NOT SUSTAINED BY THE FACTS.

JUDGE FRASER REPORTS ON THE COMPLAINTS IN REGARD TO THE BATHURST SCHOOLS.

The Most Complete Synopsis of the Document Yet Published—The Commissioner Speaks Out Plainly on the Frivolous Character of Some of the Charges—Little Incidents that Were Grossly Exaggerated—Summary of the Celebrated Case Which Has Agitated the Province.

The report submitted to the legislature by Hon. John James Fraser, the commissioner appointed by the government to investigate the complaints in regard to the Bathurst schools is a most important document, and full of interest from first to last. Judge Fraser was appointed in April last, and on the 23rd of May received the complaint of Rev. A. F. Thomson and a statement from Patrick Maloney, asking for an enquiry. The enquiry began at Bathurst on May 30; Mr. Thomson was represented by Hon. C. N. Skinner and Geo. W. Fowler; the school trustees by Richard Lawlor and N. A. Landry, and the board of education by Hon. A. S. White, solicitor general.

Judge Fraser then proceeded to hear the testimony and in August the arguments of counsel were heard at Fredericton. The report on the evidence and the statement of facts established was completed in November, and the essential portions of it are given in PROGRESS today. Here is Judge Fraser's statement of the facts established by the evidences:

Before dealing with the subject matter, I may say that when I accepted the duty imposed upon me by the commission, I felt that the fullest liberty of examination should be accorded to all parties, and where it might be at all doubtful whether the evidence offered could be considered strictly within the scope of the inquiry or not, that it would be much better for me to hear it, although it might afterward turn out to be beside the question.

Acting upon this view it will be seen by reference to the evidence that the inquiry was an unlimited one, and that the complainants had the fullest possible range in conducting the examination of witnesses; indeed so full and complete were the opportunities afforded to the complainants to get witnesses, and to ask any and every question they desired, that the counsel for complainants stated openly at the investigation that every facility had been furnished them by the solicitor general in this respect.

The evidence taken is very voluminous, and a not inconsiderable portion of it has no bearing on the subject matter of the inquiry; and had it not been for my desire to let the complainants get out all the testimony they thought necessary, I would have ruled that very much of the evidence offered had nothing whatever to do with the matter. It may be interesting reading, and, no doubt, is so; but when one comes down to ascertain as a fact whether or not the schools in Bathurst or in Gloucester county have or have not been conducted in accordance with law and the regulations of the board of education, such evidence is of very little value.

In making up a report in this matter, I have thought it best to take up each ground of the complaint in the order in which it is placed in the printed statement presented by the Reverend Mr. Thomson, preserving his numbers and divisions so as to make it more easy of reference. The complaint is dated the 18th day of May, A. D. 1893, and the first ground of complaint which is made is this:

(1) That the Rev. James Rogers, Roman Catholic Bishop of the Diocese of Chatham in the Province of New Brunswick, with a view to having the Common Schools in District No. 2 in the town of Bathurst in the County of Gloucester, and in School District No. 16 in the Parish of Bathurst in said County of Gloucester, under the control of the religious teachers of the Roman Catholic church and of the said church, did enter into an agreement with and come to an understanding with certain members of the Roman Catholic church of said school districts to bring members of certain religious teaching orders of the Roman Catholic church to the said district, and to there establish conventual schools, with a view to having the children of Protestant parents taught within such conventual schools, and pursuant to such agreement and understanding the members of one or more said orders were brought to said district and one or more said conventual schools were established in said districts or in one of said districts.

Before proceeding to refer to the evidence offered in support of this ground of complaint and to a right understanding of the question, it may be well to refer to the state of matters which had existed in Bathurst Town and Village in regard to the schools in those districts from about the year 1873 down to the month of June, 1890.

During all that period, some seventeen years and upwards, the Roman Catholic parents of children in those districts had maintained at their own expense one school Bathurst Town and one school in Bathurst Village, at which the greater number of the Roman Catholic children of the Town and Village during all those years received their education. These two schools were known as Convent Schools, and the teachers in these schools, down to the year 1890, were sisters of the congregation of Notre Dame, Montreal.

