

from the Report of the Opinion of their Lordships" from the *Toronto Mirror* of the 14th instant :—

This is an application by Mr. Hallinan, in behalf of Thomas Hayes and John Patrick O'Neill to call on the Board of School Trustees of the City of Toronto to show cause why a Mandamus should not issue commanding them to *authorize the establishment* of a separate Roman Catholic School in school section No. 9, in St. James's Ward in this city—founded upon a demand in writing by twelve heads of Roman Catholic families resident within the said section No. 9, and a refusal" [by the Board to comply with the demand.]

It will be seen that the *application* is confined to *one school within one school section*, instead of being a general application for one or more separate schools within the city in proportion to the number of children about to attend such separate school or schools. Here is where the difficulty arises, for it would appear that the Board of Trustees are empowered to *prescribe the limits* of each separate school section, without reference to the school sections already existing for the convenience of the *majority* : hence the application for a separate school *within certain limits* was supposed to be irregular. These remarks are necessary to enable our readers to understand the following "opinion" of the Judges. After a lengthy reference to former School Bills, and after mentioning that *all former School Acts* were repealed by the Act of last Session, the Judges come to section 19 of that Act, and decide as follows :—

"Sec. 19 enacts, 'That it shall be the duty of the Municipal Council of any Township, and of the Board of School Trustees of any City, &c., on the application in writing of twelve or more resident heads of families, to *authorize* the establishment of *one or more* separate schools for Protestants, Roman Catholics, or Coloured people ; and in such case it shall prescribe the limits or the divisions or sections for such schools, and provide for the first meeting for the election of Trustees, according to the 4th section of the Act ; and for such schools going into operation at the same time, with alterations in school sections.' (See sec. 10, No. 4.)

"It further provides, secondly, That none but Coloured people shall vote for Trustees of separate schools for their children, and none but the parties petitioning for, or sending children to a separate Protestant or Roman Catholic school shall vote for Trustees of such school.

"It provides, thirdly, for the proportion in which such schools shall be entitled to share in the school fund, &c. And provides, fourthly, that no Protestant separate school shall be allowed in any school division except when the teacher of the common school is a Roman Catholic ; nor shall any Roman Catholic separate school be allowed, except when the teacher of the common school is a Protestant. And, fifthly, That the trustees of the common school Sections within the limits of which such separate school section or Sections shall have been formed, shall not include the children attending such separate school or schools in their return of children of school age residing in their school section.

"Now, the nineteenth is a general clause, extending to the Municipal Councils of each Township and the Board of School Trustees of any city, &c., throughout Upper Canada, and includes in one provision, separate schools for Protestants, Roman Catholics, and Coloured people, which were not thus blended in any former Act. The bearing in mind the different provisions made for the formation of school sections or divisions in townships and cities, &c., and for the election of trustees for school sections in townships, and of trustees of Boards of School Trustees in cities, &c. Also, That in Townships, &c., it rests with the Municipal Council to declare, alter, or unite, school sections, and not with the trustees of sections ; but that in cities, &c., it rests with the Board of School Trustees. It will be seen that the provision in section 19 for the election of trustees of separate schools,—the second proviso defining the right to vote at the election of such trustees, and the fifth proviso respecting the returns of children by trustees of school sections, relate properly to townships, &c., where the Municipal Councils determine the sections, and wherein trustees are elected for such sections ; though no doubt Boards of School Trustees are within the spirit of the last so far as respects their reports under sec. 24, No. 11.

"So proviso appointing the time for separate schools going into operation according to Sec. 18, No. 4, may perhaps bear a like relation. And it is by no means clear that in the fourth restrictive pro-

viso the word "*school division*" may not mean "*school sections*" of which Trustees are separately elected, though of course, such provisos may extend to and include cities, &c., At all events, comparing the proviso or first part of sec. 19 with the provisions contained in the former statutes, and considering the terms in which it is expressed, there seems little ground to place upon it any other construction than that (as enacted) *it* (*i. e.* the Municipal Council of a Township, or the Board of Common School Trustees of a city, &c.) shall prescribe the limits of the divisions or sections for separate schools,—a construction strengthened as to Cities, &c., by the 4th sub. sec. of sec. 24, enabling the Board of Trustees to determine the *number, sites, kinds and descriptions* of schools which shall be established in such City, &c.,

"Whether the City of Toronto has been divided into school sections under former acts or the present Statute, or whether by the City Council, the Superintendent of Common Schools, or a Board of Trustees,—does not appear,—but at present the power and discretion are clearly vested in one general Board, to be exercised of course *bonâ fide* in fulfilment of the intentions of the Legislature and the spirit of the Act.

"The present application being restricted to School Sec. No. 9, in St. James's Ward, raises the question whether the applicants are entitled as of right to have such schools established within the limits of that section, and involves the more general questions whether the Board of Trustees can, on separate applications by twelve or more heads of families,—(whether Roman Catholic, Protestant or Coloured people) be compelled to authorize the establishment of separate schools in such common school sections or divisions into which the City may be divided—in which event three schools might be required in each of such sections or divisions.

"We are disposed to think the limits of separate schools are in the discretion of the Board of Trustees, and that they are not restricted by this request of the applicants to a particular section or sections assigned as limits for common schools generally, which last mentioned limits the Board is also empowered to alter *ad libitum* ;—in short, that the Board, and not the applicants, is to prescribe the limits of separate schools ;—and that applications should therefore be for the establishment of one or more such schools in general terms, leaving it to the Board of Trustees to define the limits,—a duty which no doubt ought to be performed with a due regard to the number of children for whom such schools are required and are to be provided, and the residence of the families to which they belong.

"If after this intimation of the present inclination of the Court, Mr. Hallinan desires to persevere, we are willing to hear further argument, and he can take a rule to show cause in the terms of his motions, but it is for him to consider that if the rule is eventually discharged, it may be with costs against the applicants."

EDUCATION IN THE STATE OF NEW YORK AND UPPER CANADA, 1850.—This State has over six millions of dollars of School Funds, and last year over \$1,250,000 were paid out to teachers in her Common Schools, while 750,000 children were educated therein. This is well, but not well enough. There were still more than 100,000 between 5 and 16 years of age who did not receive a month's schooling each in 1850. We must find means to draw them into the schools in coming years, and, as a beginning, must keep those schools *free to all*.—*New York Tribune*.

NOTE.—In Upper Canada there were \$333,912 available for the payment of Teachers' salaries in 1850—the number of children attending the Common Schools was 138,465 ; still there were 114,899 children of legal school age who did not attend School at all ! If, therefore, New York requires the agency of Free Schools to induce her 100,000 additional children to attend school, how much more does Upper Canada require the same potent agency to induce the parents of her 114,899 schoolless children to place within their reach the blessings of education. With a population not one-third that of the State of New York, we have the sad tale to tell, that 14,899 more children were destitute of education in Upper Canada than in the State of New York, during 1850. What stronger argument do we require to incite all true lovers of their country to united and vigorous efforts in favour of free and universal education !