

expulsion by the Board of Education, raises a question involving important and delicate rights,—rights which, in this land of civil and religious freedom, few may be willing to see infringed—or at any rate, raising discussions which must be unpleasant to those engaged in them, and calculated to result in consequences which can scarcely fail to produce acrimonious feelings, and in the end be injurious to the cause of Free Education, which we must presume the Regulation objected to was intended to further; all we can say is, as the case stands, the Regulations are not before us in such a way that we can deal with them, and therefore we are not called upon to express any decided opinion as to their validity, because the constitutionality of the Act cannot, in our opinion, be affected by any regulation made under it, there being nothing unconstitutional in the Act itself, that we can discover.

The second objection is easily answered. The provision in sec. 58, sub-sec. 12, of The Common Schools Act, declaring that no public funds shall be granted, would seem to apply to the schools particularly referred to in the preceding part of that section, and not to all schools. But, if it was intended to apply generally to all schools, as Mr. Duff's argument assumes, what does it amount to? It cannot take from the Legislature the right to make such grants. Thus, we see in the Estimates of the year 1872, grants were recommended by the Lieutenant Governor, and no doubt made, for all the denominational schools before specifically referred to, (see Journals of House of Assembly, page 124); and if such a clause was *ultra vires*, and we declared it void—*cui bono*? It would not affect the other parts of the Act, and what would practically be attained? The Legislature could, whether the clause stands or is declared void, do just as it pleases about granting or withholding the public funds.

But it is contended that the 60th section, declaring "that all schools conducted under the provisions of this Act shall be non-sectarian," prejudicially affects the rights and privileges which the Roman Catholics, as a class, had in the Parish Schools at the time of the Union. It cannot be denied that to the Provincial Legislatures is confided the exclusive right of making laws in relation to Education; and that they, and they only, have the right to establish a general system of Education, applicable to the whole Province, and all classes and denominations, provided always they have due regard to the rights and privileges protected by section 93 of The British North America Act, 1867.

Now, what in this case, is the right or privilege claimed to have been prejudicially affected? Is it a legal right or privilege that could have been put forward and enforced by the Roman Catholics, as a class, under all circumstances and in every Parish or Common School; or is it a legal right confined to the Roman Catholics as a body; or does it belong equally to all and every of the other denominations of christians in this Province, and capable by them of enforcement; or, on the contrary, was it not the mere possible chance of having religious denominational teaching in certain schools, dependent entirely on accidental circumstances; as, on what might happen to be the religious views of the majority in a Parish, and then on the accidental result of the election of Trustees and School Committee, and on the views of the parties so elected, as to religious denominational teaching, and their willingness to permit it in the schools, (admitting that the Trustees or Committee had any discretion in the matter, which perhaps is more than doubtful); was it not also dependent on the Board of Education, who had the general controlling power? If, dependent on circumstances such as these, how can it be considered such a legal right as could have been contemplated by the Imperial Parliament in passing the 93rd section of 'The British North America Act, 1867'? Where is there any thing that can, with any propriety be termed a legal right? Surely the Legislature must have intended to deal with legal rights and privileges. How is it to be defined—how enforced?