During the same period the schools conducted under the common schools Act in the said districts were attended by the Protestant children of the said districts and by some of the older boys of the Roman Catholic faith, the sisters of the congregation of Notre Dame not teaching boys.

The number of Roman Catholic children in attendance upon the Convent school in Bathurst Town in 1890, just before such school was brought under the operation of the School Law, would be about a hundred; and the number of children then enrolled as in attendance upon the common schools in Bathurst Town about one hundred and seventy.

The number of Roman Catholic children in attendance upon the Convent school in Bathurst Village in 1890, just before such school was brought under the operation of the School Law, would be about eighty; and the number of children then enrolled as in attendance upon the common schools in Bathurst Village for the term ending 30th of June, 1890, ninety-two.

From 1874 down to 1890, all the sums of money voted for school purposes at the annual meetings under the law in the town and village were assessed and levied upon all the ratepayers resident in, and upon the non-resident owners of real estate liable to be assessed in the districts, and the persons so assessed included both Roman Catholics and Protestants.

It will thus be seen that down to the year 1890 the trustees of schools in these two districts had available for the purpose of the schools conducted by them all the rates and taxes assessed upon these districts respectively, as well the rates paid by ratepayers who were Roman Catholic as by ratepayers who were Protestant; and during all these years the Roman Catholics of these two districts kept up and maintained at their own expense and by voluntary subscriptions the convent schools in these two districts.

The Sisters of Charity.

In June, 1890, the sisters of the congregation Notre Dame, Montreal, who had been teaching in the convent schools in the town and village, called upon the Roman Catholics of two districts to pay them an additional annual allowance as teachers of the convent schools, stating that the sums heretofore paid them were insufficient for the purpose of maintaing their schools. Meetings of the principal Roman Catholics of the town and village districts were held to consider the propersition to pay the additional allowance asked by these sisters, and although several sums were subscribed for that purpose it was eventually concluded by the Roman Catholics who met to consider the propositions that it would be better to part with the sisters of the congregation of Notre Dame, who declined to teach under the common schools act, and secure if possible teaching sisters who would teach under the common schools acts.

To this end the Sisters of the Congregation de Notre Dame prepared to leave the province, and did so, and arrangements were made by the trustees of schools for Bathurst Town and by the trustees of Bathurst Village, by which they agreed to take the Convent School rooms in Bathurst Town, and certain rooms in the Convent School building in Bathurst Village, and occupy them for school purposes under the Common Schools Act. Several Sisters of Charity duly licensed to teach were engaged as teachers by the trustees of schools of each of these districts, and agreements were duly entered into in accordance with the Common Schools Act between the trustees and each such teacher. The trustees in the month of September, 1890, opened these school rooms as schools under the law for the reception of pupils, and gave permits for pupils to attend the same.

The effect of this, as will be readily understood, was to bring under the operation of the Common Schools Act in the schools of Bathurst town about some one hundred children of Roman Catholic parents, and in the schools of Bathurst Village about some eighty children of Roman Catholic parents, who had hitherto been attending the Convent schools; which were, as I have already stated, supported by the voluntary subscriptions of the Roman Catholics of Bathurst Town and Bathurst Village; and as a consequence the sums to be raised by rates and taxes would be increased by the amount that would be necessary to meet this increased attendance of children. I will refer to this hereafter, when I come to deal with the question raised as to what is claimed to be the excessive cost of now running the schools in the town and village.

The First Charge.

Having thus shortly stated the condition of school matters in the town and village in the summer of 1890, I will now proceed to deal with the first ground of complaint put forward by the Reverend Mr. Thomson:

It in effect charges Bishop Rogers with a design to have the common schools of Bathurst town and Bathurst village brought under the control of religious teachers of the Roman catholic church, and of establishing conventual schools in these two districts with a view to having the children of protestant parents taught within such conventual schools. I am not aware of any course of proceeding by which any prelate of any church can bring the common schools in any district in the province, which by law are placed under the control of the trustees of the district, (subject, of course to the law and regulations,) under the control of religious teachers of his particular church. No one could have heard the evidence of Bishop Rogers, or that of Father Barry, the priest in Bathurst town, or that of Father Varrily, the priest in Bathurst village, and have arrived at the conclusion that the bishop or either of the two priests named for one moment entertained the idea of bringing the common schools in either the town or the village under the control of religious teachers of the Roman catholic church with a view of establishing conventual schools and having the children of protestant parents taught within such conventual schools.

