

was—would affect it? Assume that this contention is correct, and that it prejudicially affects the right that a class of persons had at the Union, such a right, if it existed, is not saved by 'The British North America Act, 1867,' because it would be a right or privilege with respect to a Parish School, and not to a denominational school.

I cannot discover that the Regulations have any thing to do with the question of the power of the Legislature to pass the Act, or can form any guide in the interpretation of it. It appears to me that under either of the Acts of 1858 or 1871, it was competent for the Board of Education to make any of the Regulations referred to; whether they exercised their powers wisely or unwisely, under the Act of 1871, is another question.

The propriety of the Regulations objected to is a question of public policy, upon which I am not called upon to express an opinion. I may, as an individual, entertain a very strong opinion as to its policy. As a Judge, all I feel called upon to do is to consider its legality, and for myself, on that point, I entertain no doubt.

I am therefore of opinion that the Rule should be discharged.

WETMORE, J.

While fully concurring in the opinion of my learned Brethren as to the constitutionality of 'The Common Schools Act 1871,' I do not wish to be understood as expressing a participation in any doubt whatever as to the Regulations of the Board of Education.

I think the only question properly before the Court is, as to the Act itself, and not as to the Regulations. We are only called upon to decide whether or no, the Schools Act, or any part of it, is *ultra vires*; and upon the decision, the Assessments, to set which aside the application is made, are to be affected.

If the Act itself is not *ultra vires*, I do not see how the promulgation of any Regulation, even supposing it to be one which the Schools Act would not warrant, or to be in violation of the provisions of Section 93, sub-section 1, of 'The British North America Act, 1867,' can affect the case, any more than Assessors acting in violation of the law under which an Assessment is imposed, would affect the law authorizing the Assessment. In such case, if the Assessment is imposed in a manner not warranted by law, parties aggrieved would have their remedy for obtaining relief; and so, with reference to a Regulation sought to be established by the Board of Education. If that body should exceed the power given by law in such case, the Regulation would not have the support of law to uphold it, and therefore could not be maintained; but the law, nevertheless, would remain in full force and authority.

The application to this Court is simply to set aside an Assessment in consequence of the invalidity of the Law; it does not touch the Regulations; and though they have been referred to by Counsel in the argument, it does not seem to me they are before us in such a way as to call for a decision, or the expression of an opinion upon any one of them. Indeed, I do not see that a most positive and direct expression by the Court, as to the legality or illegality of any of the Regulations, would in the slightest degree affect the constitutionality or unconstitutionality of the Law; and I therefore purposely abstain from expressing my opinion upon any one of the Regulations. Should a question arise respecting the Regulations, or should a decision upon them be necessary for any other matters before the Court, then, of course, I would be required to express my opinion; until it does arise, I decline doing so: to use an expression of Cockburn, C. J. in *Rimini vs. Van Praagh*, (L. Rep. 8 Q. B. 4,) "It will be time enough to do so, when the necessity arises."

Rule for a *Certiorari* discharged.