The Colonist.

FRIDAY, AUGUST 26, 1892.

PUBLISHED EVERY FRIDAY MORNING.

BY

W. H. ELLIS, A. G. SARGISON. } HELLIS & CO.

COLONIST BUILDING, GOVERNMENT ST.

TERMS:

THE DAILY COLONIST

PUBLISHED EVERY DAY EXCEPT MONDAY

Per Year, (Postage free to any part of Canada).... $10 00
Parts of a year at the same rate.
Per week (if delivered).... 25

THE WEEKLY COLONIST.

Per Year, (Postage Free to any part of the Dominion or United States).... $ 2 00
Six Months.... 1 25
Three Months.... 75

Subscriptions in all cases are payable strictly ADVANCE.

ADVERTISING RATES:

REGULAR COMMERCIAL ADVERTISING as distinguished from everything of a transient character—that is to say, advertising referring to regular Mercantile and Manufacturing Business, Government and Land Notices—published at the following rates: Per line, Solid Nonpareil, the duration of publication to be specified at the time of ordering advertisements:—

More than one fortnight and not more than one month—50 cents.
More than one week and not more than one fortnight—40 cents.
Not more than one week—30 cents.
No advertisement under this classification inserted for less than $2.50, and accepts only for every-day insertion.

Theatrical advertisements, 20 cents per line each insertion.

Advertisements unaccompanied by specific instructions inserted till ordered out.

Advertisments discontinued before expiration of special period will be charged as if continued for full term.

Liberal allowance on yearly and half yearly contracts.

TRANSIENT ADVERTISING—Per line solid nonpareil:—First insertion, 10 cents; each subsequent consecutive insertion, 5 cents. Advertisements not inserted every day, 10 cents per line each insertion. No advertisement inserted for less than $1.50.

WEEKLY ADVERTISEMENTS—Ten cents line solid Nonpareil, each insertion. No advertisement inserted for less than $2.

SPECIAL NOTICES—Nonpareil, in the first column of third page, 20 cents per line each insertion, or $1.50 per line per month. If inserted among local or other reading matter, 30 cents per line each insertion, or $2 per line per month. No special notice inserted for less than $2.

Where Cuts are inserted they must be ALL METAL—not mounted on Wood.

CLOSE OF THE SESSION.

The Woman's Missionary Society Concludes the Business of the Annual Meeting.

Reports Read, Officers Elected, and Plans Laid for the Coming Year's Work.

Yesterday morning's session of the Woman's Missionary Society was opened at 10 o'clock with devotional exercises, led by Mrs. Morrow.

These were followed by the roll call and the reading of the minutes of the previous meeting.

A report was read by the corresponding secretary regarding Fort Simpson; the membership there is 26, and a sum of $89 has been raised for mission work during the year. The New Westminster auxiliary report was made by Mrs. Hicks.

Miss Wintemute then read a report from the Homer street, Vancouver, auxiliary. The work done on the Indian reservation was reviewed, and some assistance asked for in connection with the extension of the field of labor. This was discussed at length, and it was decided that all funds raised by the auxiliaries must be forwarded to the general treasurer.

The report of the committee on modes of work was read and adopted, and a committee on literature was then appointed, consisting of the president and corresponding secretary.

The district organizers were appointed for the ensuing year as follows: Kamloops, Miss Savage; New Westminster, Mrs. Sexsmith and Mrs. Taite; Victoria, Mesdames Jenkins, Sutherland and Morrow; Port Simpson, Mrs. Crosby.

Rev. J. H. White, president of the conference, addressed the meeting after which came an adjournment for lunch.

The afternoon session opened with a Bible reading by Miss Cartmel, which was impressive, and rendered more so from the fact that this would be the last given before her departure for Japan, her former field of service.

The committee on memorials reported progress, after which the election of officers resulted in the re-election of Mrs. C. Watson as president; Mrs. Betts, Mrs. Tate and Mrs. Sexsmith, vice-presidents; Mrs. Jenkins, Victoria, corresponding secretary; Mrs. Burgess, recording secretary; Mrs. Newcombe, Vancouver, assistant secretary; and Mrs. B. H. Wilson, Vancouver, treasurer.

A long discussion took place on the establishment of training schools at Bella Bella and the Upper Skeena.

Mrs. Strachan recommended that a society for the prevention of cruelty to animals be formed.

It was suggested that the ladies call a meeting in Vancouver, similar to one held in Victoria some months ago, in reference to the traffic in Chinese girls; that the action of the ladies at that time had been highly beneficial in reducing the number of girls held in slavery, and that at present the number of girls so held in this city, is eight.

Resolutions of thanks were passed, also a resolution that this branch urge upon the Provincial W.C.T.U. that, through their Superintendent of Work among foreigners, they use all their influence for the prevention of certain acts of cruelty to children which have come immediately under their notice.