Bishop Rogers and the two priests just named did not hesitate to express their opinion that they believed in religious combined with secular teaching in the schools; but finding that that could not be had under the provisions of the common schools act of New Brunswick, they yielded to the law, while still entertaining their belief that religious and secular teaching should go hand in hand in daily school life.

Mr. Fowler contended that there was religious teaching in these school buildings after teaching hours, and that that was contrary to law. The use of the convent school rooms after school hours for such a purpose, inasmuch as the buildings were only hired for school purposes during school hours, does not appear to be an infringment of the regulations within the spirit of the minute of the executive council of the 6th of August, 1875, which is as follows:

'Where, by negotiations with governing bodies of schools existent at the passage of the school act, arrangements are made by trustees under 36th Victoria, chapter 12, section 58, no restriction is placed upon the use of the buildings after the close of school.'

I have, therefore, to report that in my opinion the evidence offered entirely fails to sustain the first ground put forward in Mr. Thomson's list of complaints.

(2) The second ground of complaint is that special arrangements were made by the board of education of the province of New Brunswick for the examination of the said members of the said religious teaching orders on their coming as aforesaid to said school districts, and on their so coming to said school districts they were examined in the Roman catholic convent in the county of Gloucester for the purpose of being licensed as teachers under the common schools act of this province, and upon such examination they were contrary to law licensed to teach in said districts under said acts.

The gist of this complaint is that the Sisters of Charity who were employed as teachers by the trustees of the town and village schools were contrary to law licensed to teach in said districts, inasmuch as they were examined under special arrangements involving special privileges which were refused to other teachers.

It is not claimed that the examination was not conducted fairly and properly in every respect, but what was urged was that while St. John and Chatham had been named as examining stations the Board of Education had by order substituted Bathurst as an examining station for Chatham, and that this was done for the special benefit of the Sisters to be examined, and was therefore an infringement of the School Act.

I cannot see any infringement of the School Act in the Board of Education making Bathurst a station for examination.

The Board of Education as early as 1873 fixed times and appointed stations for examinations. It is true that at first they named St. John and Chatham as examining stations; but they were not limited to these two places, and might have selected then or at any time subsequently any other place in the province for an examining station, and, therefore, the selection of any place as an examining station must be a matter entirely in the discretion of the Board of Education.

It appears to me that when it is claimed that the selection of Bathurst was a special privilege conferred upon the Sisters, those putting forward that contention entirely lose sight of the fact that when Bathurst was named as an examining station any examination to be held there *would be open to eligible candidates from all parts*. This entirely disposes of what is sought to be put forward in this ground of complaint, viz., that special arrangements were made by the Board of Education in favor of the Sisters.

Interference of the Priests.

(3) The third ground of complaint is as follows:—

That the Roman Catholic priests exercising their religious offices in the said school districts have interfered with the schools of said districts in the following manner.—

(a) One of said priests, after the establishment of the said conventual schools as aforesaid, on Sunday, in the Roman Catholic church in Bathurst, gave instructions as to what children should attend the said conventual school and what children should attend the schools taught outside of the said school presided over and taught by the members of said religious teaching orders.

(b) That during the school term ending the 30th of December, 1892, another of said priests ordered the mother of one of the pupils attending one of the public schools of one of said districts to take her daughter, the said pupil, from the said public school which she was then attending, and send her to one of the said conventual schools.

