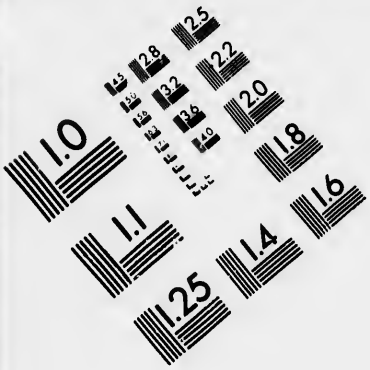


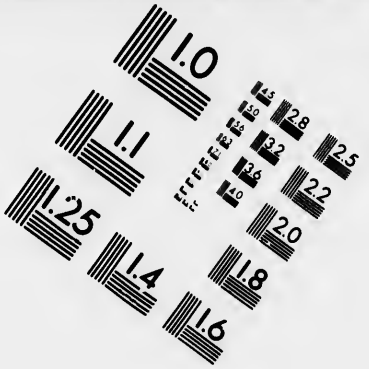
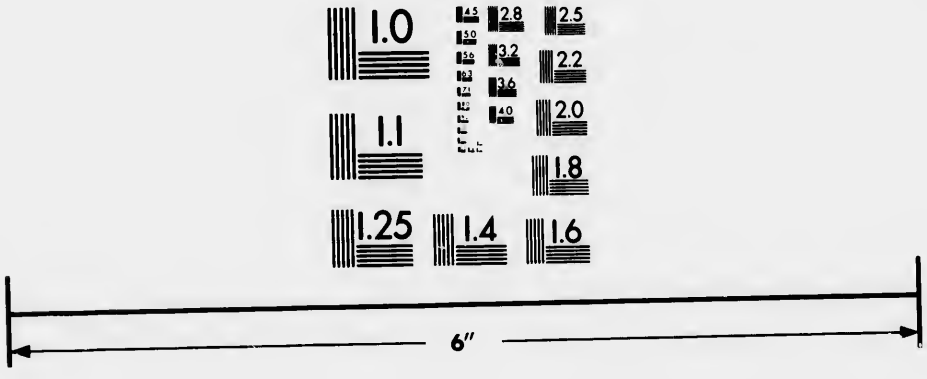
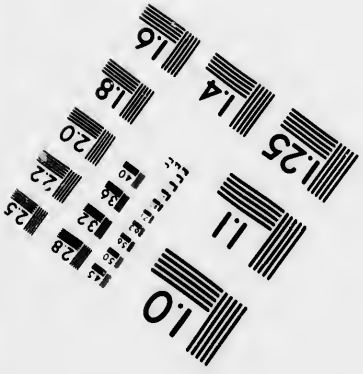
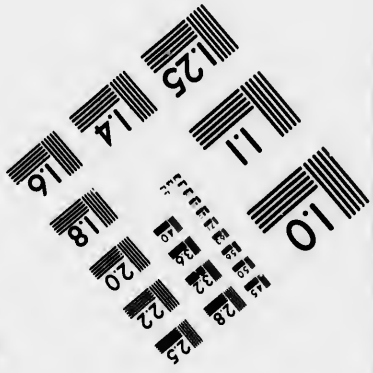


IMAGE EVALUATION
TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

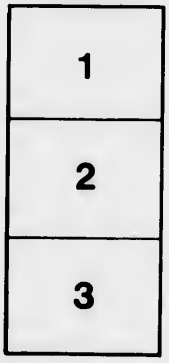
- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☐ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☐ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X ✓	28X	30X	32X



THE SCHOOL QUESTION IN MANITOBA.

PRIOR to the 1st July, 1867 (Dominion Day), Canada consisted of two provinces, legislatively united under one parliament. One of these, Upper Canada, was largely English and Protestant; the other, Lower Canada, was predominantly French and Catholic. Prior to this date, and as the result of a long and bitter struggle, Catholics had obtained, in complete measure, the right to separate schools in the English province—schools supported by government grant and municipal taxes in the same way as other schools. On the other hand, Protestants had, without difficulty, procured, in the French province, the establishment of Protestant schools. The year 1863 saw the close of all controversy and the acceptance of this situation by almost every one. The separate school question was answered and forever buried in Canada.

Dominion Day inaugurated a new era in Canadian history. The Confederation Act added two other provinces, Nova Scotia and New Brunswick (neither of which had a separate school system sanctioned by law); it changed the names Upper Canada and Lower Canada to Ontario and Quebec; it established a federal parliament at Ottawa and a local legislature in each province; it relegated certain subjects of jurisdiction to the parliament and assigned others to the legislatures, awarding to them also any residue; it made various provisions for the everlasting interment of certain nasty questions, involving racial and religious antipathies, which had vexed the earlier politicians; and the separate school question's obsequies were finally, and with much thankfulness, performed—"positively the last appearance."

Its troublesome ghost was laid in this fashion: The local legislatures are to have jurisdiction with reference to education, but not absolute jurisdiction. In Ontario and Quebec the Catholics and Protestants have certain rights. These shall not be infringed upon; to that extent the legislatures shall be impotent. If in these provinces, at any future time, the religious minority shall, by legislation, obtain any further rights or privileges, or if, in the other two provinces, a separate school system shall, in the future, be established; and if, in either of these cases, legislation be subsequently passed affecting any rights or privileges thus obtained, then an appeal from such legislation shall lie on the part of the minority to the federal authorities. We do not mean to say that these plain words were made use of in the laying process. On the contrary,

several years of litigation, with journeyings from inferior to superior, to supreme, and to supremest courts, have but lately unravelled the statute and resolved its twisted phraseology into something to be understood of all men. This, at last, we say, is what has been got out of it.