The first annual branch meeting was then closed in due form, and, in the evening, all the delegates visited the Chinese Home, to witness the baptism and triple wedding. To-day, they will take a run out to Esquimalt on the Glad Tidings, and then return to their several homes.

Coal at Port Townsend.

PORT TOWNSEND, Aug. 23.—Mr. Scott, a coal expert from Nanaimo, has recently visited this place to visit the Cow Bay Region in search of coal, and after careful search and boring has announced that coal could be found probably at 2,000 feet; possibly somewhere between 1,500 and 2,000 feet. The only additional expense in mining deep coal is sinking the shaft a little lower and in the long haul upward, but coal found on tide water, which is a very uncommon thing, could certainly be mined at a profit, even at greater depth. If a good mine is found at Port Townsend, in the vicinity of Cow Bay, it will undoubtedly prove a bonanza for the town.

NEWS OF THE PROVINCE.

Burglary at Vancouver—An Unworthy School Teacher—Health Regulations Still in Force.

A Monster Log—Successful Halibut Fishing—Fatal Accident to a Boy.

(Special to the COLONIST).

VANCOUVER.

VANCOUVER, Aug. 22.—Clubb & Stewart's store on Cordova street was entered by burglars, last night, and 75 suits of gentlemen's clothing were taken. The midnight mechanics opened the door with a false key and left by the back way. The job was very neatly done.

David Oppenheimer returned from the East yesterday.

Fred Schofield is looked upon here to-day as a modern Samson. He went to Hunting-don on Sunday, and while there encountered a full grown bear in the woods. Schofield was unarmed and strangled the bear to death. After the battle, Schofield's clothes were hanging in ribbons and he was covered with blood.

The Vancouver Cricket Club are itching for new worlds to conquer. They are at present arranging for a tour east as far as Winnipeg.

The Sunday desecration censors are at it again. This time the Young People's Christian Endeavor have passed a resolution condemning the action of the German society in holding an excursion on Sunday.

Large crowds still attend the Sunday band concerts at the park, and the beach, at English bay, is lined with Sunday bathing parties.

Miss Mackintosh, of Vancouver, has won the Governor General's medal at Queen's college. This recalls the fact that Miss McCraney, daughter of William McCraney, ex-M.P., was in receipt yesterday of the Governor General's medal for general proficiency, won a short time ago at the Belleville Ladies' college. It is the finest piece of work of its kind yet sent to the coast.

The Victoria health officials left to-day for Darcey Island to superintend the construction of additional accommodation for lepers. Lee Sing and the Chinese leper girl are both at large.

The Vancouver people do not take much interest in the agricultural show. The mayor called a meeting at the Market Hall on Saturday night. Besides the reporters, Alderman McCraney and Messrs. W. Brown and W. Marshall, were the only ones present. Westminster will have fall swing this year and Vancouver intends to help materially in the grand carnival.

The Trades and Labor Council will send no delegate East, this year, it is alleged, on account of hard times.

E. J. Buck, school teacher at Port Haney, is accused of ruining a fifteen-year-old pupil in his school at the village. Buck has fled.

J. McLagan, jr., of the World, has returned from a week among the black bears in the Coast range of mountains.

The remains of a man newly buried were found by workmen of McLean Bros., on the ditching contract, at the North Arm. The body had been cut in two to make it fit in a small box.

The health regulations here are being carried out as usual, no official notice having been received here to the contrary.

The Fairhaven, Vancouver and Burrard Inlet by-law, offering $300,000 to the company to build the road, erect bridges and sheds, etc., from American soil to a point in the city, will be voted on Wednesday.

A deputation waited on the Council, to-night, asking them to do away with all street peddling of green stuff, and restrict the sale of it to the market, with white men only as venders.

The Council passed a resolution, this evening, declining to acknowledge themselves responsible for Dr. McGuigan's salary as Health Inspector on the trains.

WESTMINSTER.

NEW WESTMINSTER, Aug. 20.—Port & Winch have sent a party North to establish a halibut fishing station, and will ship a carload East weekly during the Fall and Winter months.

A number of canneries have paid off their hands, and others will do the same next week. Half a dozen canneries will pack cohoes.

Twenty dogs have been poisoned in the city within the last 40 days. No clue to the poisoner can be discovered.

John McNabb, inspector of Fisheries, has returned from Chemainus, where he settled the oyster bed troubles between the whites and Indians. The Indians will not be allowed to fish outside the shore in front of their reserves. A man named Cane has leased 38 acres of shore, and will farm oysters extensively.

NEW WESTMINSTER, Aug. 22.—The garrison artillery will begin drill to-morrow night in preparation for General Herberts' inspection.

