BILINGUAL APPEAL NOT WELL BASED

Ontario Government Regulations Are Upheld by Privy Council.

LOSE ON ONE POINT

Act Giving Commission Powers of Trustees is Ultra Vires.

London, Nov. 2.—The privy council today dismissed the appeal of the beard of trustees of the Catholic Separate chools v. MacKell and others The privy council allowed the second appeal by the same parties, in which the Otlawa corporation, etc.,

were respondents.

Briefly, the first judgment holds that

Briefly, the first judgment holds that the regulations complained of were too ultra vires. The second judgment holds that the act by which the powers of the trustees were vested in the commission is ultra vires.

Judgment in Full.

The following is the privy ccuncil judgment in full as affecting the validity of Regulation 17, the appeal having been heard originally by Lord Chancellor Buckmaster, Lords Haldane, Atkinson, Shaw and Parmoor:

This appeal raises an important question as to the validity of the circular of instruction issued by the department of education of Ontario on August 19, 1918. The primary schools within the province are, for the purposes of this circular, separated into two divisions, public and separate schools, the latter, with which alone this appeal is concerned, being deschools, the latter, with which alone this appeal is concerned, being denominational schools established, supported and mamaged lunder certain statutory provisions, to which reference will be made. The population of the province has always been composed of both English and French-speaking inhabitants. Each of the two classes of schools is attended by children who speak, some one language dren who speak, some one language and some the other, while some again have the good fortune to speak both, so that distinction in language does not, and cannot, be made to follow distinction in the schools themselves.

Object of Circular. The regulation, in some of its clauses, deals with all schools, but its heading refers only to English and French schools, which are defined as being those schools, which are defined as being those schools, whether separate of public, where French is a language of instruction or communication, and which have been marked out by the minister for inspection as provided in the circular. The object of the cir-cular is to restrict use of French in cular is to restrict use of French in these schools, and to this restriction appellants assert they are not obliged to submit. Respondents, who are supporters of the same Catholic schools, desire to maintain the circular in its integrity, and upon appellants refusal to abide by its terms, respondents instituted proceedings out of which this appeal has agisen, asking among other things a mandatory order enforcing obedience to the circuorder enforcing obedience to the circu-

The supreme court of Ontario granted an injunction and their judg-ment was affirmed by the unanimous Appellants' defence of their action rests in substance upon the conten-tion that the instructions were and are wholly unauthorized and unwarranted and beyond the powers of the minister of education, because they were contrary to the British North

Inspectors' Authority.
In order to confer legislative authority upon inspectors,, an act of On-tario has been passed during the litigation declaring the regulations im-posed were duly made and approved under the authority of the department of education, and became binding, ac-cording to the terms of their provi-sions as appellants and the schools under their control, and containing consequential provisions. It is obvious that the validity of the statute depends upon considerations similar to those involved in determining the validity of the instructions, but this statute is the subject of another proceeding, and the present appeal confined to the question whether the minister of education had power to

issue the circular. The number of schools affected by The number of schools affected by the dispute is considerable, for of 192 Roman Catholic schools under charge of the appellants, 115 have been designated English and French schools.

B. N. A. Act Sections.

The material sections of the North America Act upon which appellants rely are sections 91, 92 and 93. Section 91 authorizes the parliament of

tion 91 authorizes the parliament of Canada to make laws for the peace, order and good government of Canada in relation to all matters coming assigned exclusively to the legislatures of the provinces. Section 92
enumerates the classes of subjects in
relation to which the legislatures may
exclusively make laws, and includes

exclusively make laws, and includes

exclusively make laws, and includes

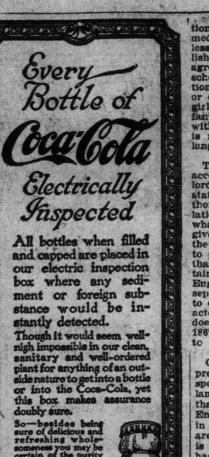
method for Catholics and for public and separate schools.