Three years after confederation (1870) the western prairies were added to the Dominion, and a portion of them were set off as the province of Manitoba. Prior to incorporation with Canada, the territories had been governed in some fashion by the Hudson's Bay Company, and, as a matter of law, had no system of separate schools. The position of affairs there, with reference to education, may best be described by quoting from an affidavit made by His Grace the Archbishop of St. Boniface, used in subsequent litigation:

"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 the 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 was 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 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 Roman Catholic children, and were not under obligation to and did not contribute to the support of any other schools. In the matter of education, therefore, during the period referred to, Roman Catholics were, as a matter of custom and practice, separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman Catholics as herein set forth."

The transfer of the territories to Canada was not accomplished without friction. During the negotiation between the imperial authorities, the Hudson's Bay Company and Canada, which preceded the transfer of the territory, the Canadian Government sent in its surveyors (prematurely, therefore), who proceeded to mark off the land into sections and townships, utterly regardless of the protests of the settlers. No attempt was made to explain to the settlers the policy which the Canadian Government intended to pursue with reference to the method of government, the recognition of titles to lands, or any other subject of legislation. Not only were surveyors sent up, but a gentleman, who was not at all likely to prove acceptable to the settlers, was also accredited to the settlement, and carried with him his appointment as lieutenant-governor, to date from the day of the proclamation of the transfer. Naturally the settlers protested, and naturally many of them resisted. They formulated bills of rights; they met in convention; they determined to form a provisional government; they held their

general elections; they elected their representatives; and these representatives met in legislative assembly and made and administered laws. Canada, meanwhile, acknowledging her error, sent to them commissioners with many assurances of good will and of respect for rights, and requested that delegates might be sent to Ottawa to discuss terms of agreement.

Should negotiation fail, Canada had meditated the possibility of resort to force, and had applied for assistance to the Imperial Government. The application was answered by Earl Granville on the 5th of March, who telegraphed:

"Her Majesty's Government will give proposed military assistance, *provided reasonable terms are granted to the Red River settlers.*"

And on the 22d of March, by a dispatch from the under-secretary of the colonies, that

"Troops should not be employed in forcing the sovereignty of Canada on the population of Red River *should they refuse to admit it.*"

On the 23d of April, Earl Granville thus informed the governor-general:

"Canadian Government *to accept decision of Her Majesty's Government* on all portions of the settlers' 'bill of rights.'"

The negotiations with the delegates were carried on by Sir John A. Macdonald and Sir George E. Cartier, who had been appointed by the government as a committee for that purpose. The interviews extended from the 23d of April to the end of May, conferences taking place on the 23d, 25th, 26th, 27th, 28th, 29th and 30th of April and the 2d of May. On the 3d of May the governor-general was able to cable:

"Negotiations with the delegates closed satisfactorily."

To this Earl Granville replied (18th of May):

"I take this opportunity of expressing the satisfaction with which I have learned, from your telegram of the 3d inst., that the Canadian Government, and the delegates, have come to an understanding as to the terms on which the settlements on the Red River should be admitted into the union."

Some question has been raised as to whether, among the demands made by the settlers, there was included any request for separate schools. There were at least three bills of rights prepared, and the Catholics say that there was a fourth. The question is supposed to turn upon the genuineness of this fourth bill, but in the opinion of the writer the point is clear enough even if this

bill could be proved to be a forgery. In the first bill (December, 1869) is the following:

"That a portion of the public lands be appropriated to the benefit of schools, the building of bridges, roads and public buildings."

In the second bill (February, 1870) is the following:

"That while the Northwest remains a territory the sum of $25,000 a year be appropriated for schools, roads, bridges. That all the properties, rights and privileges, as hitherto enjoyed by us, be respected, and that the recognition and management of local customs, usages and privileges be under the control of the local legislature."

In the third bill (March, 1870) is the following:

"That all properties, rights and privileges enjoyed by the people of this province, up to the date of our entering into the Confederation, be respected; and that the arrangement and confirmation of all customs, usages and privileges be left exclusively to the local legislature."

In the fourth bill (March, 1870), is the following:

"That all properties, rights and privileges enjoyed by us up to this day be respected; and that the recognition, and settlement of customs, usages and privileges be left exclusively to the decision of the local legislature.

"That the schools be separate, and that the public money for schools be distributed among the different religious denominations in proportion to their respective population according to the system of the Province of Quebec."

To any unprejudiced mind all these bills of rights imply the continuation of schools upon the denominational system. The fourth one no doubt is the only one which prescribes the particular kind of denominational system which the settlers desire ("the system of the Province of Quebec"); but the first two bills, asking that land and money be appropriated for the support of schools, clearly imply that the schools are to be denominational; for no one would have thought of demanding that if *public* schools were established they were to be sustained by public grants. Bills two and three also demand that all rights theretofore enjoyed should be respected. Any one at all familiar with the great importance attached by Canadians to their various views of educational matters, would not doubt that the rights which the settlers had enjoyed with reference to their schools were intended to be included in this demand.

It is contended, on the one hand, that the Red River delegates, who went to Ottawa to arrange terms of incorporation with Canada took with them bill No. 3, and, on the other, that they took bill No. 4. For the reason already given the solution of this question seems to be quite immaterial, but if other reasons be required they may easily be given: Whatever bill was taken it is clear that

Canada did not accede to all the terms of it. An agreement nevertheless was arrived at, and part of this agreement was (as then believed by every one) that the schools should be separate. This agreement was ratified by the Legislative Assembly sitting in the territories. The agreement, therefore, is the important matter, and not the question which of the negotiating parties suggested any particular term of it. It is quite clear, then, that the future character of the schools in Manitoba was agreed to at the time of the drafting of the Manitoba charter; and it is admitted on all hands that it was the intention of every one that Manitoba should have constitutionally no power to establish a system of which the separate schools system was not a feature.

