

Mr. Duff.—Under a previous section the majority of the inhabitants of that district must consent before they are liable to that.

Sir M. Smith.—When they do consent every child in the district may enter the school.

Mr. Duff.—What I was about to submit to your Lordships was that in view of the state of the law of the different Provinces at the time of the Union, the Imperial Legislature must have contemplated a state of circumstances such as existed in the Province of New Brunswick.

Lord Justice James.—What the Legislature provided was that if there was any legal right secured by law to any class of religious denominations, the local majority was not to deprive that class of it; that the local majority was not to be at liberty to take away any actual legal right secured to any denomination.

Mr. Duff.—Yes but perhaps I may submit to your Lordships that the language of this first sub-section is capable of being applied to a right—such as this—a right to call into existence Schools exclusively of any particular Denomination, under particular circumstances or rather conditions of time and place. The right would exist even if those schools themselves did not exist. Your Lordships will observe that the language is different from the other sub-section. It is not a system of Separate Schools; it is not a system of Denominational Schools; but it is a right in respect of Denominational Schools. I would respectfully submit to your Lordships that that right might exist, capable of being called into existence under local circumstances or otherwise, and in point of fact it was from time to time called into existence as shewn by the affidavit of the priest, M. Cormier. We do not of course pretend to say that merely because in certain districts schools were established belonging peculiarly to the Roman Catholic denomination where their doctrines were taught, their Bible read and their Acts of devotion practised, therefore that you gave them a right, but if they could call these schools into existence by virtue of any law in force, that, I respectfully submit was a right in respect of a denominational school.

Lord Justice James.—That is to say, that if a school might fall into the hands of persons entirely Roman Catholic or entirely Protestants there would be Roman Catholic electors and Protestant electors, and a Roman Catholic Master or a Protestant Master appointed. The school might be so worked as to give it a denominational character it is thought, but to say that because it has assumed that character it is therefore a denominational school, any injury to which would be unconstitutional, is monstrous.

Mr. Duff.—I refer your Lordships to the 8th section in the Act 21st Victoria, at page 30, of the book containing the Acts. "Every teacher shall take diligent care, and exert his best endeavours to impress upon the minds of the children committed to his care the principles of Christianity morality and justice, and a sacred regard to truth and honesty, love of their country, loyalty humanity, and a universal benevolence sobriety, industry and frugality chastity and moderation and temperance, order and cleanliness and all other virtues which are the ornaments of human society, but no pupils shall be required to read or study in or from any religious book, or join in any act of devotion objected to by his parents or guardians; and the Board of Education shall, by Regulation secure to all children whose parents or guardians do not object to it, the teaching of the Bible in parish schools—and the Bible when read in parish schools by Roman Catholic children, shall if required by their parents or guardians, be the Douay version, without note or comment."

There we have the Bible secured; we have the Roman Catholic Bible secured to Roman Catholic children. This section authorises acts of devotion to be practised. It authorises religious books being used. Well, if in a locality entirely Roman Catholic they appoint a Roman Catholic teacher and Roman Catholic Trustees, they have their Douay Bible, they practice their acts of devotion and they use religious books, all under this section, all authorised by this law.

Lord Justice Mellish.—Is there any section in the Act about prayers in the school.

Mr. Duff.—Not that I recollect. It appears that a school so constituted would be legally constituted under this Act. The right to constitute such a school is a right secured to them by Law in respect of a denominational school.

Lord Justice James.—It is a right to the ratepayers of a district to establish a school; but it is not a right to a denomination. It is a right to the rate payers to whatever denomination they belong, but because the rate payers may belong to one denomination by an overwhelming majority, that does not make the school denominational.

Mr. Duff.—The 93rd section would seem to secure some such rights as this, because Lower the other rights, the rights of the system of separate schools in Upper and Canada were secured by the other sections.

Lord Justice Mellish.—I do not agree with you there because I can find nothing in the first section which prevented the legislature of Upper Canada repealing the peculiar laws by which the Roman Catholic schools in Upper Canada were established. The section says: "All the powers privileges and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be, and the same are hereby extended to