

Regulations, including clause 3(1) of regulation 17 of 1912 and 1913, have no application whatever. This being so, it would not seem that it prejudices the defendants at all in respect to any right or privilege which they had at Confederation *qua* denominational schools.

The defendants, also, it seems, seek to find a right or privilege existing by law at Confederation to use their own French language in their Separate Schools, in that clause which the 2nd and 3rd Charters of Henry III. added to Magna Charta. (1) The famous clause in Magna Charta runs—"No freeman shall be arrested or detained in prison, or disseised of his freehold, or outlawed, or banished, or in any way molested; and we will not set forth against him, nor send against him, unless by the lawful judgment of his peers and by the law of the land." The two Charters of Henry III. add after the words "disseised of his freehold," the words "or of his liberties or *free customs*." (1) The suggestion is that French-speaking Roman Catholic Canadians in Ontario had at the Union, a free custom to teach in French in their Separate Schools in the province—and that it was thus a right or privilege existing by law by virtue of the above Charters. And if "liberties and free customs" mean what Mr. Taswell Langmead says the words mean, in his Constitutional History, (4th ed., p. 138), namely, "such franchises or free customs as belong to a man of his *free birthright*," possibly the contention might hold good.

But Thomson on Magna Charta (p. 186), says: "Free customs are liberties enjoyed by custom or usage, which in its legal sense signifies a law not written but established by long use, and the consent of ancestry. The antiquity of a custom should be so great, as that the memory of man cannot shew its contrary, and legal memory is with the first year of King Richard I., 1189." In the same way McKechnie on Magna Charta (p. 445) says it probably refers to such rights as those of levying tolls and tallages.

The defendants, also, it would appear, rely upon section VIII. of the Quebec Act, 1774, which provides that the religious Orders and Communities in Quebec may continue to "hold and enjoy their property and possessions, together with all customs and usages relative thereto, *and all other civil rights*." Quebec, at that time, of course, included what is now Ontario, and although it certainly would seem to be going a long way to contend that a right to use the French language as the medium for instruction in the Roman Catholic Separate Schools was a custom or usage relative to their property or possessions, one does not feel so sure that it may not be held to have been a civil right enjoyed by them at that time. The Courts would surely have protected them in the enjoyment of such right, unless and until interfered with by lawful authority; and I have never been able to make out what a civil right is, except a right which the Courts will protect. If, therefore, that section of the Quebec Act is to be con-

(1) Curiously enough in reproducing this clause in R.S.O. 1897, ch. 322, no reference is made to the Charters of Henry III., where alone the words which are material to our present purpose are to be found.