Three years after Confederation, as I have said, Manitoba became (1870) one of the Provinces of the Dominion. In the meantime the ghost had slipped his clumsy wrappings, and in the Province of New Brunswick was at his old disrupting and envenoming work. In that province, as we have seen, there was no system of separate schools recognized by law at the time of the union. As a matter of practice, however, there were schools which, by general consent, had become Catholic in character, although retaining their public *status*. Rights, held by this tenure, having been affected by local legislature, the power of the legislature to interfere with them was challenged, was litigated, and was finally upheld. Rights based upon *practice*, and not upon statute, were evidently not rights, but permissions only. Once more the troublesome spirit disappeared. Once more the separate school question in Canada was finally disposed of.

The lesson of this New Brunswick incident came in time for the preparation of the Manitoba charter. With it before them the draughtsmen thought that they had forever saved the new province from ghostly visitation, when they inserted two little words—"or practice"—in the phraseology used in the cases of the older provinces, and made it read in this fashion:

> "In and for the 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 any right or privilege, with respect to denominational schools, which any class of persons have by law *or practice* in the province at the Union.

At this time there were within the limits assigned to Manitoba about 12,000 people, nearly equally divided, as to religion, between the Roman Catholic and Protestant churches. In speculating as to the future of the prairie acquisition, Canadians had contemplated the probability of its future population being princi pally French and Roman Catholic. From the Province of Quebec

there had been a large annual exodus to the eastern states of the Union. If this stream could be diverted to the northwest, the expectation would almost certainly be realized. The provision just quoted, therefore, was inserted for the benefit of those who might need its protection, and not as has often been said for the benefit of Catholics alone.

At the first session of the Manitoba Legislature (1871) a school act was passed providing for a system of schools suitable to the existing circumstances. It provided for a Board of Education, and a division of it, into two sections—Catholic and Protestant. The board as a whole had certain functions, but the chief part of the work was to be transacted by the sections. The system was improved from time to time, but always (until 1890) retained its chief characteristic of Catholic and Protestant schools. The geographical distribution of the people lent itself to the easy application of this division, for the English and French (save in the urban communities) were very largely congregated in different parts of the province. For nineteen years (until 1890) this happy state of affairs continued almost without a murmur. All but the veriest few were perfectly satisfied, and congratulations were frequently heard that divines who might, and sometimes did, preach against one another in the pulpit, met, nevertheless, at the same education board, at the openings and closings of schools and colleges, and elsewhere, and applauded, in matters relating to education, the efforts made by their pulpit opponents for the instruction of the young. Almost up to the moment of the overthrow of this system did the congratulations and applause continue, and their cessation was due, not to the people of Manitoba, but to certain circumstances which shall now be related.

The nineteen years just spoken of had witnessed great changes in the province. The French exodus to the eastern states had maintained its old direction, and absolutely refused to "go west." From Ontario, however, and from Sweden, Iceland, Russia, etc, a large emigration had arrived. The Catholics found themselves reduced from 50 per cent., to not more than 15 per cent. of the population. Their political influence, however, retained some of its importance, for in the keen struggle between Liberal and Conservative their vote might frequently turn the scale. In fact it did in one very notable instance decide a most important election; which election decided the fate of an administration; turned out the Conservatives brought in the Liberals; and led directly—to the repeal of the separate school system! The Catholic vote was, in the most scandalous fashion possible, exploited and applied to the overthrow and discomfiture of those whose franchises were sought by politicians who swore themselves their friends. We hesitate to

lay bare to foreign eyes the utter meanness and degradation of some of our country's political leaders, but it is impossible to tell of the Manitoba school case and omit it.

For several years prior to the year 1888 (two years before the school act we complain of) the Conservatives had been in office. In January of that year, Mr. Burke, the member for St. François Xavier, was asked to join the administration, and his acceptance of office necessitated his re-election. The constituency was predominantly French and Catholic. Mr. Burke was of that nationality and religion, and had at the previous election been elected by acclamation. The Liberals although under suspicion of being antipathetic towards these classes determined to contest the election, and nominated a Protestant Englishman. Their success seemed hopeless, and plainly had to be attained, if at all, by convincing the electorate that the suspicions were absolutely groundless. To accomplish this the most solemn and public promises were made, and those who had been cultivating and spreading the suspicions were denounced as scandalous calumniators. Mr. Joseph Martin the strongest man in the Liberal party made two speeches in the constituency, and declared that if, when his party came into power, it in any way attacked the separate schools, or the use of the French language, *he would leave the party forever.* The President of the Liberal Association for the province was present at one of these meetings, and was appealed to to confirm Mr. Martin's assurance of the policy of the party. By these means Mr. Burke was beaten. Four days afterwards the administration resigned, and the Liberals with Mr. Greenway as Premier, and Mr. Joseph Martin as Attorney-General came into office. Two years afterwards this same Mr. Joseph Martin introduced the bill abolishing the Catholic schools!

The facts just related are not denied. They were recently proved by the declarations of the President of the Liberal Association; of the Liberal candidate at the election; of the Liberal organizer at the election; of the Conservative candidate at the election; and of six of the electors. All these testified that without such promises the Liberals would infallibly have been beaten. We say, again, these facts never have been, and are not, denied. Since that time Mr. Joseph Martin has been politically promoted, and now as representative of the city of Winnipeg in the Commons of Canada, is looked upon as one of the leaders of the Liberal party in Canada!

