

Lord Justice James.—It seems to be a thing as plain as possible—a Parish School under the control of a Board, open to all sects, there, being a denominational school; it is an absolute contradiction in terms. You might as well introduce the word "not" after the word "shall" in an Act of Parliament, and make a clause read "shall not" when the Legislature said "shall."

Mr. Brown.—If the case is to turn upon that particular point I do not think I can add anything material. The case is undoubtedly as Lord Justice Mellish has stated and I am compelled from the necessity of this to admit that what is a Roman Catholic School this year may become a Protestant School the next. It is unavoidable from the Act of Parliament. Still what I do submit is that what the Legislature had in contemplation was the state of things existing and the privileges enjoyed by either Protestants or Roman Catholics at the time of the Act of Union. The state of things is shown to be such that in Roman Catholic districts the teaching was exclusively Roman Catholic and in Protestant district, no doubt, it was the same. If a person in the district was asked what sort of a school this was, whether or not it was a denominational school he would have said "undoubtedly it is a Roman Catholic School" and the same observation would be made with regard to Protestant Schools.

If your Lordships think that it is no use my going into the other parts of the case I would ask you to hear what Mr. Duff, who argued this case in the Court below, will say with reference to the first article.

Mr. Duff.—The inhabitants of this district have felt so much aggrieved that they desire me to present the case before your Lordships. They have attempted to obtain redress through the Dominion Parliament and have been refused until they first obtained your Lordships' judgement in the matter: therefore it is that under a great many difficulties we have felt constrained to bring the case to your Lordships' notice. I shall have only a few words to say. Of course it is a very important question as regards the interests of a large portion of her Majesty's subjects in the province of New Brunswick, and they feel themselves very much aggrieved. It is a question that involves the construction of their constitution. We have now as they have in the United States a written constitution and would like if it had been possible to have had the assistance of some of the legal minds in the United States to govern us in the construction of this Act, such men as Mr. Justice Story or Mr. Kent.

Lord Justice James.—I think you may assume that we can construe a statute.

Mr. Duff. It will be fair, at all events, to refer very shortly to the laws in force in different Provinces at the time of the Union. I think on reference to these it will be found that all the laws on the subject of education in Ontario, Quebec, and New Brunswick have a two fold object; the one was secular education: the other was religious instruction combined with that secular education. That was particularly the case with regard to Lower Canada where the rights of the Protestant minority were secured by what are called dissentient Schools. The rights of the Roman Catholic minority in Upper Canada were secured by what are termed Separate Schools. The rights of these two classes of Christians, the Roman Catholics and Protestants, were secured as we say in New Brunswick by the 8th section of the Act.

Lord Justice Mellish.—How were the Catholic Schools in Upper Canada and the Protestant Schools in Quebec managed?

Mr. Duff.—By an assessment.

Lord Justice Mellish.—By an assessment on people of a different denomination.

Mr. Duff.—No, on themselves separately. That is by the 15th.

Lord Justice Mellish.—Were there any schools clearly denominational schools, Roman Catholic or Protestant in any one of the four Provinces which were supported by taxes on all the Queen's subjects without reference to their religion.

Mr. Duff. No, I think not, unless your Lordships hold that it was so in New Brunswick. I am coming to that presently.

Lord Justice Mellish.—That is considered a very great grievance as a rule.

Mr. Duff.—Section 58 of the consolidated statutes of Lower Canada contains this provision.

Lord Justice James.—The foundation of the whole case is whether there are denominational schools, and the question is whether it is capable of anything like a reasonable argument that a school open to all the children in the district, in which all children are to be equally taught and which is under the control of ratepayers, whether it is possible to contend that that is a denominational school. It is a public school as distinctly as it can be.

Mr. Duff.—I want about to ask your Lordship's attention to the laws of Ontario.

Lord Justice James.—I could easily understand there were denominational Schools whose privileges required to be preserved; but in New Brunswick the schools were public schools, established by public moneys, moneys raised partly by assessment and partly by the estate, into which it was expressly provided that all children should be admissible.

Sir M. Smith.—Section 24 of the Parish Schools Act is, "any district school supported by assessment shall be free to all the children residing therein."