

## APPENDICES

in the provision is a legal right or privilege, and does not include any practice instruction or privilege of a voluntary character which at the date of passing of the Act might be in operation (*City of Winnipeg v. Barrett*, 1892, A. C. 445.)

Further, the class of persons to whom the right or privilege is reserved must, in their Lordship's opinion, be a class of persons determined according to religious belief, and not according to race or language. In relation to denominational teaching, Roman Catholics together form within the meaning of the section a class of persons, and that class cannot be subdivided into other classes by considerations of the language of the people by whom that faith is held. The appellants and the respondents, therefore, are members of the same class, but this fact does not affect the appellants' position on their appeal, for their case is that even to the class so determined there was preserved by the Statute and vested in them as trustees rights or privileges which include the right of deciding as to the language to be used as a means of instruction; and the question, therefore, that arises, is, What were the rights and privileges that were protected by the Act, and were they invaded by the Circular according to its true meaning?

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

This Act enabled any number of people, not less than five and being Roman Catholics, to convene a public meeting of persons who desire to establish a separate school for Roman Catholics, and for the election of trustees for the management of such schools; by section 7 it is enacted that the trustees of such schools should form a body corporate under the Statute, should have power to impose, levy, and collect school rates or subscriptions from persons sending children to, or subscribing towards the support of, such schools, and should have "all the powers in respect of separate schools that the trustees of common schools have and possess under the provisions of the Act relating to common schools." A special clause also related to the