

The
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A JOURNAL DEVOTED TO THE INTERESTS OF THE CATHOLIC CHURCH IN CANADA

Reddite quæ sunt Cæsaris, Cæsari; et quæ sunt Dei, Deo.—Matt 22: 21.

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MANITOBA SEPARATE SCHOOLS AND EDUCATION DEPARTMENT.

The following is the full text of the Minister of Justice's report to the Governor-General in Council in the Disallowance of the Manitoba School Act:

To His Excellency the Governor-General in Council:

The undersigned has the honour to report upon the two Acts of the following titles, passed by the Legislature of the Province of Manitoba at its session held in the year 1890, which Acts were received by the honourable the Secretary of State on the 11th April, 1890: "An Act Respecting the Department of Education" and "An Act Respecting Public Schools."

The first of these Acts creates a Department of Education, consisting of the Executive Council, or a committee thereof appointed by the Lieutenant-Governor in Council, and defines its powers. It also creates an advisory board, partly appointed by the Department of Education and partly elected by teachers, and defines its powers also.

The "Act Respecting Public Schools" is a consolidation and amendment of all previous legislation in respect to public schools. It repeals all legislation which created and authorized a system of Separate Schools for Protestants and Roman Catholics.

By the Acts previously in force either Protestants or Roman Catholics could establish a school in any school district, and Protestant ratepayers were exempted from contribution for the Catholic schools, and Catholic ratepayers were exempted from contribution for a Protestant school.

The two Acts now under review purport to abolish these distinctions as to the schools, and these exemptions as to ratepayers, and to establish instead a system under which public schools are to be organized in all the school districts without regard to the religious views of the ratepayers.

The right of the Province of Manitoba to legislate on the subject of Education is conferred by the Act which created the Province, viz., 82-93 Vic., chapter 3 (the Manitoba Act), section 22, which is as follows:

22. "In and for the Province of Manitoba the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

(2) "An appeal shall lie to the Governor-General in Council from any Act or decision of the Legislature of the Province, or 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."

(3) "In case any such provincial law as from time to time seems to the Governor-General in council or any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in council under this section."

In the year 1870, when "The Manitoba Act" was passed, there existed no system of education established or authorized by law; but at the first session of the Provincial Legislature, in 1871, an "Act to establish a system of education in the Province" was passed. By that Act the Lieutenant-Governor in council was empowered to appoint not less than 10 or more than 14, persons to be a Board of Education for the Province, of whom one half were to be Protestants and the other half Catho-

lics, with one superintendent of Protestant and one superintendent of Catholic schools. The board was divided into two sections, Protestants and Catholics, each section to have under its control and management the discipline of the schools of its faith, and to prescribe the books to be used in the schools under its care which had reference to religion or morals. The moneys appropriated for education by the Legislature were to be divided equally, one moiety thereof to the support of the Protestant schools, the other moiety to the support of the Catholic schools.

By an Act passed in 1875, the board was increased to 21—12 Protestants and nine Roman Catholics. The moneys voted by the Legislature were to be divided between the Protestant and Catholic schools in proportion to the number of children of school age in the schools under the care of the Protestant and Catholic sections of the board respectively.

The Act of 1875 also provided that the establishment in a school district of a school of one denomination should not prevent the establishment of schools of another denomination in the same district.

Several questions have arisen as to the validity and effect of the two statutes now under review, among these are the following:

It being admitted that "no class of persons" (to use the expression of "The Manitoba Act") had "by law at the time the province was established any right or privilege with respect to denominational (or any other) schools," had "any class of persons any such right or privilege with respect to denominational schools by practice" at that time?

Did the existence of separate schools for Roman Catholic children, supported by Roman Catholic voluntary contributions, in which their religion might be taught, and in which text books suitable for Roman Catholic schools were used, and the non-existence of any system by which Roman Catholics, or any others, could be compelled to contribute for the support of schools, constitute a "right of privilege" for Roman Catholics "by practice," within the meaning of the Manitoba Act?

The former of these, as will at once be seen, was a question of fact, and the latter a question of law, based on the assumption which has since been proved to be well founded, that the existence of separate schools at the time of the "union" was the fact on which the Catholic population of Manitoba must rely as establishing their "right or privilege by practice." The remaining question was whether, assuming the foregoing questions, or either of them, to require an affirmative answer, the enactments now under review, or either of them, affected any such "right or privilege."

After referring to the trial at the Queen's Bench of Manitoba, in which the petitioners were unsuccessful, he goes on to say:

An appeal has been asserted and the case is now before the Supreme Court of Canada, which will in all probability be heard in the course of the next month. If the appeal should be successful, these Acts will be annulled by judicial decision, the Roman Catholic minority in Manitoba will receive protection and redress. The Acts purporting to be repealed will remain in operation and those whose views have been represented by a majority of the Legislature cannot but recognize that the matter has been disposed of with due regard to the constitutional rights of the province.

If the legal controversy should result in the decision of the Court of Queen's Bench being sustained, the time will come for your excellency to consider the petitions which have been presented by and on behalf of the Catholics of Manitoba for redress under the sub-sections (2) and (3) of section 22 of "The Manitoba Act," quoted in the early part of this report, and which are analogous to the provisions made by "The British North America Act" in relation to other provinces.

(Sgd.) JOHN S. D. THOMPSON,
Minister of Justice.