Mr. Belcourt urged that so to regulate the use of the French language in separate Catholic schools constituted an interference and is in some the classes of subjects by act, local or private nature in the province. Section 93 deals specifically with education, and enacts that in and for each province the legislature may exclusively make laws in relation to the education of the subject, and according to provisions therein contained. It appears, therefore, that the subject of education is excluded from the powers conferred on the parliament of Canada, and is placed wholly within the competence of the provincial legislatures, who again are subject to limitations expressed in four provi-

Provisions Cited. Provision one is in these terms:
"Nothing in any such law shall pre-

judicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union. Provision three contains an important safeguard which gives an appeal to the governor-general in council from any decision affecting any right or privilege of the Protestant or Catholic ir relation to education. Provision four provides machinery for making the decision of the governorgeneral effective. If a provincial law which seems to the governor-general requisite for the due execution of the provisions of the section is not made, the proper provincial authority, then, and in every such case, and so far only as the circumstances of each case

Vital Clauses.



cation. They do not affect or diminis whatever the remedy the appellants have under provision one, and cannot operate to give the legislature of Ontario authority to legislate in matters specially excepted from their authority. Accordingly, it would require an act of the imperial legislature prejudicially to affect any right or privilege reserved under provision one, and, if operate to give the legislature of the commission one, and cannot of the imperial legislature prejudically to affect any right or privilege to that extent, they are not binding to appellatins. There is no question that the English and French Schools act and the previous act and the previous act and the special properties of the imperial legislature prejudically affect any such right of privilege to that extent, they are not binding to appellants. There is no question that the English and French Schools act and the special school

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Classes Defined. Further, the class of persons to whom the right or privilege is reserv-ed must, in their lordships' opinion be of the class of persons determined according to religious belief and not according to race or language in relation to the denominational teaching of the circular applies to public means they are to be determined out the denominational teaching of and separate schools alike and impartially, and if it contained provimersons and the section, a class of sions with regard to religious instructions they think fit as to the persons, and that class cannot be subdivided into other classes by considerations of the language of the people. Appellants and respondents therefore are members of the same class, but this fact does not affect appellants' position on their appeal.

For their case is that even to a

class so determined there were pre-served by statute and vested in them as trustees rights or privileges which include the right of deciding as to the language to be used as the means of instruction. The question, therefore, that arises is, what were the lights and privileges protected by the act, and were they invaded by the circular, according to its true means that the description of teachers that they must possess a knowplaint of appellants is mainly directed.

Refers to Both.

The paragraph refers equally to public and somewhat the description of teachers that they must possess a knowledge of English, interfered with the description of the circular, which impose as necessary conditions of qualification of teachers that they must possess a knowledge of English, interfered with the circular, which impose as necessary conditions of qualification of teachers that they must possess a knowledge of English, interfered with the circular, which impose as necessary conditions of qualification of teachers that they must possess a knowledge of English in this respect. To accede to this argument would involve
the removal of a condition as to the interfered with the circular. ng? Now it appears that at the date of the passage of the North America Act, a statute was in operation in Uprights and privileges were conferred on Catholics in respect of separate schools, and so far as the facts of this case are concerned this was the only source from which rights and privi-leges could have proceeded.

Convening Meetings.

This act enabled any number of people, not less than five and being Roman Catholics, to convene a public powers in respect of separate schools such interference could not be rethat trustees of common schools have sisted. Their lordships have already stricted by section 13.

the trustees the determination of the children are being educated in Catholic kind and description of the schools to separate schools. be established, the teachers to be employed and generally the terms of their employment. These powers are, however, to some extent limited by sub-sections 15 and 16, the first of which in effect requires that the text books should be a uniform series of authorized text books while the latter npels the trustees to see that all schools under their charge are conducted according to authorized regulations. Counsel for appellants na- any pleading or process in or issuing turally place great reliance upon these from any court of Canada, and in and provisions, and in a wider aspect of from all or any of the courts. If any their argument contend that the kind inference is to be drawn from this secor any decision of the governor-gen-or any decision of the governor-gen-of school the trustees are authorized the tion it would not be in favor of the to provide is a school where education contention of the appellants. is to be given in such language as the

trustees think fit may make remedial laws for the due wilege possessed with respect to denominational schools in 1867 in determining the number and kind of the particular are provided by Cannot Accept View. schools to say within what limits the board of whom the trustees can the French language is to be used. These provisions contain procedure of great value to the Profescant or Catholic minority in relation to edu-

tion of trustees, may be used as the medium of instruction on turms not less unfavorable than the use of English. Their lordships are unable to agree with this view. The kind of school referred to in subhead 8 of section 93 is, in their opinion, the grade or character of school for example, a girls' school, a boys' school or an infants' school, and a kind of school within the meaning of that subhead is not a school where any special language is in common use.