(c) That one of the said priests instructed Theodore Langis, one of the teachers in the public schools of said District No. 16, to teach the pupils in the said schools the Roman Catholic catechism, which said teacher did, in pursuance of said instructions, and by the further direction of one of the trustees of the said School District No. 16, so do

(d) That one of the said priests, previous to the establishment of said conventual schools in said District No. 16, wrote a letter to the board of trustees of said district requesting said trustees to rent the Convent building in said district for school purposes in the district aforesaid, and to employ the members of the said religious teaching orders as teachers therein; and in consequence thereof, the said trustees did so engage and occupy a portion of the said Convent School building for such school purposes, and did employ said members of said religious teaching orders as teachers therein.

Dealing then, with the sub-section (a), the complaint substantially is that after the trustees of schools in Bathurst Town had entered into an agreement to take the school rooms in the Convent building for school purposes under the Common Schools Act, and had entered into an agreement with certain of the Sisters of Charity duly licensed to teach in the common schools of New Brunswick to become teachers in the common schools in Bathurst Town, Father Barry, the Roman Catholic priest, had, on a Sunday, after the arrangements had been completed, in the Roman Catholic church in Bathurst under his charge, given instructions as to what children should attend the school in which the Sisters of Charity were to be placed at teachers, and what children should attend the other common schools in the town.

This charge, looked at from a plain, common-sense view of announcements from time to time made from the pulpit of any denomination, cannot I think but be considered as an endeavor to misjudge the motives of the speaker, and to give to a very fair announcement, to say the least of it, a most ungenerous construction.

After it was understood and agreed that the Roman Catholics of Bathurst Town and of Bathurst Village were to come under the School Act, and arrangements had been made for that purpose, what was more natural than that the priest should from the pulpit announce to his congregation that the schools in the town were in the future to be carried on under the provisions of the Common Schools Act, and explain to them as to the attendance at the school buildings under the control of the trustees of the Roman Catholic children of his flock. The granting of permits to the children is the act of the trustees and not of the priest.

I should say that the charge, that Father Barry in the exercise of his religious office in making the announcement he did was interfering in a religious point of view with the schools of the district, is entirely disproved

In regard to the sub-section (b), charging that during the school term ending 30th, of December, 1892, another priest, Father Varrily, ordered the mother of one of the pupils attending one of the public schools of one of said districts to take her daughter, the said pupil, from the public school which she was then attending, and send her to one of the said conventual schools, the facts as disclosed by the evidence were that a young girl attending the common school in the Convent building in the Village was observed to be somewhat too familiar with some boatmen or fishermen at the public wharf—in fact, was guilty of levity with them—and being remonstrated with by a Sister of Charity, who was not one of the licensed teaching Sisters, became indignant and left the school held in the Convent building, and sought for and obtained a permit to enter the High School building, and did enter it. It was a question whether her name was registered as a pupil. It seemed to me from the evidence that, although there was some informality, she was substantially registered by the principal as a pupil. Father Varrily believed he had a right as parish priest to talk to the girl and to her mother as to her alleged indiscretion, with the result that the girl returned to the common school in the Convent building. It seemed to me that the School Law never contemplated that the parent should not have control over his child in such a matter as that, or that the clergyman should not have the right to look after the morals of the members of his flock.

In the present instance what Father Varrily did was what any minister of any denomination would have done in respect to what he considered was objectionable conduct in any child of any family under his ministerial control.

It was claimed that the young girl wanted to go to the Superior School in the Village with a view to obtaining such education as would enable her to attend the Normal School, with a view to her becoming a teacher under the Common Schools Act, and that her return to the school in the Convent building prevented this.

What all this has to do with the priestly control of the common schools, I am at a loss to understand.

The teaching of the catechism took place during noon-day recess: that is after the school was dismissed at noon, and before the opening of the school in the afternoon.

Father Varrily and the teacher, Theodore Langis, both thought that after the school was dismissed at noon teaching the catechism during the recess was not teaching the catechism within school hours, and was not in contravention of the School Regulations.

What is a School Session.

This brings up an important question, which may as well be considered here once for all; as the teaching of the catechism and the giving of religious instruction after the dismissal of the school at noon and before the opening of the afternoon sessions has been practised in the Town and Village schools as well as in some of the other schools in other districts in the Parish of Bathurst.

The wording of the regulation relating to the length of the daily school session has not varied very much from the making of the first set of School Regulations down to the present time.

