

the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec." There is nothing that prevents the Legislature in Upper Canada repealing all the powers, privileges and duties conferred on separate schools for the Queen's subjects in Upper Canada, except the first section.

Mr. Duff.—The third sub-section has some reference to it. "Where in any Province a system of separate or dissentient schools exist by law at the Union, or is thereafter established by the Legislature of the Province, an appeal shall be to the Governor General in Council from an Act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects, in relation to education.

Lord Justice Mellish.—If you are right that the Parish Schools in New Brunswick were Denominational Schools, that would be a system of dissentient separate schools in New Brunswick, and the third subjection would apply to it.

Mr. Duff.—That is not my contention.

Lord Justice James.—Do you really go so far as to say that the Act establishing modern schools has never been repealed? Was there any Act that could not be repealed by the Legislature?

Mr. Duff.—If they simply repealed the Act, and went no further, we should not be injured.

Lord Justice James.—If they simply repealed the Act it is as *tabula rasa*: therefore, there would be no legal privilege interfered with.

Mr. Duff.—We should not then be supporting schools of other denominations. They deprive us of the right.

Sir M. Smith.—The right is gone by the repeal of the Act.

Lord Justice James.—It seems idle to say they cannot repeal the Act.

Mr. Duff.—Well, my Lords, that is all I have to say.

[The Council Chamber is cleared and their Lordships deliberate. After a short time, Counsel and parties are re-admitted]

JUDGMENT.

Lord Justice James.—Their Lordships have been unable to entertain any doubt whatever upon this question. The point is a very short point and depends upon the construction of a very few words in the Act constituting the Dominion of Canada. The question above to which we desired Counsel to confine themselves as lying at the root of the whole thing is whether the Schools which existed in New Brunswick under the Public Schools Act which existed there before the new Act, were Denominational Schools or not.

I think the Council would find it impossible to express their view on the subject in any better or more forcible language than that which is found in the judgment of Mr. Justice Fisher, which is probably the more valuable upon these points because as far as their Lordships are able to gather, Mr. Justice Fisher personally expressed some doubt as to the policy of the regulations under the new system. Mr. Justice Fisher's language after giving some other description of the old School Act is:—"It provided for a School library in each district by a money grant in aid of the amount raised in the locality for that purpose, and placed the selection of books under the control of the Board of Education, but expressly excluded works of a licentious, vicious or immoral tendency or hostile to the Christian religion or works on controversial theology. This is the only part of the law in which anything of a denominational character is referred to in any way, and it shows how zealous the Legislature was in guarding the law and in preserving the Schools from any denominational or sectarian tendency. Provision was made for the education of the children of the whole people, in schools of every grade and by teachers of both sexes, and by the Superior Schools the wants of higher education were provided. The whole machinery of the Act is designed to make the schools common to the children of every man irrespective of his religious opinions. The Act recognizes the agreement of the inhabitants of any locality with a teacher, licensed by the Board of Education, when they have provided a sufficient school house and secured the necessary salary raised by voluntary contributions or tuition fees. It contains provisions for voluntary assessment in the District, Parish or County where the ratepayers determine to adopt that mode of supporting the schools, and in such case the schools are declared to be free to the children of all the inhabitants. The system is prescribed by the Board of Education; the localities take an active part in the establishment and government of the schools subject to the general control of the Government. The local agency is exercised, and the local officers appointed in the same manner as for the Government and support of the poor, the highways or any other local or parochial objects, neither class, creed nor color affect or influence one more than the other. The only qualification for the electors of any Officer is that they are to be ratepayers upon