

## APPENDICES

Their Lordships have no doubt that the power so given would be exercised with wisdom and moderation, but it is the creation of the power and not its exercise that is subject to objection, and the objection would not be removed even though the powers conferred were never exercised at all. To give authority to withdraw a right or privilege under these conditions necessarily operates to the prejudice of the class of person affected by the withdrawal. Whether or not a different policy might have been preferable, either in the opinion of the Provincial Legislature, or in that of the Courts, is not a relevant consideration. It was argued that no evidence on behalf of the appellant Board had been called to prove that the withdrawal of their rights, powers, and privileges, operated to their prejudice. In the opinion of their Lordships no such evidence was necessary.

For the purpose of these appeals it is unnecessary to say more. The decision depends on a question of construction. During the argument the Counsel for the respondent Commission pressed on their Lordships the difficulty of providing any adequate alternative in order to ensure the proper education of the children of Roman Catholic parents in the City of Ottawa. Their Lordships realize the great importance of this consideration and there is no doubt that considerable temporary inconvenience must be involved if the appellant Board, as representatives of the supporters of the Roman Catholic Separate Schools in Ottawa, fail to open the schools under their charge at the time appointed by law, and to provide and pay qualified teachers. It may be pointed out, however, that the decision in this appeal in no way affects the principle of compulsory free primary education in the Province established under the School Law of 1850, and that if the appellant Board and their supporters fail to observe the duties incident to the rights and privileges created in their favor, the result is that the children of Roman Catholic parents are under obligation to attend the common schools, and thus lose the privileges intended to be reserved in their favor under provision (1) of section 93 of "The British North America Act, 1867." The history of this question is thus accurately summarized in the judgment of Meredith, C.J.O.:—

"The ground upon which was based the claim of the Roman Catholics to separate schools was the injustice of