressed by the Judicial Committee of the Privy Council in the City of Winnipeg v. Barrett (1892, A.C. 445).

"In the Manitoba Act (33 Victoria, chapter 3, Canada) the following sub-section was substituted for sub-section (1) of section 93 of the British North America Act, 1867:—

" '(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.'

"The decision turned upon the words 'or practice,' which do not occur in the British North America Act, 1867, or in the Saskatchewan Act, but in the course of their judgment their Lordships said, at page 453:—

" 'What then was the state of things when Manitoba was admitted to the union? On this point there is no dispute. It is agreed that there was no law or regulation or ordinance with respect to education in force at the time. There were, therefore, no rights or privileges with respect to denominational schools existing by law.'

"As I have already pointed out, there was a similar 'state of things' in this portion of the Dominion on the 15th July, 1870.

"The appellant, then, is forced into one or other of two positions. If he relies on the British North America Act, 1867, he is confronted with the provincial legislation of 1908 and 1915, which is clearly within the powers of the provincial legislature, and under which a system of Separate Schools has been established by the legislature of the province. If he relies on the Saskatchewan Act, he is confronted with the same legislation, which, in my opinion, deliberately adopts the system of Separate Schools and Separate School rights which was imposed upon the province by the Saskatchewan Act. In either case, what has been deliberately given cannot be taken away; at least, if it is taken away, the remedial action of the Governor-General-in-Council and the Parliament of Canada may be invoked by a Protestant or Roman Catholic minority whose rights or privileges under the Provincial Statutes of 1915 have been affected.

"If the Saskatchewan Act is within the powers of Parliament, a recourse to the Courts will also be open to any class of persons whose right or privilege with respect to Separate Schools as provided for in section 1 may be prejudicially affected.

"For the reasons above stated, I think that the appeal should be dismissed with costs.

"Given at Regina this 6th day of January, 1917."

APPENDIX V.

PRIVATE AND PAROCHIAL SCHOOLS IN THE UNITED STATES.

The following statement is compiled from the Report of the Commissioner of Education for the year 1913.

	1912	1913
Catholic Population.....	15,015,569	15,154,158
Pupils in Private and Parochial Schools.	1,333,786	1,360,761
Number of Private and Parochial Schools	5,119	5,256

On page 349 of the Report appears the following sentence: "Parochial Schools are found in all of the dioceses of the United States, varying in number according to the extent and condition of the Catholic population. In the larger dioceses they have been increasing every year. From 3,812 in 1900 the system expanded to 4,972 in 1910, an increase of 30 per cent. There has been also a proportionate increase in the number of pupils enrolled. From 1900 to 1910, while the Catholic population increased 35 per cent., there was an increase of 40 per cent. in the number of pupils in Parochial Schools."

The Report also emphasizes the fact that these schools are inefficient in a number of respects, more especially with reference to an undesirable lack of uniformity both in curriculum and grading. At the Catholic Educational Association held in Pittsburgh, 1912, and again in New Orleans, 1913, reforms were under consideration with a view to effecting such a reorganization of the Roman Catholic Parochial Schools as would place the system on a satisfactory basis.

The statement of the case with reference to Jewish Schools is found on page 377 of the Report. The last year for which returns were available was 1908. Since 1908, however, it is stated that there has been a steady increase in the Jewish population of the United States.

The total estimated Jewish population in 1908 was 1,800,000, of whom 360,000 were the estimated number of Jewish school children. The following sentence indicates the seriousness of the situation from a parochial viewpoint: "The total number of children, then, who in 1908 received Jewish religious instruction amounted altogether to about 100,000; so that fully about 260,000, among them probably 170,000 girls, were left without any religious instruction whatsoever."

With reference to Lutheran Parochial Schools the following sentence (page 406) sums up the situation: "The grand total for the Lutheran Church in the United States in 5,883 schools, 3,758 teachers, and 272,914 pupils." The total approximate number of Lutheran children (ranging from infancy to the age

of 14 or 15 years when they leave the Parochial Schools) was 1,216,023; so that about 22.44 per cent. of the total number of Lutheran children of school age are found in church schools.

In the year 1912-13, the total enrolment of pupils in schools operated by the Mormon Church was 6,292.

Perhaps it is not an unfair inference to draw from the above statistics that the total number of children attending Parochial Schools in the United States is in the neighbourhood of 2,000,000, of whom approximately 75 per cent. are found in Roman Catholic schools.