

is within the exclusive legislative authority of the Dominion Parliament.

Appeal allowed with costs.

South Dufferin *v.* Morden :

*Martin*, Attorney-General, for appellants.

*McTavish*, Q.C., for respondent.

Lynch *v.* Northwest Land Company :

*Kennedy*, Q.C., for appellant.

*Robinson*, Q.C., and *Tupper*, Q.C., for respondents.

Gibbins *v.* Barber :

*Tupper*, Q.C., for respondent.

[Oct. 28.]

BARRETT *v.* THE CITY OF WINNIPEG.

*Constitutional law—Constitution of Manitoba—33 Vict., c. 3 (D.)—Act respecting education—Denominational rights—Separate schools.*

The act by which the Province of Manitoba became a part of the Dominion of Canada (33 Vict., c. 3 (D.)), gave to the province the exclusive right to legislate in respect to education, with the following limitation: "Provided that nothing in any such law (a law relating to education) shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons has by law or practice in the province at the union." The words "or practice" are an addition to, and the only deviation from, the words of the like provision in the B.N.A. Act, under which *ex parte Renaud* (1 Pugs. 273) was decided in New Brunswick.

In 1871, after the said union, an act relating to schools was passed by the Legislature of Manitoba, by which the control of educational matters was vested in a board, consisting of an equal number of Protestants and Catholics. A Protestant and a Catholic superintendent of education were to be appointed, and Protestant and Catholic school districts established, the legislative grant for schools to be apportioned to each. This act was amended from time to time, but the system it established continued until 1890.

By 53 Vict., c. 38, passed by the legislature in 1890, a system of public schools was established in the province; the former system was abolished; the control of educational matters was vested in a department of education, consisting of a committee of the executive council, and all

the schools were to be free, and no religious exercises to be allowed except as authorized by the advisory boards to be established under the provisions of the act. The ratepayers of the several municipalities were to be indiscriminately taxed for the support of the public schools.

A Catholic ratepayer of the city of Winnipeg moved to quash by-laws passed to impose a tax for school purposes, and in support of his motion an affidavit of the Archbishop of St. Boniface was read, setting forth the position of the Roman Catholic Church with respect to education and the control it always exercised over the same, and showing that prior to the admission of Manitoba into the union Catholics had their own schools, partly supported by fees from parents, and partly by the funds of the church.

*Held*, reversing the judgment of the Court of Queen's Bench, Manitoba (7 Man. L.R. 273), that this act, 53 Vict., c. 38, prejudicially affected the rights and privileges with respect to denominational schools which Roman Catholics had by practice in the province at the union, and was therefore *ultra vires* of the provincial legislature. *Ex parte Renaud* (1 Pugs. 273) distinguished.

Appeal allowed with costs.

*S. H. Blake*, Q.C., and *Ewart*, Q.C., for appellants.

*Germully*, Q.C., and *Martin*, for respondents.

LISGAR ELECTION.

[Nov. 17.]

COLLINS *v.* ROSS.

*Election petition—Preliminary objections—R.S.C., c. 9, s. 63—English general rules—Manitoba—Copy of petition—R.S.C., c. 9, s. 9 (h)—Description and occupation of petitioner.*

*Held* (1), affirming the judgment of the court below, that the judges of the court in Manitoba not having made rules for the practice and procedure in controverted elections, the English rules of Michaelmas Term, 1868, were in force: R.S.C., c. 9, s. 63; and that under Rule 1 of said English rules, the petitioner, when filing an election petition, is bound to leave a copy with the clerk of the court to be sent to the returning officer, and that his failure to do so is the subject of a substantial preliminary objection, and fatal to the petition. STRONG and GWYNNE, JJ., dissenting.