The regulation, as published in the School Manual of the year 1887, is as follows:

Regulation 19, sub section 6—*Length of daily sessions:* 'The hours of teaching shall not exceed 'six each day, exclusive of *at least one hour* allowed 'at noon *for recreation*. The board of trustees, 'however, may, if it desires, restrict the number of 'hours to five, and for the younger children to four. 'A short recess shall be allowed about the middle of 'the morning sitting, and the same in the afternoon 'session if deemed necessary. In the youngest 'primary departments or classes, special care should 'be exercised that the pupils are not confined too 'closely or too long in the school room.'

When we look at the regulation which gives to the teacher the privilege of opening and closing the daily exercises of the school by reading a portion of scripture, and by offering the Lord's prayer or such other prayer as might be permitted by the board of trustees, it is manifest that from the hour fixed for the opening of the school each day to the hour fixed for the closing of it is the length of the daily school session and the teaching of the catechism or the giving of religious instruction *in the school building* within the hour allowed at noon for recreation is contrary to the spirit and intent of the school act and to the regulations in that respect. There is, however, no evidence to show that there has been any complaint to the board of education that this practice had been followed in the town and village schools, or in any of the other schools in Gloucester in respect to which the evidence showed such a practice prevailed, nor were the board of education, as appeared by the evidence, asked to inquire into such practice.

I can only repeat here what I have stated above, that a teacher might honestly believe the regulations to mean that the hour allowed at noon for recreation was not an hour in which he was employed in the discharge of any school duties, and therefore, the pupils and their parents consenting, that he might lawfully give such pupils instruction in the catechism.

(d) That one of the said priests previous to the establishment of said conventual schools in said district No. 16, (the Village,) wrote a letter to the board of trustees of said district, requesting said trustees to rent the Convent building for school purposes in the district aforesaid, and to employ the members of the said religious teaching orders as teachers therein; and in consequence thereof the said trustees did so engage and occupy a portion of the said Convent building for such school purposes, and did employ said members of said religious teaching orders as teachers therein.

The priest referred to is Father Varrily, and it appeared by the evidence that he made application by letter dated the 31st of July, 1890, to the board of school trustees of the Village, on behalf of three of the Sisters of Charity, who all held First Class licenses under the Public School Law of Nova Scotia, and temporary licenses of the Third Class in this province, offering their services as teachers at a salary of $110.00 each for the school year; and he also offered the trustees the use of three class rooms (or more if needed) in the Convent for class purposes, together with all the school apparatus hitherto in use, such as desks, chairs, stoves, etc., for an annual rental of thirty dollars or ten dollars for each class room. Father Varrily also stated in the letter that if the board of trustees engaged these Sisters as teachers they would be ready to commence teaching on the first of September, and undertake to teach in conformity with the law and regulations governing public schools in this province. It was established in evidence that Father Varrily had such control over the Convent building as would empower him to rent it to the trustees. The board of trustees did rent the school rooms referred to and also hired the Sisters as teachers.

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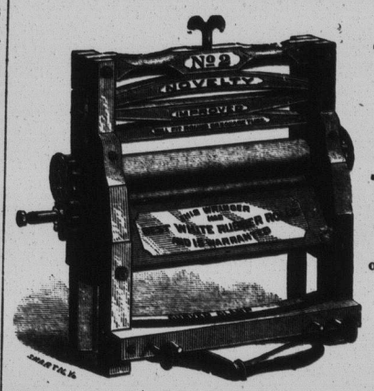

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The board of school trustees is a creation of the Act, and they have powers and rights which so long as they act within the law must be respected, and cannot arbitrarily be interfered with.

I am at a loss to see what infringement of the School Act or the regulations there was in what was done by Father Varriiy or by the board of school trustees, as they were at perfect liberty to accept or reject the application of Father Varrily, and were not bound to rent the Convent school rooms or to engage the Sisters as teachers.