Schools Must Conform.

The schools must be conducted in accordance with regulation. Their lordships can find nothing in the statutes to take away from the authority that had power to issue regulations the power of directing in what language education is to be given. If, therefore, the trustees of the common schools would be bound to obey the regulation which directed that education should, subject to certain regulations, be given in either English or French, the trustees of the seperate schools would also be bound to obey a regulation of the same character affecting their school, provided it does not interfere under the act of 1867, i.e., a right or privilege attached to denominational teaching.

Affection for Language.

On wider ground their lordships ap-

to denominational teaching.

Affection for Language.

On wider ground their lordships appreciate the affection which French speaking residents feel for the French language, but it must not be forgotten that altho in majority supporters. that altho in majority supporters of English and French separate schools in Ottawa are of French origin, there in Ottawa are of French origin, there are other supporters to whom French is not a natural language. This fact has no doubt caused great difficulty in adjusting matters fairly, as between the different inhabitants. The natural rivalry as to languages to be used in education and the care with which this difficulty has been considered is evidenced in the terms of a valuable report printed in record, and to which their lordships would direct attention.

Obscure Language.

It therefore becomes necessary to examine closely the terms of the circular in order to ascertain the nature and extent of restrictions it imposed.

and extent of restrictions it imposed Unfortunately it is couched in obscure language and it is not easy to ascertain its true effect if it opens with a definition of English and French schools. It was argued on behalf of appellants that even this definition appellants that even this definition was not within the power of the department, but there is no weight in this objection provided that selected schools are so dealth with as not to impeach any legal right or privilege of the appellants. In the second paragraph of the circular important regulations and courses of study prescribed for public schools which prescribed for public schools which are not inconsistent with the provisions of circular are applied to English and French schools with the following

the parents, and this serves these rights. Indeed this indep clause, in their lordships' opinion, indicates that the whole course of religi- the words of subsection ous teaching in separate schools is outside the operation of the circular.

sions with regard to religious instruc-tion in the public schools by virtue of this clause those provisions would not apply to separate schools. Thruout the whole of the circular, however, there is nothing whatever to indicate that it is intended to have any application, excepting it may be in the case of public schools, to anything but secular teaching. It is in this connection that clause three must be read. This is the paragraph which regulates the the circular, which impose as necesuse of French as a language of in-struction and communication. It is chers that they must possess a know-

be used as a language of in-

Except on approval of the chief inspector in the case of pupils beyond form one who are unable to speak or understand English, there are further provisions for a special course in Eng-lish for French-speaking pupils and and documents before them the regu-

and collect school rates and subscrip- way inconsistent with the natural right tions from persons sending children or subscribing towards the support of such schools, and should have all the such schools, and should have all the of these reserved by the act of 1867 under the provisions of the act relating expressed the view that people to common schools. A special clause joined together by a union also related to the appointment of teachers, who before had been arbitrataith do not form a class of persons rily appointed by boards of trustees. within the meaning of the act. If any This power was regulated and re- other opinion were adopted there appears to be no reason why a similar Determination of Schools.

Sub-section 8 places in the hands of English-speaking parents whose

No Reference to Education. In this connection it is worthy of notice that the only section of the notice that the only section of the norters or at least a majority of them. the use of English and French language, does not relate to education, and is directed to am entirely different subject matter. It authorizes the use of either the English or French language in debates in the houses of parliament in Canada and the legislature of Quebec, and by any person or in any pleading or process in or issuing the use of English and French langu-

Further objections taken to the circuisr depend upon these considera-tions: that it interferes with the right

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ndependent question.
So far as teachers are concerned

the words of subsection 8, section 79, empower the trustees to determine the

instruction, including the local super-intendent of the schools. It is argued local superintendent, a power conferred on the trustees, the provisions in lic and separate schools, and directs that modifications shall be made in the course of study in both classes of might be a serious matter for the schools, subject to the approval of the cause of education in the province, but chief inspector in the case of French-speaking pupils. French where neces-statute compels this view. Even asstatute compels this view. Even as-suming that the provision of section struction and communication, but not 96, as to granting certificates to teachers, might be still revived, even then there is nothing to prevent the estab-lishment of special conditions as conditions with which teachers must comply before any such certificate can be ven. Their lordships' lations impeached were duly made and approved under authority of the de-partment of education, and became

binding, according to the terms of those provisions on the appellants and schools under their control. They will advise his majesty to dismiss the appeal. The appellants will pay the Long Legal Fight.