The Liberals had thus obtained office, but to the exercise of power two things were necessary: (1) to add strength to the administration by inducing some prominent Catholic to join it; and (2) to carry a general election, and for that purpose to secure the

Catholic vote. The St. François Xavier pledges had done much towards the removal of the Catholic dread of Liberal antipathy. Mr. Greenway saw the importance of supplanting it altogether with a feeling of trust and confidence. For this purpose, accompanied by Mr. Alloway (a prominent Protestant supporter), he called upon His Grace, the Archbishop of St. Boniface, to repeat and emphasize the former assurances. His Grace was unwell. At his request Mr. Greenway made his communication through Vicar-General Allard, and intimated that he would be glad if His Grace would name some one who would be acceptable to his people as a member of the administration. The Vicar-General listened to the assurances and request, and agreed to meet Mr. Greenway at Mr. Alloway's office the next morning at nine o'clock. The meeting took place, and the Vicar-General then informed Mr. Greenway that His Grace was extremely gratified with the protestations of good will made by Mr. Greenway; that he believed that Mr. Prendergast enjoyed the confidence of his people; and that inasmuch as politics, apart from defence of his flock, were outside his sphere, no opposition would be made to the government so far as he was concerned. Mr. Greenway was delighted. Mr. Prendergast joined the administration. The general elections came on. The Liberals were the Catholics' best friends. The Greenway government was sustained by a sweeping majority, and nowhere was the success greater than in the Catholic constituencies, from which but one opposition member was returned.

We have now arrived at the month of July, 1888. Mr. Martin's school act is to arrive in March, 1890, but we seem to be further away from it than ever; The draughtsmen have taken care with their "or practice" to make such an act impossible; the Conservatives in Manitoba have always been friendly towards the Catholics; and now the Liberals, as to whose disposition there had been some suspicion, have declared themselves also to be their friends. The new friends too have an overwhelming majority; Mr. Prendergast is one of the administration, and there will be no elections for the next four years. What can happen?

To explain the sudden reversal in Manitoba the attention of the reader must for a few moments be directed to the Province of Quebec. We have seen that the Manitoba elections were held in the month of July, 1888, and that Liberals then were vying with Conservatives in expressions of good-will towards Catholics. In Quebec, in the same month (oddly enough) was passed a statute afterwards known as the Jesuits' Estate Act. The Jesuits had for many years preferred a claim to certain lands which had at one time belonged to their order. In settlement of this claim the Legislative Assembly of the Province of Quebec agreed to pay to them

the sum of $400,000; but, inasmuch as the jealousy of the Protestants would thereby be certainly aroused, the legislature at the same time provided that a sum of $60,000 should be paid over to the Protestant Committee of the Council of Public Instruction, which amount (with a small increase afterwards made) was to the Jesuit grant, in the same proportion as was the Protestant to the Catholic population. This act was passed without a dissentient vote, and no Protestant member of the house ventured to attack it upon the grounds afterwards so violently put forward.

Although the Province of Quebec was satisfied with the act, a few persons in the province of Ontario formed a society which they chose to call, "The Equal Rights Association." In their constitution they declared:

"That this convention desires to record its conviction that the incorporation of the Jesuits, and the passing of the act respecting the settlement of the Jesuits' Estates, by the Legislature of the Province of Quebec; the course of the government of the Dominion in leaving these acts to their operation; and finally the rejection, by an immense majority, of the resolution moved in the House of Commons for the disallowance of the last-mentioned act, have brought forcibly home to Canadians the controlling influences which Ultramontanism has obtained amongst us, and the urgent need of organizing for the defence of our civil and religious liberties; and this meeting of delegates elected from, and representing all, parts of the Province of Ontario, with the assistance of representatives from other provinces, heartily approves of the calling of this convention for the furthering of this great end."

The Dominion Government refused to disallow the act, and forthwith, the "sleepy Protestants of Quebec" (as they were styled by an Ontario enthusiast) prepared petitions by way of appeal to the Governor-General. These were approved and fostered by the Equal Rights Association, one of its resolutions declaring that:

"This convention approves of the action of the Toronto Citizens' Committee and others, in circulating and promoting the petitions to his Excellency, the Governor-General, against the Jesuits' Estate Act, and pledges itself to promote and further, in every way, the signature and presentation of petitions against the said act."

There being some doubt as to whether the Governor-General would entertain the appeal the association issued an address in which was the following paragraph:

"The right of appeal to the Governor-General which minorities at present have must remain; nay the entire Dominion is the proper guarantee for equality of dealing on the part of the provinces with the adherents of the various churches, and nothing beyond this should be sought."

The government determined to hear the petitions, and appointed the 15th of October, 1889, for the argument. Meanwhile, however, the Quebec petitioners obtained some slight modification of

the act from the local legislature, and determined to drop further opposition. This was a great disappointment to the Ontario disturbers of the peace of another province; but the Quebec Protestants would go no further, and the agitation, and with it the association framed "for the defence of our civil and religious liberties," came to an end.

But the evil it had done was not all buried with its bones. One of its chief men, Mr. Dalton McCarthy (a lawyer of great ability, untiring energy, unconquerable courage, and narrow horizon), while the controversy was fiercely raging, happened to visit the prairie province. Manitobans had been almost silent spectators of the Jesuit Estate embroglio, but had no doubt been much interested, and to some extent stirred, by it. In January, 1888, with the help of Mr. Martin's St. Francois Xavier promises, the Liberals had attained power. In August, 1889, the same gentleman stood upon a Manitoba platform while Mr. Dalton McCarthy spoke to the following effect:

"There was something for a politician to live for; we have the power to save this country from fratricidal strife, the power to make this a British country in fact, as it is in name. In order to accomplish this, other issues must for the moment give way. We have got to bend our energies, and let it be understood in every constituency that whether a man call himself Grit or Tory, Conservative or Reformer, his record is clear, his principles are sound, and no influence at Ottawa will induce him to betray his great trust. The speaker was glad to inform the meeting that the poor sleepy Protestant minority of Quebec were at last awake. He trusted before many weeks to address a meeting in Montreal, and to realize that that minority is sound to the core on this question. *There is the separate school question here*, and in the Northwest, and there is the French school question in Ontario; *we have all the work to do in our various localities; let us do that first* before we seek to traverse fields, before more difficulty is to become encountered because vested rights have become solidified."