It does appear to me that this charge might well have been omitted from the Complaint, unless, indeed, it be that it was thought because Father Varrily was a priest he therefore ceased to have the common right which any ratepayer or resident of the district possessed of offering to rent to the trustees for school purpose school rooms over which he had control, and of making a request on behalf of a teacher to the trustees for the employment of such teacher.

Observance of Holy Days.

(4) The fourth ground of complaint is that, under and by reason of the influence of the Roman Catholic authorities in said school districts, Roman Catholic holy days, not being school holidays, have been observed in the public schools in said districts, as well as in said conventual schools.

The evidence disclosed the fact that Roman Catholic children did not attend the common schools on days which were known as Roman Catholic holy days, and the effect of this was in many cases to so deplete the schools of pupils as virtually to render proper teaching in the school quite an impossibility. In many cases the schools were closed on such days, and the teacher taught on Saturday instead It was claimed that in the schools of the Convent school rooms in Bathurst Town and Village the Saturdays thus substituted would not be much if any in excess of the substitute days permitted by sub-section 4 of Regulation 20, (School Manual, 1892,) while on the other hand Mr. Skinner and Mr. Fowler urged that the sub-section did not warrant the substitution, and that the non-attendance of Roman Catholic pupils by reason of their not attending school on a Roman Catholic holy day did not constitute such *extraordinary circumstances* as would justify the board of trustees in reaching a judgment that the substitution was desirable or necessary within the meaning of the 4th sub-section.

I simply report the facts with one or two observations. If Roman Catholic parents do not wish their children to attend the common school in the district on a Roman Catholic holy day, and they are not obliged to send them to school on such a day, it may be the duty of the teacher to sit all the teaching day in a school room without any pupils; or, in districts where the Roman Catholics are, perhaps, nine-tenths of the people in the district, with, perhaps, but three or four pupils, as the evidence disclosed would have been the case in some districts

The regulations may not permit a substitute day to meet such a case, and, therefore, the substitution of Saturday teaching may have been, and I think was not in accordance with the regulations. Yet this would not afford ground for charging the Board of Education with having sanctioned in any of the schools in the Town or Village, or in any of the schools in the County of Gloucester, the practice by the teachers of substituting Saturday teaching for days lost in consequence of pupils of the Roman Catholic faith not attending the common school of the district on Roman Catholic holy days, no complaint having been made to the Board of any such practice.

I may just add that there was not a particle of evidence to show that the Roman Catholic authorities of the Roman Catholic church in any way or manner interfered with the trustees or the teachers to cause the closing of any school on these holy days in the common schools of the districts; the closing seems to have been the act of the teachers, and for the reasons given, that Roman Catholic pupils would not attend school on such holy days.

Inspector Mersereau's Report.

(5) The fifth ground of complaint is that a report prepared by George W. Mersereau, Esquire, School Inspector for said district, with reference to certain of their statements of facts, and forwarded to and received at the office of the Board of Education at Fredericton, has not been laid before the Board of Education.

The facts in reference to this, as detailed by Inspector Mersereau in his evidence, were that shortly after a committee of the Board of Education had been at Bathurst, as he thought in 1892, although he could not be positive to the date—at all events at the time the committee were in Bathurst investigating certain difficulties, the Attorney General asked him to make up what he would consider a workable scheme for the schools of the Village, but he didn't remember whether the schools of the Town were included—he remembered he was in Campbellton when he made his report or scheme, and instead of sending it to the Attorney General he sent it to the Chief Superintendent of Education, explaining the conditions under which he forwarded it.

It appears that this report or scheme was never intended for the Board of Education, but simply for the information of Attorney General; and, as Mr. Mersereau states, the Chief Superintendent informed him that he had received the report so intended for the Attorney General, had handed it to him, and had not seen it afterwards.

As the evidence disclosed these facts, the counsel for the complainants at the argument conceded that the information upon which they had based the charge had proved to be erroneous, and, therefore, that the charge was an unfounded one.

The Duty of the Board of Education.

(6) The sixth ground of complaint is: That the Board of Education of the Province of New Brunswick has from time to time, and persistently, declined to take action on the memorials, communications and complaints addressed to it in reference to the matters set out in the statement of complaint, and particularly a memorial