The Catholic Register.

"Truth is Catholic; proclaim it ever, and God will effect the rest."—BALMEZ.

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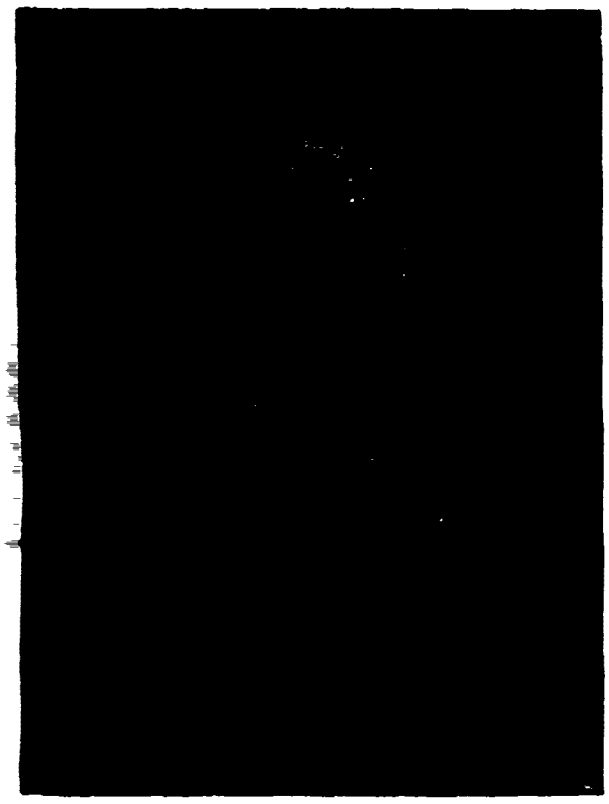
MANITOBA CASE.

The appeal of the Manitoba Catholics has been sustained by the Privy Council.

In their Lordships' opinion it is the twenty-second section of the Manitoba Act which has to be construed in the present case, though it is, of course, legitimate to consider the terms of the earlier Act, and take advantage of any assistance they afford in the construction of the enactments with



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which they so closely correspond, and which have been substituted for them. Before entering into a critical examination of this important section of the Manitoba Act it will be convenient to state the circumstances under which the Act was passed, and also its exact scope. It is the decision of this board, in the case of Barrett v. The City of Winnipeg, which seems to have given rise to some misapprehension. In 1867 the union of the Provinces of Canada, Nova Scotia and New Brunswick took place. Among the obstacles which had to be overcome in order to bring about that union, none, perhaps, presented a greater difficulty than the differences of opinion which existed with regard to the question of education. It had been the subject of much controversy in Upper and Lower Canada. In Upper Canada a general system of undenominational education had been established; but with a provision for Separate schools to supply the wants of the Catholic inhabitants of that province. The second subsection of section 93 of the British North America Act extended all the powers, privileges and duties which were then by law conferred and imposed in Upper Canada on the Separate schools and school trustees of the Roman Catholic inhabitants of that province to the dissentient schools of the Protestant and Roman Catholic inhabitants of Quebec. There can be no doubt that the views of the Roman Catholic inhabitants of Quebec and Ontario, with regard to education, were shared by the members of the same communion in the territory which afterwards became the Province of Manitoba. They regarded it as essential that the education of their children should be in accordance with the teaching of their Church, and they considered that such an education could not be obtained in Public schools designed for all the members of the community alike, whatever their creed, and that it could be secured in schools conducted under the influence and guidance of the authorities of their Church.

At the time when the Province of Manitoba became part of the Dominion of Canada the Roman Catholic and Protestant populations in the province were about equal in number, and prior to that time there did not exist in the territory then incorporated any public system of education. The several religious denominations had established such schools as they saw fit, and maintained them by means of funds voluntarily contributed by the members of their own communion. None of them received any state aid. The terms upon which Manitoba was to become a province of the Dominion were a matter of negotiation between the representatives of the inhabitants of Manitoba and the Dominion Government. The terms agreed upon, so far as education is concerned, must be taken to be embodied in the twenty-second section of the Act of 1870. Their Lordships do not think that anything is to be gained by an enquiry as to how far the provisions of this section placed the Province of Manitoba in a different position from the other provinces, or whether it was more or less advantageous. There can be no presumption as to the extent to which the variation was intended. This can only be determined by construing the words of the section according to their natural signification. Among the very first measures passed by the Legislature of Manitoba was an Act to establish a system of education in that province. The provisions of that Act require examination. It is sufficient for the present to say that the system established was distinctly denominational.

THE EDUCATION ACT.