Thus was the fire kindled which, within eight months, was to sweep over the province of Manitoba, was to result in the School Act of March, 1890, and was to terminate the friendly relations which had obtained there for so many years between Catholics and Protestants.

Mr. Martin's School Act was passed in 1890. It established what are called (for the sake of concealing their character) public and non-sectarian schools. All Catholic school property was turned over to trustees, to be elected under the new act; and it was provided that no school which did not comply with the requirements of the statute, that is, that did not cease to be Catholic, was to be deemed to be a public school, or be entitled to any public support. Even the Catholic organization was ended, and they were not to be allowed so much as to tax themselves for the support of their own schools. A large sum of money on hand at the time went along with their property. The provisions as to religion were as follows:

"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. 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. The public schools shall be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided."

These clauses are due entirely to the power and influence of the Protestant clergy. Mr. Martin's avowed intention had been to make the schools entirely secular. When this was announced the Protestant sects preached, protested, resolved, declaimed and threatened so vigorously, voluminously and vengefully, that the government had to draw back, and was compelled to make the schools to suit the Protestants. The Catholics were numerically too weak to affect the government's course, so the Protestants had their way.

Protestant influence went further, and in the very teeth of the act, which provided that "The public schools shall be entirely unsectarian," succeeded in having inserted among the regulations the following provision:

"To establish the habit of right doing, instruction in moral principles must be accompanied by training in moral practices. The teacher's influence and example, current incidents, stories, memory gems, sentiments in the school lessons, examination of motives that prompt to action, didactic talks, teaching the Ten Commandments, etc., are means to be employed."

If the teachers were all to be Catholic, this regulation would, of course, be, from our standpoint, unobjectionable. Protestants, however, in that case would, if the provision was acted upon, take to the bayonet. As the teachers in the vast majority of cases are Protestant, it ought not to be (but is) wondered at that Catholics decline to send their children to what would be, in respect to the teaching of religion and morality, mere Protestant Sunday-schools. Among the subjects for study, too, is "History—(a) English—Religious Movements—(Henry VIII. and Mary)"—a subject which, in the hands of Protestant teachers, would inevitably be the basis of some very pretty instruction for Catholic children.

Of the practical working of the act, one wants no stronger or other testimony than that of its author, Mr. Joseph Martin, who, in a letter to the *Press* (26th of June, 1895), said as follows:

"When I introduced the school bill of 1890, I pointed out that, in so far as it provided for religious exercises in the schools, it was in my opinion defective. I am one of those who deny the right of the state to interfere in any respect in matters of religion. I said then, and I still think, that the clause of the 1890 Act, which provides

for certain religious exercises, is *most unjust to the Roman Catholics*. If the state is to recognize religion in its school legislation, such a recognition as is acceptable to Protestants only, and in fact only to a majority of Protestants, *is to my mind rank tyranny*."

Such as it is, however, "rank tyranny" and all, the act has been passed, the wrappings are evidently slipping, and the strength of those little words "or practice" must be brought to the test. Lawyers are employed and are told that there can be no doubt what was meant by the provincial charter; that those who negotiated its terms are still living and will testify; that if the language be dubious, a reference to the Hansard debates, and the votes and proceedings, will show what was intended by every one. Lawyers answer that no inquiry into such matters can be permitted; that such matters might be useful to laymen; that lawyers, by their rules, are prohibited from looking anywhere but at the statute itself; that the rules must be maintained; and that that which is plain and well known to everybody else must remain obscure and unknown to them. Justice, thus well blinded, proceeds to make her award. Inferior Court says that the act is good, and within the competence of the legislature. Superior Court says the same, one-third of it (taking possibly a surreptitious look) dissenting. Supreme Court says unanimously that the act is bad and *ultra vires*, rights and privileges enjoyed by *practice* at the time of the union having been prejudicially affected. Supremest Court (the British Privy Council) says that they have not been affected, and that the act is perfectly competent—three rounds out of four, and the victory to the St. Francois Xavier statute.

The wrappings are off, then, and the ghost again at large. As for the new device, "or practice," it has proved to be completely useless. Supremest Court says as follows:

"Now, if the state of things which the Archbishop described 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, this right, if it had been defined, or recognized by positive enactment, might have had attached to it as a necessary or 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 inconsistent with the right to set up and maintain denominational schools, that the two things cannot exist together, or, that the existence of one necessarily implies, or involves, immunity from taxation for the purposes of the other.

"Such being the main provisions of the Public School Act of 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 School Act of 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."

And when it is said that such an interpretation of the Act leaves it a nullity, and without possibility of application to anything, Supremest Court says that that cannot be helped:

"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 so strictly measured and limited by the practice which actually prevailed at the time of the union, they will be reduced to a condition of a 'natural right,' which does not want any legislation to protect it. Such a right, it was said, cannot be called a privilege, in the 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 afford 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 describe distinctive and peculiar features to rights which seem to be of such a common type as not to deserve special notice or require special protection."