Threshing operations have begun at Ladner's Landing. On Saturday Thomas E. Ladner began threshing his wheat, and by the end of the week all the threshing machines in the Delta will be hard at work.

William Preston, of Surrey Centre, shot a 400 pound black bear near the Royal City logging camp, last week. Bruin was in very good condition from feasting on wild berries and skunk cabbage for the last two or three months.

Mr. Moresby and Mr. Hussey returned last evening from Howe Sound, where they went on Friday to remove the quarantine from the Gibson place. They had the house thoroughly fumigated and supplied the family with a fresh outfit of clothes and burned the clothes which had been in use.

Visitors to the Royal City logging camp in Surrey, last week, were shown what is said to be the largest log yet taken out in the camp. The first cut above the stump, which was 30 feet in length, measured 8 feet 4 inches in diameter at the butt and 6 feet at the smaller end.

In the County Court, George Klu-kwa-luka-luka, charged with larceny from the Wannuck Packing Company's store at Rivers Inlet, came before Judge Bole. He chose to be tried summarily, and the trial proceeding forthwith he was found guilty and sentenced to eighteen months' imprisonment with hard labor.

Peter Robinson was arrested this morning charged with the theft of a canoe.

The force of water in the water pipes is so great that the joints in several places have been broken.

The steamer Belle came down from Nahwitti, to-day, with ten thousand pounds of halibut for Port & Winch, the result of the first three days' fishing by the party sent up last week, and is considered very satisfactory. When the station is fairly established and the fishing grounds are thoroughly prospected, there will be no trouble experienced in securing 20,000 pounds weekly. The halibut brought down to-day will be sent East to-morrow.

In the Pythian prize drill at the celebration here, as far as can be learned, eleven divisions will be present to compete; four from this jurisdiction, two from Seattle, and one each from Tacoma, Port Townsend, New Whatcom, Snohomish, and Fairhaven.

NANAIMO.

NANAIMO, Aug. 22.—Henry McCann, aged nine, fell from an express wagon at Northfield, walked home apparently unhurt on Saturday morning. Being taken sick, Dr. Campbell prescribed for him. When the doctor returned in the afternoon he found the boy dead in bed, the parents being absent from the house at the time. Death was due to internal injury.

Tey Shing, who was summoned for assaulting Mrs. Matthison, appeared in the police court to-day. The evidence of Mrs. Mathison and Mrs. Munroe was similar to that given before. The evidence of W. Coburn was contradictory, and the case was dismissed. Mrs. Mathison, who was very indignant at the turn of the affair, called Coburn a —— liar, and declares she will leave her marks on the Chinaman at the first opportunity.

Wm. Adams has been fined for having grouse in his possession out of season.

The steamship City of Nanaimo brought over some cattle, this evening. One steer became unmanageable, refused to be driven ashore, and climbed the stairway to the upper deck. He made several attempts to gore those on board, and had to be shot on the upper deck before he could be got down.

Ship Two Brothers sails to-night.

ALBERNI.

ALBERNI, Aug. 19.—The Government steamer Sir James Douglas called last week.

Work on the new Government building is advancing rapidly.

The public school at Gill's, under Mr. J. Howitt, teacher, and Beaver Creek, under Miss Dunkerly, late of Victoria, opened this week.

Mr. Debeaux was attacked by a steer last week and badly bruised on the breast, also receiving a wound under the arm. He is recovering and is out again.

Several applications for the position of resident doctor have been received by Mr. G. A. Huff, and a medical man will soon be secured.

Miss McDonald, the teacher of the Indian Mission school, has had poor health lately, and goes to Victoria by the next boat for a change.

Mr. R. H. Wood, of Vancouver, the contractor for the work on the paper mill, is reported to be a good mechanic, one who understands well the control of water-power, having had experience in such work in Ontario. It is to be hoped the dam and flume will be in good shape before the fall rains set in.

VANCOUVER.

VANCOUVER, Aug. 23.—The Fraser Valley and Burrard Inlet bonus by-law will be voted upon September 24. It is difficult to feel the pulse of the people on this vital question at present. The majority of real estate men hold property in the east end. They will be powerful supporters of the by-law, and a large number of ratepayers are already showing practical objection to increased taxation. They intend to vigorously oppose the by-law.

Tom Allan, of Dunsmuir street, has been left $10,000 by a lately deceased cousin, of Ottawa, Ont.

The Wilmington has arrived from Portland with freight.

The floating city wharf, opposite the end of Gore Avenue, is under construction. The break in the water main in the Narrows has not yet been located.

The 1,280 acres recently reclaimed of Pitt meadows land is to go on the market at once.

WESTMINSTER.

NEW WESTMINSTER, Aug. 23.—Mr. Moresby went down to Lulu Island to-day to investigate a supposed murder in connection with the finding of a human body badly decomposed in a box. The body had been there for years, and it is probably that of an Indian buried in the usual way.

