

except that one of 1871, to which I referred, and then the clergyman there was not speaking of a Separate School in a legal sense . . . My opinion is . . . that every case of concession to use the FRENCH language that has been produced in evidence relates to a Public School."

9. The claim advanced by the Defendant Board in the action referred to, is the claim of those of the French race in the City of Ottawa. A majority of the supporters of Separate Schools in the City of Ottawa is of that race and elects the majority of the members of the Separate School Board for the City.

10. During the years of 1912 and 1913 Regulations including Instructions Nos. 17 of 1912 and 1913, and No. 18 of 1912 were made and published by the Department of Education.

11. The attitude of the Board of Trustees of the Ottawa Separate Schools, (controlled as it was and now is, by members elected by the French race) with respect to these Regulations is too well known to require any extended reference. Suffice it to say that the Board refused to comply with or enforce the Regulations and refused to permit of the inspection of the so-called English-French schools by duly appointed Inspectors. The Honourable the Minister of Education for the Province thereupon deprived the Board of the annual grant in aid of education for the year 1913, notwithstanding that almost one-half of the schools are exclusively English schools, maintained up to a proper standard of efficiency and conducted in strict compliance with Departmental Regulations. Although no intimation has been received from the Department as regards the Government grant for 1914, it is probable the Board will also be deprived of the grant for the latter year.

12. In the month of April, 1914, the Board of Trustees whilst refusing to conduct the English-French schools according to law, and whilst maintaining its attitude of defiance of the Department of Education attempted to introduce and pass a By-law authorizing the issue of debentures to the amount of \$275,000. The representatives of the English speaking ratepayers on the Board, in conjunction with other ratepayers, thereupon instituted proceedings in the Supreme Court of Ontario and claimed, with other relief; (1) an Injunction restraining the Board from further mortgaging or pledging the resources of Separate School ratepayers whilst continuing to conduct the English-French schools contrary to law, and (2) a Mandatory Injunction requiring the Defendant Board to conduct the schools according to law and Regulations of the Department of Education.

THE FOLLOWING IS A COPY OF THE JUDGMENT OF HIS LORDSHIP, MR. JUSTICE LENNOX IN THAT ACTION DELIVERED ON THE 28TH OF NOVEMBER, 1914.

There are only two classes of primary schools in Ontario Public and Separate Schools. "Public School" or "Separate School," simply imports an English School. For convenience the Department of Education annually designates certain schools attended by French-speaking pupils as English-French and these may be either Public or Separate Schools. The Defendants have under their charge 192 Roman Catholic Separate Schools, of which 116 are English-French.

The main issue to be determined in this action is the validity or invalidity of certain provisions of the School laws of Ontario, and particularly of Instructions or Regulations No. 17 of the Department of Education, issued in June, 1912, and August, 1913. I will deal with this issue first.

Under our Constitution, the power to make Educational laws, and the control of Education is for the most part committed to the Provinces. It is not an unfettered power or unlimited control. There is power vested in the Governor General in Council and the Dominion Parliament by which they may, if they will, prevent the effective exercise of the jurisdiction conferred upon the Provincial Legislatures. Sub-Sections 3 and 4 of section 93 of the British North America Act, 1867. But notwithstanding the strenuous argument of counsel for the defence these sub-sections in no way affect the issues in this case, for the manifest reason that the jurisdiction of the Dominion is supervisory or remedial only, and the powers conferred have not been exercised or even invoked; and