The Act, then, is valid and constitutional. But the Catholics have another shot in the locker. The charter of Manitoba has these clauses, also:

"An appeal shall lie to the Governor-General in Council from any act or decision of the legislature of the Province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

"In case any such provincial law, as, from time to time, seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council, on any appeal under thi ction, is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case may require, the Parliament of Canada may make remedial laws for the due execu-

tion of the provisions of this section, and of any decision of the Governor-General in Council under this section."

A petition to the Governor-General in Council[1] is prepared, signed by 4267 Catholics, and forwarded to Ottawa, praying for the restoration of their rights, and the modification of the statute. The government, however, doubts its jurisdiction. Supremest court has held that no rights and privileges, enjoyed by the Catholics at the union, have been prejudicially affected; and if so, what power has the government? Catholics suggest that if they can no longer urge their ante-union rights acquired by practice, they can at least found their claim to relief upon their post-union rights, acquired by the statutes of the province itself. Government does not know, and refers the question to supreme court for advice. Supreme court (three out of five) advise that the government has no jurisdiction at all; and can, in no way, interfere. Supremest court advises that the government has ample jurisdiction, and makes sundry directions as to what ought to be done. Here are some extracts from the judgment:

"The terms upon which Manitoba was to become a province of the Dominion were matter of negotiation between representatives of the Province of Manitoba and of the Dominion Government."

"Those who were stipulating for the provisions of Section 22 as a condition of union, and those who gave their legislative assent to the Act by which it was brought about, had in view the perils then apprehended."

"It was not doubted that the object of the first sub-section of Section 22 was to afford protection to denominational schools."

"There is no doubt either what the points of difference were, and it is in the light of these that the 22d section of the Manitoba Act of 1870, which was in truth a parliamentary compact, must be read."

"The sole question to be determined is whether a right or privilege which the Roman Catholic minority previously enjoyed has been affected by the legislation of 1890. Their Lordships are unable to see how this question can receive any but an affirmative answer."

"Bearing in mind the circumstances which existed in 1870, it does not appear to their Lordships an extravagant notion that in creating a legislature for the province with limited powers, it should have been thought expedient in case either Catholics or Protestants became preponderant, and rights which had come into existence under different circumstances were interfered with, to give the Dominion Parliament power to legislate upon matters of education, so far as was necessary to protect the Protestant or Catholic minority as the case might be."

"Their Lordships have decided that the Governor-General has jurisdiction, and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it has been committed by statute. It is not for this tribunal to intimate the precise steps to be taken. Their general character is sufficiently defined by the third sub section of Section 22 of the Manitoba Act."

"All legitimate ground of complaint would be removed if that system (the system of 1890), were supplemented by provisions which would remove the grievance upon

[1] In Canada the phrase Governor-General in Council really means the government of the day.

which the appeal is founded, and were modified so far as might be necessary to give effect to these provisions."

Four and a half years of litigation and at last we know the meaning of a few English sentences in the Manitoba charter. We know that the matter has become one of politics, and that as it involves the separate school question, the times for politicians have grown stormy and dark—tempests from every quarter, and lee shores on every side; Catholics in this constituency, Orangemen in that, and medleys everywhere else in all proportions; resolutions, petitions, pamphlets and sermons; political barometers and Christianity going down; political umbrellas and all uncharitableness going up; what is government to do?

Fully to appreciate the government's difficulty a few words must be devoted to a peculiar feature of the Canadian constitution —the power of disallowance. In the United States the Federal authorities have nothing more to do with State legislation than with the municipal affairs of the villages. If State legislation be *ultra vires* the law courts will so hold; but if it be *intra vires* "it goes." It is different in Canada. There every act of a local legislature may within one year be disallowed by the Governor-General in Council—that is, by the Federal Government of the day. In the earlier days of confederation this power of disallowance was exercised somewhat freely, and consequently became obnoxious to each province in turn, as its legislation fell to be disallowed. For several years the railway legislation of Manitoba had been rigorously overruled, in the interest of the Canadian Pacific Railway, and plainly to the financial detriment of the province. This mistaken use of the disallowance power had the natural effect of arousing popular objection to the power itself, and to array the general mind upon the side of "Provincial Rights." Dominion governments had therefore grown chary of exercising a power so unpopular, and latterly it had fallen into complete disfavor, and almost complete disuse in cases in which popular sympathy would be aroused. The Dominion government had been asked to disallow the very School Act which we are discussing, but had refused to do so, although it was plainly a breach of the spirit, if not of the letter, of the constitution. The cry of "Provincial Rights," to the undiscriminating mind, seemed to apply as well to a case of disallowance of provincial legislation by the Dominion Government, as to a case in which an appeal lay through the initiative of the Dominion Government, to the Dominion Parliament. The difference is, of course, very great. In the one case the executive at Ottawa sits in judgment, without benefit of debate, upon provincial legislation. In the other, it is the representatives of the people of the whole Dominion, that sit to discuss and determine

an appeal from the representatives of the people of a single province. The provision seems to have much to recommend it, if it be, as it is, confined to cases in which racial or religious questions may arise. At all events it was, as we have seen, much thought of and appealed to by Protestants, when the Catholic Province of Quebec passed the Jesuits' Estate Act. It became in their eyes an odious instrument of oppression only when applied to the relief of the Protestants in Manitoba.

The Dominion Government then had to face the facts (1) that Manitoba in passing the School Act has acted within her jurisdiction; (2) that the Catholics are in the Dominion but a minority; (3) that interference with "provincial rights" is unpopular, and especially so in Manitoba; and (4) that many of the government's own supporters will undoubtedly refuse to follow it in any attempt to interfere. Upon the other hand, the government sees that, although the Catholics are in the minority, they are more compact than is the majority; that the Catholics in defence of their religion will in large numbers forsake, for the time, their political allegiance and vote as the occasion may require. But above and beyond that, as we shall trust, it sees that Canada's hope for the future lies not in discord and disorder but in that unity which can only be maintained, in mixed populations, by a large-minded spirit of fair play, mutual concession and a generous respect for the opinions and sentiments of their fellow-countrymen.

