

vinces of Upper and Lower Canada, as they were formerly called, and the Separate Schools here mentioned for the Queen's Roman Catholic subjects were schools established by Act of Parliament in Upper Canada, and in like manner the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec were also schools established by Act of Parliament in Lower Canada. They were established by Act of Parliament in like manner as these schools in New Brunswick, of course with this distinction that there was express provisions in the Acts of Parliament relating to the Province of Canada, for the establishment of these separate and dissentient schools. The Act of Upper Canada was in the consolidated statutes of Upper Canada, chapter 65.

Lord Justice James. How does that throw any light upon your argument? In those Provinces there were Denominational Schools which had privileges secured to them by law.

Mr. Brown.—I use it as showing that Article 2 is intended to apply to the separate and dissentient Schools of Upper and Lower Canada, established by Act of Parliament; that it consequently does not apply to the schools of New Brunswick or Nova Scotia; and, therefore, that Article 1, probably by inference, was intended to apply to the Parliamentary Schools in Nova Scotia, there being no others than those I have mentioned; that is to say, these Parish Schools which, in Protestant districts were Protestant Schools, and in Catholic districts were Catholic Schools. So far as Nova Scotia is concerned I have been unable to discover that there were any schools established there beyond Common Schools.

Lord Justice Mellish.—Article 1 would clearly apply to a case of this sort—if the law at that time allowed Roman Catholics to establish with their own money exclusively Catholic Schools, it would not be lawful for the Legislature to pass a law saying, "We object to the Roman Catholic Religion so much that there shall be no Roman Catholic Schools in this Province."

Mr. Brown.—That is probably so, but it is not very likely that the Legislature can be supposed to have had that case before them. There were some private Roman Catholic Schools and some private Presbyterian Schools in New Brunswick.

What I was a going to say was, that it is more probable, both by the words and the reason of the case, that Article 1 contemplated schools of a public character than mere private schools. It would be almost without example in modern times for the Legislature to interfere with mere private schools of any Body.

Sir M. Smith.—They interfere with endowed schools.

Lord Justice Mellish.—No doubt they do in this country.

Mr. Brown. It would be a very extraordinary thing here if the Legislature were to interfere with the Roman Catholic College, at Oxott, or the Dissenters School, at Mill Hill. There was a School called the Madras School, which had a charter from the Crown, and that was confirmed by a private Act of New Brunswick, which I have in this Book; but it does not appear that that Act did more than confirm the charter of this Madras School. Nothing appears to have been done by Act of Provincial Parliament, excepting the grant of the charter.

Lord Justice James. It is all by law, whether by chapter or otherwise.

Mr. Brown. I submit it can hardly be supposed those were the Schools wholly and solely referred to in this section.

Lord Justice Mellish.—The second clause enacts that all the powers, privileges and so on which the Roman Catholics have in Upper Canada, (which is a Protestant country) shall apply to the Protestant Schools in Lower Canada. That section does not prevent the Legislature of Upper Canada taking away those privileges. That is already done by the first section.

Mr. Brown.—I think the third Article probably provided for that—"where in any Province a system of separate or dissentient schools exist by law at the Union, or is thereafter established by the Legislature of the Province. An appeal shall be to the Governor General in Council."

Lord Justice Mellish.—That gives an appeal to the Legislature, but still the first section applies to those very schools for the purpose of providing that their privileges shall not be taken away.

Mr. Brown.—As I understand Article 2, it was intended to put a limit on the powers of the Provincial Legislature to make new enactments because it says this—"In each Province the Legislature may exclusively make laws in relation to education; subject and according to the following provisions, one of which is '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 the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.'" That is apparently intended to be operative in the future.

Lord Justice James.—Do you really think it worth while to pursue this topic any further?

Mr. Brown.—Your Lordship sees the great importance of the case. It isn't my duty to represent my own views here. As well as I can I have represented the views of my client.