

which they were by law entitled, found it necessary to intervene and to place the schools under the control and management of a Commission; the Commissioners appointed entered upon their duties and in good faith carried on the schools and expended the moneys in question in carrying them on; and what is argued is, that, because the Commission, as it has been held, had no legal existence, the supporters of the schools are entitled, though they have enjoyed the benefit of that expenditure, to say that it was improperly made and that the Commissioners must pay the money out of their pockets, with the result that the schools will have been carried on, while the Commission was in charge of them, free of expense to the supporters of the schools, and that the Commissioners must pay over to the School Board what will probably suffice to carry them on for a further period of a year or more.

It cannot, I think, be that the Legislature is powerless to prevent such a wrong from being perpetrated. While the School Board is a separate entity, it is a trustee for the supporters of the separate schools, and what is argued is that these supporters who have enjoyed the benefit of having their schools carried on are entitled to say to the Commissioners, "You have carried them on without authority and must lose all that you have expended in so doing." The Commission was the *de facto* trustee for the time being of the separate school supporters, and in all justice is entitled to be recouped the expenditure it has made for the benefit of its *cestuis que trust*.

In my judgment, the case does not differ from that of an incorporated company whose affairs were managed by a board of directors not validly chosen, and in such a case I am aware of no principle of law which would prevent the *de facto* board from successfully claiming to be allowed against what had come to its hands of the company's money, the expenditures which it had properly made in carrying on the company's business, and to be indemnified against any liability it had incurred in so doing.

If this be the correct view, why are the Commissioners to be held to be in a worse position than the *de facto* directors in the case I have suggested? I know of no reason.

If then this be the measure of the Commissioners' right, how can it be said that legislation which declares that right prejudicially affects any right or privilege of the supporters of the Ottawa Separate Schools?

True it is that if the legislation is effective the School Board is deprived of the right to have the accounts taken, but nothing substantial has been taken away in view of the result of the audit which the School Board had made, which shewed that the accounts