The government, meanwhile, has been prevoyant and forehanded. It has endeavored to disarm attack by an exhibition of respect and tenderness for provincial feeling. On the 26th of July, 1894, it passed an order-in council which, after reciting the petition of the Catholics, declared as follows:

"The committee beg to observe to your excellency that the statements which are contained in this memorial are matter of deep concern and solicitude in the interests of the Dominion at large, and that it is a matter of the utmost importance to the people of Canada that the laws which prevail in any portion of the Dominion should not be such as to occasion complaint of oppression or injustice to any class or portion of the people, but should be recognized as establishing perfect freedom and equality, especially in all matters relating to religion and religious belief and practice; and the committee, therefore, humbly advise that your excellency may join with them in expressing the most earnest hope that the Legislature of Manitoba, and of the northwest territories respectfully may take into consideration, at the earliest possible moment, the complaints which are set forth in this petition, and which are said to create dissatisfaction among Roman Catholics, not only in Manitoba and the northwest territories, but likewise throughout Canada, and may take speedy measures to give redress in all the matters in relation to which any well founded complaint or grievance be ascertained to exist."

To this order-in-council the Manitoba Government made reply (20th October, 1894), among other things declaring:

"The questions which are raised by the report under consideration have been the subject of most voluminous discussion in the Legislature of Manitoba during the past four years. All of the statements made in the memorial addressed to his excellency the Governor-General and many others have been repeatedly made to and considered by the legislature. That body has advisedly enacted educational legislation which gives to every citizen equal rights and equal privileges and makes no distinction respecting nationality and religion. After a harassing legal contest the highest court in the British dominion has decided that the legislature in enacting the law of 1890 was within its constitutional powers and that the subject of education is one committed to the charge of the provincial legislature. Under these circumstances the executive of the province sees no reason for recommending the legislature to alter the principles of the legislation complained of. It has been made clear that there is no grievance, except it be a grievance that the legislature refuses to subsidize particular creeds out of the public funds, and the legislature can hardly be held to be responsible for the fact that their refusal to violate what seems to be a sound and just principle of government creates in the words of the report dissatisfaction amongst Roman Catholics, not only in Manitoba and the northwest territories but likewise throughout Canada. . . . . The government and legislative assembly would unitedly resist by every constitutional means any such attempt to interfere with their provincial autonomy."

The legislative Assembly at its next meeting approved of the following clause in the "Speech from the Throne" (somewhat equivalent to the Governor's message):

"By the judgment of the Judicial Committee of the Privy Council, recently pronounced on an appeal from the Supreme Court of Canada, it has been held that an appeal lies to the Governor-General in Council, on behalf of the minority of this province, inasmuch as certain rights or privileges given by prior provincial legislation to the minority in educational matters had been affected by the Public School Act of 1890; and that therefore the Governor-General in Council has power to make remedial orders in respect thereto. Whether or not a demand will be made by the Federal Government that the act shall be modified is not yet known to my government. But it is not the intention of my government in any way to recede from its determination to uphold the present public school system, which if left to its own operation would, in all probability, soon become universal throughout the province."

Later in the session it adopted the following resolution:

"While this House loyally submits itself to the provisions of the constitution as interpreted by the Judicial Committee of Her Majesty's Council, it is hereby resolved that the exercise of appellate jurisdiction by the Governor-General in Council, in such way as to lead thereafter to the alteration of the principles upon which the public school system of Manitoba is founded, will be viewed with great apprehension; that interference by the Federal authority with the educational policy of the province is contrary to the recognized principles of provincial economy; that this House will, by all constitutional means, and to the utmost extent of its power, resist any steps which may be taken to attack the school system established by the Public School Act of 1890 which is believed to be conceived and administered in the highest and best interest of the whole population of the province of Manitoba."

Notwithstanding this defiant attitude, the Dominion Government (its jurisdiction having now been well established), appointed a day for the hearing of counsel for the Catholic minority, in support of their petition of appeal, and of counsel for the Manitoba Govern-

ment. The argument lasted four days, and on the 19th March the Dominion Government gave its judgment by passing an order-in-council, the pith of which is to be found in the following sentences:

"The committee, therefore, recommend that the said appeal be allowed, and that Your Excellency in Council do adjudge and decide that by the two acts passed by the Legislature of the Province of Manitoba on the 1st day May, 1890, entitled respectively 'An Act respecting the Department of Education,' and 'An Act respecting the Public Schools,' the rights and privileges of the Roman Catholic minority of the said province, in relation to education, prior to the 1st day of May, 1890, have been affected by depriving the Roman Catholic minority of the following rights and privileges which, previous to and until the 1st day of May, 1890, such minority had, viz.:

(*a*) "The right to build, maintain, equip, manage, conduct and support Roman Catholic schools, in the manner provided for by the said statutes, which were repealed by the two Acts of 1890 aforesaid.

(*b*) "The right to share proportionately in any grant made out of the public fund for the purposes of education.

(*c*) "The right of exemption, of such Roman Catholics as contribute to Roman Catholic schools, from all payment or contribution to the support of any other school.

