

dance of any child at a public school, or confer any advantage in respect of attendance other than that of free education, and at the same time left each denomination free to establish, maintain and conduct its own schools, did not contravene the above proviso; and that accordingly certain by-laws of a municipal corporation, which authorized assessments under the act, were valid.

Appeal in the first case from a judgment of the supreme court (Oct. 28, 1891), reversing one of the court of queen's bench for Manitoba (Feb. 2, 1891); in the second case from a judgment of the court of queen's bench (Dec. 19, 1891), which followed that of the supreme court.

The province of Manitoba joined the union in 1870, upon the terms of the Constitutional Act of Manitoba, 1870, 33 Vict., c. 3 (Dominion Statute.)

Section 22 is the material section, and is set out in their lordships' judgment. In 1890 the provincial legislature passed two statutes relating to education—chaps. 37 and 38—the latter of which is intitled "The Public Schools Act, 1890." Its validity was the subject of this appeal.

The facts are stated in the judgment of their lordships.

In the first case the application was for a summons to show cause why the by-laws in question, which were passed under the act for levying a rate for school and municipal purposes in the city of Winnipeg, should not be quashed for illegality 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 catholics alike for the whole sum, in a manner which but for the act of 1890 would have been invalid according to the education acts thereby repealed.

Killam, J., dismissed the summons, holding that the rights and privileges referred to in the Dominion statute were those of maintaining denominational schools; of having children educated in them, and of having inculcated in them the peculiar doctrine of the respective denominations.

He regarded the prejudice effected by the imposition of a tax upon catholics for schools to which they were conscientiously opposed as something so indirect and remote that it was not within the act.

The court of queen's bench affirmed this order.

Taylor, C. J., and Bain, J., held that "rights and privileges" included moral rights, and that whatever any class of persons was in the habit of doing in reference to denominational schools, should continue, and not be prejudicially affected by provincial legislation, but that none of those rights and privileges had been in any way affected by the act of 1890.

Dubree, J., dissented, holding that the right or privilege existing at the union was the right of each denomination to have its denominational schools, with such teaching as it might think fit, and the privilege of not being compelled to contribute to other schools of which members of such denomination could not in conscience avail themselves; and that the act of 1891 invaded such privilege, and was consequently *ultra vires*.

The supreme court reversed the order.

Ritchie, C. J., held that as catholics could not conscientiously continue to avail themselves of the public schools as carried on under the system established by the Public Schools Act, 1890, the effect of that act was to deprive them of any further beneficial use of the system of voluntary catholic schools which had been established before the union, and had thereafter been carried on under the state system introduced in 1871.

Patterson, J., pointed out that the words "injuriously affect" in section 22, sub-section 1, of the Manitoba Constitutional Act, would include any degree of interference with the rights or privileges in question, although falling short of the extinction of such rights or privileges. He held that the impediment cast in the way of obtaining contributions to voluntary catholic denominational schools by reason of the fact that all catholics would, under the act, be compulsorily assessed to another system of education amounted to an injurious affecting of their rights and privileges within the meaning of the sub-section.

Fournier, J., pointed out that the mere right of maintaining voluntary schools, if they chose to pay for them, and of causing their children to attend such schools,