Threshing has commenced at Chilliwack and Sumas, and immense quantities of fruit are being shipped from those sections.

The steamers Gladys and Dunsmuir were crowded, this afternoon, with the Odd Fellows and their friends, bent on having a delightful time at Ladner's Landing. It is estimated that between 400 and 500 excursionists went from this city.

Negotiations have been practically concluded by the city for the sale of $257,000 worth of city debentures to the Confederation Association Company, of Toronto. This completes the sale of the last debentures held by the city.

The Giant Powder Company have commenced the erection of a powder magazine at Tree Island, and in two weeks' time the building will be ready for use. The site has been cleared, and the work is proceeding rapidly, so that in a short time the storing of explosives near the city will be done away with.

NANAIMO

NANAIMO, Aug. 23—Count D. Euron was arrested, last evening, charged with embezzlement, at the instance of the French Syndicate store. The Count had been bookkeeper for the Syndicate. Some months ago the amount of cash turned over did not tally with the accounts, the amount short being $35. The Count is still in jail, not being able to give bail.

The case of Capt. Newcombe came up in the magistrates' court, last evening, for a violation of the health regulations in taking one passenger without inspection by the health officer. A number of witnesses were examined. Dr. Praeger underwent a long examination also Dr. Herald of Vancouver. The latter's evidence tended to prove that Vancouver was an infected port on the 14th inst., the day which the Comox left Vancouver. The magistrate at this point said that after hearing the evidence of Dr. Herald he could not but consider that Vancouver was an infected port on the 14th and 15th inst. He reserved his decision for one week.

Sailed, steamer Wetmore. Arrived, steamer Wilmington.

PLUMPER'S PASS.

PLUMPER'S PASS, Aug. 22.—The Union German Society, Vancouver, under the presidency of Deutscher Liederkrans, had a pleasant outing on Sunday last, making this place their headquarters for the time being. The steamer Comox was chartered to convey the pleasure seekers to this island, nearly 150 people taking advantage of the fine weather which prevailed, and participating in the day's enjoyment. After visiting the various places of interest, including Flaghill, The Figgery, Sea Kale Harbor, and Jonah's Rock, a move was made for home shortly after 4 o'clock, the excursionists extending their time of enjoyment by making the round trip home by way of Cowichan Gap. Among the visitors was Mr. M. P. Morris, of the Vancouver Daily Telegram, who, like all others, expressed himself delighted with this place, and left taking with him a few "trophies" grown on the island as samples of the quality and quantity raised, and which this place may feel justly proud of.

The new schoolhouse for Galiano Island is about completed and is a credit to the district. All honor is due the contractor, Mr. Cain, for its early completion and the satisfactory and substantial workmanship throughout.

Mr. W. H. Mawdsley, of this place, lost his valuable Jersey cow on Saturday morning last. The animal was one of the few butter-givers that averaged 14 lbs a week and the loss is a heavy one, as only last week an offer of $400 for her was refused.

Mr. O. T. Stone, having resigned the trusteeship of Galiano's public school, as announced in last week's news, as also the roadmastership of that place, a meeting was held on Saturday last, when Mr. Robert Grubb was unanimously elected to fill the position of trustee, Mr. E. Winstanley, one of the board, undertaking the secretaryship. It is also a pleasing duty to announce that Mr. Winstanley has been appointed to the position of roadmaster for the island, and his past experience in that respect will, no doubt, justify his being elected to the position.

Miss N. Wright, of Galiano Island, is making a pleasant stay in Westminster for a few days.

Wheat, oats and peas, with a few exceptions, may be said to be fairly harvested.

Captain Robertson and son, of Moresby Island, visited this place on Sunday last on a tour around the different islands.

Miss Kate Merrill returned to Victoria on Saturday morning last, after spending an enjoyable vacation here.

For the information of those around who intend exhibiting at the forthcoming show to be held at Victoria next month, it may not be out of place to mention that all entries will close on Saturday, the 24th September, and anyone who may wish it, by placing themselves in communication with any of the committees of the Association will no doubt receive all the information required.

Mr. J. H. Brownlee, of Victoria, is visiting this point to-day, re insurance matters, returning by boat this evening.

Mrs. Haynes, Miss Mabel Haynes and Miss Warner are visitors staying at Villa Bay.

Messrs. Hesson Tayler, J. D. Imbert, G. Payne, C. Long, Mrs. Lawson, Mrs. Bryce and Miss Haney were passengers on the Rithet this evening for Victoria.

IN THE DIVISIONAL COURT.

(Present—Begbie, J.; Crease, J., and Drake, J.)

August 22, 1892.

McClary Manufacturing Co. v. W. J. Corbett and C. Cliff (trading as Corbett & Cliff) and W. J. Corbett and J. C. Cornish (trading as Corbett & Co.)