These judgments mark another phase in the long legal battles in the courts in the Ottawa Separate School

In a word, the first judgment renoves all doubts held by the supporters of Samuel Genest as to the onstitutionality of Regulation 17 of the Ontario Department of Education. second judgment has reference to the appointment of the commission to manage the Ottawa Separate Schools, and finds it lacking in some of the details.

led by Samuel Genest, chairman of the Ottawa Separate School Board, have carried on opposition to it, and used every means in their power to have the regulation rescinded.
With regard to the matter of in-

pection of separate schools, wherever it was possible inspectors, who were qualifications for the position, appointed. During 1912 it was impossible to get a Catholic inspector, and when the Protestant inspector went into several of the schools in Ottawa and in one other place the children walked out in a body. In Ottawa the whole of the lay teachers were dismissed. Y the chairman of the board, to whom the power to do so was given by the board, and for a long time the schools were empty.

END OF TROUBLE FERGUSON HOPES

Believes French Will Quietly Accept Privy Council

No Need for Further Legislation to Enforce the

Premier Hearst, Hon. Dr. Pyne and

Hon. Mr. Ferguson, who was in charge of the education department during much of the controversy, after the text of the judgment had been re-

legislation be invoked. It was only an emergency measure, because we knew that the natter would be thrested cut eventually before the privy council.

Ontario's Position.

"Our position has always been and still is that we are determined that every child attending school shall have the opportunity of learning the English language. We think that the

the leader of the English-speaking section being named MacKell, the case was known generally as MacKell et al education experts are the most cap- TESTIMONY BY CALDER

vent the Quebec Bank from handing over such moneys as it held for the old poard to the con were sought and the case was carried to the appeal court.

The Main Fight.

But the main fight, that which has brought forth the present judgment from the privy council, centred around an action begun by Mr. Genest and others to have it declared that the was heard in the courts of Ontario and when the separate school supporters lost in each hearing they appealed to the privy council. Hon. N. A. Belcourt of Ottawa handled the case for the separate school supporters, and retained Sir John Simon, formerly attorney-general in the British cabinet, to argue it before the privy council.

Ruling.

ON REGULATION SEVENTEEN

Hon. G. Howard Ferguson agreed yesterday that the privy council's decision on the bilingual issue, in sustaining the legality of regulation 17. gave them the victory on the vital issue, government control of education, while the adverse decision of the council or the authority of the commission appointed by the government to administer the separate schools in Ottawa was merely upon a technicality, a local matter, one of machinery that could be righted if necessary at the next sitting of the provincial

the text of the judgment had been received, gave out the following statement, which may be taken as indicating the position taken by the cabinet in the matter.

"The statute that we passed, known as the School Commission Act, is something we hoped we would never have to make use of. In the very prequible it was set forth that only in case of disobedience of a flagrant wharacter would the aid of the new legislation be invoked. It was only an emergency measure, because we knew

ment of the department, but the unduly influenced by a few gogs, largely influenced by department, but they were ister.

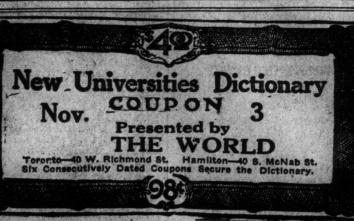
French Will be Content. "Now that it has been made clear that the repartment has the authority that the repartment has the authority that these disturbers have denied, I feel satisfied that the great body of the French people will be content, if they are left alone, to accept the dechers.

Under the statute of 1859 the body for examining and giving certificates of qualifications was constituted by three members of the board of public the statute of public instruction including the local super-

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By Order of the Board. Toronto, October 25th, 1916.

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Department Taken Largely Out

over by the governor-in-council for expenditure, he never interfered with the expenditure of same. He said he auditors as to the administration of the act or the expenditure of money. The creation of the board had relieved the road work of political pressure by at least 90 per cent. To a very large extent it was taken out of politics altogether, he declared.

GERMANS ATTEMPT ESCAPE

Kingston, Nov. 2.-Four Germa. risoners at Fort Henry made a bold attempt last night to escape by dig-



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