"And the committee also recommend that Your Excellency in Council do further declare and decide that, for the due execution of the provisions of Section 22 of 'The Manitoba Act,' it seems requisite that the system of education embodied in the two Acts of 1890 aforesaid, should be supplemented by a Provincial Act or Acts, which would restore to the Roman Catholic minority the said rights and privileges, of which such minority has been so deprived as aforesaid, and which would modify the said Acts of 1890, so far and so far only, as may be necessary to give effect to the provisions restoring the rights and privileges in paragraphs (*a*), (*b*) and (*c*) hereinbefore mentioned.

"The committee further and for the reasons hereinbefore stated recommend that if Your Excellency in Council should be pleased to approve of this report, Your Excellency in Council do make an order in the premises in the form and to the effect as set forth hereunto submitted."

The order referred to in the last sentence was passed (21st March). It is generally known as the "Remedial Order." It recites the order-in-council just quoted; makes the declaration contained in it; and requires "all persons whom it may concern to take notice and govern themselves accordingly."

The local Legislature replied with a resolution (June), in which it is said:

"We are therefore compelled to respectfully state to Your Excellency in Council that we cannot accept the responsibility of carrying into effect the terms of the Remedial Order."

Much objection was made to the Remedial Order. Not merely was the whole proceeding obnoxious to very many; but to the scope of the remedy suggested, and to the phraseology of the document was violent opposition offered; and it was, and has been, absolutely impossible to remove the misapprehension upon which almost all such opposition is based. For the chief misconception,

the Manitoba charter is itself largely to blame. It says that, "An appeal shall lie to the Governor-General in Council." The appeal is in reality not to the Governor-General, but to the Parliament of Canada. The only function performed by the Governor-General is the preliminary one of deciding whether or not, in any particular case, a religious minority is to be permitted to appeal to Parliament. If this be true it would be altogether improper for the Governor-General, in granting leave to appeal, to limit the petitioners as to the extent of the relief that they were to ask, and in consequence to limit the jurisdiction of Parliament when dealing with the subject. The Governor-General then was right in permitting the petitioners to carry to Parliament their whole claim. To the objection that the phraseology was unnecessarily harsh and overbearing, it is sufficient to say that it follows the language of the statutes, and that if it had not done so it would not have been effectual for the purpose intended. In order that the Federal Parliament may acquire jurisdiction there must have been a formal and precise declaration of the Governor-General and a refusal by the Local Legislature to comply.

The Dominion Parliament was in session when the resolution containing the refusal of the Legislature reached Ottawa. The steps necessary to give to Parliament jurisdiction to restore to the Manitoba Catholics the rights and privileges taken away from them had now been completed, and it remained merely to introduce the bill and, if possible, to pass it. At this point the government hesitated. It was found impossible to remove the prejudice aroused by the form and phraseology of the Remedial Order. Many who either knew, or should have known better, declared that it was tyrannous, and should be superseded by something more conciliatory. Even many of the friends of the Catholics were misled in this way. The session, too, was far advanced, and the preparation and passage of a lengthy school act would necessitate a tedious prolongation of work to men already exhausted by the labors and heat of the summer. Among the members of the government, also, there was much difference of opinion. Some of the Catholic members insisted upon the immediate introduction of legislation. Some of the Protestant members were rigidly opposed to hasty action. Three Catholic ministers resigned in consequence of the disagreement, but two of them afterwards returned, and the government policy was announced as follows:

"Though there may be differences of opinion as to the exact meaning of the reply in question, the government believes that it may be interpreted as holding out some hope of an amicable settlement of the Manitoba school question on the basis of possible action by the Manitoba Government and legislature; and the Dominion Government is unwilling to take any action which can be interpreted as forestalling or pre-

cluding such a desirable consummation. The government has also considered the difficulties to be met with in preparing and perfecting legislation on so important and intricate a question during the last hours of the session. The government has, therefore, decided not to ask Parliament to deal with remedial legislation during the present session. A communication will be sent immediately to the Manitoba Government on the subject, with a view to ascertaining whether that government is disposed to make a settlement of the question which will be reasonably satisfactory to the minority of that province, without making it necessary to call into requisition the powers of the Dominion Parliament. A session of the present Parliament will be called together to meet not later than the 1st Thursday of January next. If by that time the Manitoba Government fails to make a satisfactory arrangement to remedy the grievance of the minority, the Dominion Government will be prepared at the next session of Parliament to be called, as above stated, to introduce and press to a conclusion such legislation as will afford an adequate measure of relief to the said minority, based upon the lines of the judgment of the Privy Council and the remedial order of the 21st of March, 1895."

A few days after this announcement, Mr. Dalton McCarthy moved: "That all the words after 'That' be left out, and the following inserted instead thereof:

"This House has heard with regret the statements recently made defining the policy of the government respecting the Manitoba school question, and is unwilling by silence to allow it to be assumed that, at the session to be held in January next, any more than at the present session, it is prepared to pass a law to restore the system of separate schools in Manitoba on the lines of the remedial order of the 21st of March, 1895."

The debate which ensued was confined almost exclusively to the members upon the government side of the House, and the difficulties to be encountered became manifest as some of the best men in that party announced that they would be unable to support the government's proposition if made at the ensuing session. Almost everybody, however, was agreed that, as one member put it, "It is time enough to say good morning to His Majesty when you meet him," and that the troublesome question should be postponed until January. Mr. McCarthy was unable to get sufficient support to call for a division.

This brings the history of the Manitoba school case down to the present time. It is to be hoped that the Provincial Government will, during the interval, agree to remedy the grievances. If it do not, there can be little doubt that remedial legislation will be passed at the next session of the Federal Parliament. This may, and no doubt will, lead to further litigation, but the stronger hand of the Dominion must prevail, and justice and right, so long delayed, be awarded to the Roman Catholic minority in the province of Manitoba. The ghost must down again.

JOHN S. EWART, Q. C.

WINNIPEG, MANITOBA.