This was an appeal on behalf of the plaintiffs from an order of Mr. Justice McCreight, setting aside judgment by default for $3,911 against defendants, on the grounds that the defendants had been sued as individuals and only one of them (Corbett) served with the writ, and on the further ground that the special endorsement on the writ which was in the following words: "To amount of account rendered for goods sold and delivered by the plaintiffs to the defendants at their request, $3,888, and the plaintiffs claim interest thereon at 6 per cent. until judgment," was not a sufficient statement of a liquidated demand under order 3, rule 6.

Yates, for the plaintiff applicants, contended that the endorsement was sufficient as containing sufficient particulars to enable defendants to decide whether they should defend or not. (Smith v. Wilson, 5 C.P.D. p. 25; Walker v. Hicks, 3 S.R.D. p. 8; Bichers-Speight 22 A.B.D. p. 7; Aston v. Hurwitz 41 L.T. N.S. p. 521) and that the reference to the account rendered imparted the particulars as there stated into the endorsement.

C. Wilson, for the defendants, respondents, cited Wilkes v. Wood, and also contended that the claim for interest in the endorsement, included in the judgment, vitiated it.

It was held by the court that a judgment in default, under rule 68, could not be obtained upon an endorsement including a general claim for interest, that being an unliquidated claim—and the appeal was accordingly dismissed with costs.

McClary Mfg. Co. v. same defendants and Anderson, assignee of defendants.

This appeal arose out of a motion by Anderson, to whom the defendants, after the judgment, had made an assignment for the benefit of their creditors, to set aside the judgment upon grounds similar to those raised by the defendants themselves in the other motion, but Mr. Justice McCreight had dismissed the application of the assignee upon the ground that he had no *locus standi* to make it. Jacques v. Harrison 12 S.B. D. 165.

C. Wilson for the assignee appellants, Yates for the plaintiffs respondents.

The court having decided in the other appeal that the judgment by default should be set aside, the arguments of this appeal became unnecessary and no order was made.

CHINESE EXCLUSION.

The American Law To Be Tested in the Courts Officially.

CHICAGO, Aug. 23.—Sam Moy, prominent in the Chinese colony here, surprised the Government officials by informing them yesterday afternoon that orders had been received from China not to obey the law requiring Chinese residents to take out certificates of residence. He said the government of China had sent out one of its officials to this country to fight the law in the courts. This minister from the Chinese court was in Chicago ten days ago, he said, and informed him and others of the wishes of the Chinese government. The representative from the celestial empire had gone to Washington City to secure the best legal talent to be had, and the law would be tested in the United States Supreme Court.

A test would be made of the arrest of some Chinese in Detroit, where they are held on the charge of violating the exclusion law passed by the present congress. In this way the exclusion law and the provision compelling Chinamen to take out certificates of residence would be tested together. Until a decision was rendered, he said, no Chinaman in Chicago would take out a certificate. Many of the Chinese living in this district are opposed to the requirements of the law, and most of them will probably follow the advice of the Chinese representative. Some few of the most intelligent of the race have, however, called on Collector Warner and asked for particulars concerning the law.

The Alaska excursion season is now nearly over, and it is estimated that 2,000 tourists have visited the land of the midnight sun.

MANITOBA SCHOOLS.

An Interesting and Important Finding by the Highest Court of the Empire.

Privy Council's Decision Reversing the Judgment of the Supreme Court of Canada.

An Opinion Defining the Rights of Protestants and Catholics Before the Law.

The following is the full text of the judgment of the Privy Council in the Manitoba school cases. The bench was composed of Lord Watson, Lord Hobhouse, Lord Macnaghten, Lord Morris, Lord Hannen and Lord Shand, The cases were inscribed The City of Winnipeg v. Barrett—The City of Winnipeg v. Logan.

There were appeals instituted on behalf of the city of Winnipeg, the first from a judgment of the Supreme Court of Canada of October 28, 1891, reversing decisions of the Court of Queen's Bench of Manitoba, and of Mr. Justice Killam, and the second from a decision of the Court of Queen's Bench of Manitoba of December 19, 1891. Sir Horace Davey, Q.C., Mr. D'Alton McCarthy, Q.C. (of the Canadian bar), and Mr. Martin (of the Canadian bar) appeared for the appellants; the Attorney-General, Mr. S. H. Blake, Q.C. (of the Canadian bar), Mr. S. Ewart, Q.C. (of the Canadian bar), and Mr. F. C. Gore for the respondent Mr. Barrett, and Mr. Ram for the respondent Mr. Logan. The arguments were recently heard before a committee consisting of Lord Watson, Lord Macnaghten, Lord Morris, Lord Hannen, Sir Richard Couch and Lord Shand, when their lordships reserved judgment.

