

The right to impose this Assessment is objected to on the ground that it includes a sum for the support of schools under the authority of the Act relating to Common Schools, 34 Vic. cap. 21, which it is contended is unconstitutional; that the Legislature have no power to pass it, because it contravenes the exception in the Act of Union.

By the 93rd section of 'The British North America Act, 1867,' it is declared—"That in and for each Province, the Legislature may exclusively make laws in relation to Education, subject and according to the following provision:—

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

"(2) All the powers, privileges and duties at the Union by law conferred and imposed in Upper Canada on the Separate Schools and School Trustees, of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

"(3) Where in any Province a system of Separate or Dissentient Schools exists by law at the Union, or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.

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

The exclusive power of legislating upon the subject of Education, is thus conferred upon the Legislature of each Province, subject to the reservation of the rights of any class of persons with respect to Denominational Schools.

Every one acquainted with the history of the Provinces which comprised Canada, before the Union, knows the reason for the insertion of some of the provisions of this section. It was found to be the only mode of solving a question that had caused serious difficulty with the Government and Legislature of that Province.

Paragraphs two and three were constructed to soothe and settle these difficulties, and at present only apply to that Province, now consisting of Ontario and Quebec, where schools were in operation at the Union, answering the description given them in these paragraphs.

Whether the fourth paragraph applies to any other law than such as is referred to in the third paragraph, it is not necessary to consider, as the constitutionality of the School Act depends entirely upon the meaning of the first paragraph.

The simple question for solution is, does The Common Schools Act 1871, prejudicially affect any right or privilege with respect to Denominational schools, which any class of persons had by law in the Province at the time of the Union? It is not merely a right or privilege. A denominational right or privilege, of itself, if any such existed, would not alone make The Common Schools Act unconstitutional. It must be a right or privilege with respect to a denominational school, which a class of persons had by law at the Union, which is prejudicially affected by this Act, to render it unconstitutional.

It appears to me, that the first inquiry is—What is a denominational school? In my opinion, it is a school under the exclusive government of some one denomination of Christians, and where the tenets of that denomination are taught. But assume that a school