This system, with some modifications of the original scheme, bore fruit in later legislation, and remained in force until it was put an end to by the Acts which have given rise to the present controversy. In Barrett's case the sole question raised was whether the Public Schools Act of 1890 prejudicially affected any right or privilege which Roman Catholics, by law or practice, had in the province at the time of the union. Their Lordships arrived at the conclusion that this question must be answered in the negative. The only right or privilege which the Roman Catholics possessed, either by law or in practice, was the right or privilege of establishing and maintaining for the use of the members of their own Church such schools as they pleased. It appeared to their Lordships that this right or privilege remained untouched. Therefore it could not be said to be affected by the legislation of 1890. It was not doubted that the object of the first sub section of section twenty two was to afford protection to denominational schools, or that it was proper to have regard to the intent of the Legislature and surrounding circumstances in interpreting the enactment. But the question which had to be determined was the true construction of the language used. It is true that the construction put by this board upon the first sub section reduced within very narrow limits the protection afforded by that sub section in respect to denominational schools. It may be that those who have been acting on behalf of the Roman Catholic community of Manitoba, and those who either framed or assented to the wording of that enactment, were under the impression that its scope was wider, and that it offered protection greater than their Lordships held to be the case But such considerations cannot properly influence the judgment of those who have to judicially interpret a statute. The question is not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of a Legislature if violence were done to the language in which their legislation has taken shape. But such a case would, on the whole, be quite as likely to defeat as to further the object which was in view. Whilst, however, it is necessary to resist any temptation to deviate from sound rules of construction in the hope to more completely satisfy the intention of the Legislature, it is quite legitimate, where more than one construction of a statute is possible, to select that which will best carry out what appears from the general scope of legislation and surrounding circumstances to have been its intention. Their Lordships then proceed to consider the terms of the second and third sub sections of section twenty two of the Act of 1870, upon the construction of which the questions submitted chiefly depend. For the reasons given their Lordships concur with the majority of the Supreme Court, thinking that the main issues are not in any way concluded either by the decision in Barrett's case, or by any principles involved in that decision. The second and third sub sections, as contended by the respondent, and affirmed by some judges of the Supreme Court, were designed only to enforce the prohibition contained in the first sub-section. The arguments against this contention appear to their Lordships to be conclusive. In the first place, that subsection needs no further provison to enforce it. It imposes a limitation on legislative powers conferred, and any enactment contravening its provisions is beyond the competency of a Provincial Legislature, and, therefore, null and void. The second sub-section ought not to be construed as giving to parties aggrieved an appeal to the Governor-General-in-Council concurrently with the right to resort to the courts in case the provisions of the first sub-section are contravened, unless no other construction of the subsections be reasonably possible. The nature of the remedy, too, which the third sub section provides for enforcing the decision of the Governor General strongly confirms this view—that the remedy is either provincial law or a law passed by the Parliament of Canada. What would be the utility of passing a law for the purpose of merely annulling an enactment which the ordinary tribunals would without legislation declare to be null, and to which they would refuse to give effect? Such legislation would, indeed, be futile.

THE RIGHT OF APPEAL.

The first sub-section invalidates a law affecting prejudicially the right or privilege of any class of persons. The second sub section gives an appeal only where the right or privilege affected is that of a Protestant or a Roman Catholic minority. Any class of minority is clearly within the purview of the first sub-section. But it seems equally clear that no class of Protestant or Catholic minority would have a locus standi to appeal under the second sub-section because its rights and privileges had been affected. Moreover, to bring a case within that sub-section it would be essential to show that a right or privilege had been affected. Could this be said to be the case because a void law had been passed, which purported to do something, but was wholly ineffectual to prohibit a particular enactment and render it ultra vires? This surely prevents its affecting any rights. In their Lordships' opinion the second sub section is a substantive enactment, and is not designed merely as a means of enforcing the provision which precedes it. The question then arises, does the sub section extend to the rights and privileges acquired by legislation subsequent to the union? It extends in terms to any right or privilege of a minority affected by an Act passed by the Legislature, and would therefore seem to embrace all the rights and privileges existing at the time when such Act was passed. Their Lordships see no justification in putting a limitation on language thus unlimited. Their Lordships being of the opinion that the enactment which governs the present case is the twenty-second section of the Manitoba Act, it is unnecessary to refer at any length to the arguments derived from the provisions of section 93 of the British North America Act, but so far as they throw light on the matter they do not, in their Lordships' opinion, weaken, but rather strengthen, the views derived from a study of the later enactment.

SEPARATE SCHOOLS.

It was argued that the omission from the second sub-section of section twenty-two of the Manitoba Act of any reference to a system of separate or dissentient schools thereafter established by the Legislature of the province was unfavourable to the contention of the appellants. If the words with which the third sub section of section 93 commence had been found in sub-section two of section twenty-two of the Manitoba Act, the omission of the following words would undoubtedly have been important. But the