THE JUDGMENT.

Lord Macnaghten now delivered the judgment. He said: These two appeals were heard together. In the one case the city of Winnipeg appeals from a judgment of the Supreme Court of Canada, reversing a judgment of the Court of Queen's Bench for Manitoba, and in the other from a subsequent judgment of the Court of Queen's Bench for Manitoba, following the judgment of the Supreme Court. The judgments under appeal quashed certain bylaws of the city of Winnipeg, which authorized assessments for school purposes in pursuance of the Public Schools Act, 1890, a statute of Manitoba, to which Roman Catholics and members of the Church of England alike take exception. The views of the Roman Catholic church were maintained by Mr. Barrett, the case of the Church of England was put forward by Mr. Logan. Mr. Logan was content to rely on the arguments advanced on behalf of Mr. Barrett, while Mr. Barrett's advisers were not prepared to make common cause with Mr. Logan, and naturally would have been better pleased to stand alone. The controversy which has given rise to the present litigation is, no doubt, beset with difficulties. The result of the controversy is of serious moment to the Province of Manitoba, and a matter apparently of deep interest throughout the Dominion. But in its legal aspect the question lies in a very narrow compass. The duty of this board is simply to determine, as a matter of law, whether, according to the true construction of

THE MANITOBA ACT, 1870,

having regard to the state of things which existed in Manitoba at the time of the union, the Provincial Legislature has or has not exceeded its powers in passing the Public Schools Act, 1890. Manitoba became one of the provinces of the Dominion of Canada under the Manitoba Act, 1870, which was afterwards confirmed by an imperial statute known as the British North America Act, 1871. Before the union it was not an independent province, with a constitution and a legislature of its own. It formed part of the vast territories which belonged to the Hudson's Bay company and were administered by their officers or agents. The Manitoba Act, 1870, declared that the provisions of the British North America Act, 1867, with certain exceptions not material to the present question, should be applicable to the province of Manitoba, as if Manitoba had been one of the provinces originally united by the Act. It established a Legislature for Manitoba, consisting of a Legislative Council and a Legislative Assembly, and proceeded, in section 22, to re-enact, with some modifications, the provisions with regard to education which are to be found in section 93 of the British North America Act, 1867. Section 22, of the Manitoba Act, so far as it is material, is in the following terms: "In and for this province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions: (1) Nothing in any such law shall prejudicially affect the right or privilege with respect to denominational schools, which any class of persons have by law or practice in the province at the union:" Then follow two other sub-sections. Sub-section 2 gives an "appeal," as it is termed in the Act, to the Governor-General in Council from any act or decision of the Legislature of the province or any provincial authority "affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." Sub-section 3 reserves certain limited powers to the Dominion Parliament in the event of the Provincial Legislature failing to comply with the requirements of the section or the decision of the Governor-General in Council.

AT THE COMMENCEMENT OF THE ARGUMENT

a doubt was suggested as to the competency of the present appeal in consequence of the so-called appeal to the Governor-General in council provided by the Act. But their Lordships are satisfied that the provisions of sub-sections 2 and 3 do not operate to withdraw such a question as that involved in the present case from the jurisdiction of the ordinary tribunals of the country. Sub-sections 1, 2 and 3 of section 22 of the Manitoba Act, 1870, differ but slightly from the corresponding sub-sections of section 93 of the British North America Act, 1867. The only important difference is that in the Manitoba Act, in sub-section 1, the words "by-law" are followed by the words "or practice," which do not occur in the corresponding passage in the British North America Act, 1867. These words were no doubt introduced to meet the special case of a country which had not as yet enjoyed the security of laws properly so called. It is not perhaps very easy to define precisely the meaning of such an expression as "having a right or privilege by practice." But the object of the enactment is tolerably clear. Evidently the word "practice" is not to be construed as equivalent to "custom having the force of law." Their lordships are convinced that it must have been the intention of the Legislature to preserve every legal right or privilege, and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools which any class of persons practically enjoyed at the time of the union. What, then, was the state of things when Manitoba was admitted to the union? On this point there is no dispute. It is agreed that there was no law or regulation or ordinance with respect to education in force at the time. There were, therefore, no rights or privileges with respect to denominational schools existing by law. The practice which prevailed

IN MANITOBA BEFORE THE UNION

is also a matter upon which all parties are agreed. The statement on the subject by Archbishop Tache, the Roman Catholic archbishop of St. Boniface, who has given evidence in Barrett's case, has been accepted as accurate and complete. "There existed," he says, "in the territory now constituting the province of Manitoba a number of effective schools for children. These schools were denominational schools, some of them being regulated and controlled by the Roman Catholic church, and others by various Protestant denominations. The means necessary for the support of Roman Catholic schools were supplied to some extent by school fees, paid by some of the parents of the children who attended the schools, and the rest were paid out of the funds of the church contributed by its members. During the period referred to Roman Catholics had no interest in, or control over, the schools of the Protestant denominations, and the members of the Protestant denominations had no interest in, or control over, the schools of the Roman Catholics. There were no public schools in the sense of state schools. The members of the Roman Catholic church supported the schools of their own church for the benefit of the Roman Catholic children, and were not under obligation to and did not contribute to the support of any other schools." Now if the state of things which the archbishop describes as existing before the union had been a system established by law, what would have been the rights and privileges of the Roman Catholics with respect to denominational schools? They would have had by law the right to establish schools at their own expense, to maintain their schools by school fees or voluntary contributions, and to conduct them in accordance with their own religious tenets. Every other religious body which was engaged in a similar work at the time of the union would have had precisely the same right with respect to their denominational schools. Possibly the right, if it had been defined or recognized by positive enactment, might have had attached to it, as a necessary of appropriate incident, the right of exemption from any contribution under any circumstances to schools of a different denomination. But in

THEIR LORDSHIPS' OPINION

it would be going much too far to hold that the establishment of a national system of education upon an unsectarian basis is so inconsistent with the right to set up and maintain denominational schools that the two things cannot exist together, or that the existence of the one necessarily implies or involves immunity from taxation for the purpose of the other. It has been objected that if the rights of Roman Catholics, and of other religious bodies, in respect of their denominational schools, are to be strictly measured and limited by the practice which actually prevailed at the time of the union, they will be reduced to the condition of a "natural right," which "does not want any legislation to protect it." Such a right, it is said, cannot be called a privilege in any proper sense of the word. If that be so, the only result is that the protection which the Act purports to extend to rights and privileges existing "by practice" has no more operation than the protection which it purports to offer to rights and privileges existing "by law." It can hardly be contended that, in order to give a substantial operation and effect to a saving clause expressed in general terms, it is incumbent upon the court to discover privileges which are not apparent of themselves, or to ascribe distinctive and peculiar features to rights which seem to be of such a common type as not to deserve special notice or require protection. Manitoba having been constituted a province of the Dominion in 1870, the Provincial Legislature lost no time in dealing with the question of education. In 1871 a law was passed which established a system of denominational education in the common schools, as they were then called.

A BOARD OF EDUCATION WAS FORMED,

which was to be divided into two sections, Protestants and Roman Catholics. Each section was to have under its control and management the discipline of the schools of the section. Under the Manitoba Act the province has been divided into 24 electoral divisions for the purpose of electing members to serve in the Legislative Assembly. By the Act of 1871 each electoral division was constituted a school district, in the first instance; 12 electoral divisions, "comprising mainly a Protestant population," were to be considered Protestant school districts; 12, "comprising mainly a Roman Catholic population," were to be considered Roman Catholic school districts. Without the special sanction of the section there was not to be more than one school in any school district. The male inhabitants of each school district, assembled at an annual meeting, were to decide in what manner they should raise their contributions towards the support of the school, in addition to what was derived from public funds. It is, perhaps, not out of place to observe that one of the modes prescribed was "assessment on the property of the school district," which must have involved, in some cases at any rate, an assessment on Roman Catholics for the support of a Protestant school, and an assessment on Protestants for the support of a Roman Catholic school. In the event of an assessment there was no provision for exemption, except in the case of the father or guardian of a school child—

A PROTESTANT IN A ROMAN CATHOLIC SCHOOL

district or a Roman Catholic in a Protestant school district—who might escape by sending the child to the school of the nearest district of the other section and contributing to it an amount equal to what he would have paid if he had belonged to that district. The laws relating to education were modified from time to time, but the system of denominational education was maintained in full vigor until 1890. An Act passed in 1881, following an Act of 1875, provided among other things that the establishment of a school district of one denomination should not prevent the establishment of a school district of the other denomination in the same place, and that a Protestant and a Roman Catholic district might include the same territory in whole or in part. From the year 1876 until 1890 enactments were in force declaring that in no case should a Protestant ratepayer be obliged to pay for a Roman Catholic school, or a Roman Catholic ratepayer for a Protestant school. In 1890 the policy of the past 19 years was reversed and the denominational system of public education was entirely swept away. Two Acts in relation to education were passed. The first (53 Vic., c. 37) established a Department of Education and a Board consisting of seven members, known as the "Advisory Board." Four members of the Board were to be appointed by the Department of Education, two were to be elected by the public and high school teachers, and the seventh member was to be appointed by the University Council. One of the powers of the Advisory Board was to prescribe the forms of religious exercises to be used in the schools. The Public Schools Act, 1890 (53 Vic., c. 38) enacted that all Protestant and Roman Catholic school districts should be subject to the provisions of the Act, and that all

PUBLIC SCHOOLS SHOULD BE FREE

schools. The provisions of the act with regard to religious exercises are as follows: "6. Religious exercises in the public schools shall be conducted according to the regulations of the Advisory Board. The time for such religious exercises shall be just before the closing hour in the afternoon. In case the parent or guardian of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place. 7. Religious exercises shall be held in a public school entirely at the option of the school trustees for the district, and, upon receiving written authority from the trustees, it shall be the duty of the teachers to hold such religious exercises. 8. The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided." The Act then provides for the formation, alteration and union of school districts, for the election of school trustees, and for levying a rate on the taxable property in each school district for school purposes. In cities, the Municipal Council is required to levy and collect upon the taxable property within the municipality such sums as the school trustees may require for school purposes. A portion of the legislative grant for educational purposes is allotted to public schools; but it is provided that any school not conducted according to all the provisions of the Act, or any Act in force for the time being, or the regulations of the Department of Education, or the Advisory Board

SHALL NOT BE DEEMED A PUBLIC SCHOOL

within the meaning of the law, and shall not participate in the legislative grant. Section 141 provides that no teacher shall use, or permit to be used, as text books any books except such as are authorized by the Advisory Board, and that no portion of the legislative grant shall be paid to any school in which unauthorized books are used. Then there are two sections (178 and 179) which call for a passing notice, because, owing apparently to some misapprehension, they are spoken of in one of the judgments under appeal as if their effect was to confiscate Roman Catholic property. They apply to cases where the same territory was covered by a Protestant school district and by a Roman Catholic school district. In such a case Roman Catholics were really placed in a better position than Protestants. Certain exemptions were to be made in their favor if the assets of their district exceeded the liabilities, or if the liabilities of the Protestant school district exceeded its assets. But no corresponding exemptions were to be made in the case of Protestants. Such being the main provisions of the Public Schools Act, 1890, their lordships have to determine whether that Act prejudicially affects any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union. Notwithstanding the Public Schools Act, 1890, Roman Catholics and members of every other religious body in Manitoba

ARE FREE TO ESTABLISH SCHOOLS

throughout the province; they are free to maintain their schools by school fees or voluntary subscriptions; they are free to conduct their schools according to their own religious tenets without molestation or interference. No child is compelled to attend a public school. No special advantage other than the advantage of a free education in schools conducted under public management is held out to those who do attend. But then it is said that it is impossible for Roman Catholics, or for members of the church of England (if their views are correctly represented by the Bishop of Rupert's Land, who has given evidence in Logan's case), to send their children to public schools where the education is not superintended and directed by the authorities of their church, and that therefore Roman Catholics and members of the church of England who are taxed for public schools, and at the same time feel themselves compelled to support their own schools, are in a less favorable position than those who can take advantage of the free education provided by the Act of 1890. That may be so. But what right or privilege is violated or prejudicially affected by the law? It is not the law that is in fault; it is owing to religious convictions, which everybody must respect, and to the teaching of their church that Roman Catholics and the members of the Church of England find themselves unable to partake of advantages which the law offers to all alike. Their lordships are sensible of the weight which must attach to the unanimous decision of the Supreme Court. They have anxiously considered the able and elaborate judgments by which that decision has been supported. But they are unable to agree with the opinion which the learned judges of the Supreme Court have expressed as to the rights and privileges of Roman Catholics in Manitoba at the time of the union. They doubt whether it is permissible to refer to the course of legislation between 1871 and 1890, as a means of throwing light on the previous practice or on the construction of

THE SAVING CLAUSE IN THE MANITOBA ACT.

They cannot assent to the view, which seems to be indicated by one of the members of the Supreme Court, that public schools under the Act of 1890 are in reality Protestant schools. The Legislature has declared in so many words that the public schools shall be entirely unsectarian, and that is carried out throughout the Act. With the policy of the Act of 1890 their lordships are not concerned. But they cannot help observing that, if the view of the respondents were to prevail, it would be extremely difficult for the Provincial Legislature, which has been entrusted with the exclusive power of making laws relating to education, to provide for the educational wants of the more sparsely inhabited districts of a country almost as large as Great Britain, and that the powers of the Legislature, which on the face of the Act appear so large, would be limited to the useful but somewhat humble office of making regulations for the sanitary conditions of schoolhouses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of this sort. In the result their lordships will humbly advise Her Majesty that

THESE APPEALS OUGHT TO BE ALLOWED

with costs. In the "City of Winnipeg v. Barret," it will be proper to reverse the order of the Supreme Court, with costs, and to restore the judgment of the Court of Queen's Bench for Manitoba. In the "City of Winnipeg v. Logan," the order will be to reverse the judgment of the Court of Queen's Bench, and to dismiss Mr. Logan's application and discharge the rule nisi and the rule absolute with costs.