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## SUPREME COURT OF CANADA.

OTTAWA, June 28, 1892.

New Brunswick.]

NORTH BRITISH & MERCANTILE INS. CO. v. MCLELLAN.

*Fire Insurance—Insurable interest—Property in goods—Construction of contract—Statement in application—Warranty or representation—Breach of condition—Evidence.*

By a contract in writing M. agreed to cut and store a certain quantity and description of ice, the said ice houses and all implements to be the property of P. who, after the completion of the contract was to convey the same to M.; the ice was to be delivered by M. on board vessels to be sent by P. during certain months; P. was to be liable to accept and pay for only good merchantable ice delivered and stowed as agreed. The property on which the buildings for storing said ice were situate was leased to P. by the owner, the lease containing a covenant by the owner to grant a renewal to M. A bill of sale was made by him to a third party of the buildings on said land. M. effected insurance on the whole stock of ice stored, and in his application, to the question, does the property to be insured belong exclusively to applicant, or is it held in trust or on commission, or as mortgage? "he answered: Yes, to applicant." The application contained a declaration that the same was a just, full and true exposition of all the facts and circumstances in regard to the condition of the property so far as known to the applicant and so far as material to the risk, and it was to form the basis of the liability of the company.

The property insured was destroyed by fire, and payment of

the insurance was refused on the ground that the property belonged to P., and not to M. In an action on the policy, the defendants endeavoured to prove that other insurance on the same property had been effected by P., and set up a condition in the policy that in such case the company should only be liable to pay its ratable proportion of the loss. This condition was not pleaded, and the policies to P. were not produced nor the terms of his insurance proved. Evidence was given, subject to objection as to its admissibility, that P. had effected insurance to cover advances made to M. on the ice, and had been paid his loss. The plaintiff obtained a verdict for the full amount of his policy, which was affirmed by the Supreme Court of New Brunswick in banc.

*Held*, affirming the decision of the Court below, that the whole property in the ice insured was in M.; that the clause in the agreement stating that the ice houses and implements were to be the property of P. meant that the buildings and implements only were to pass to P. as he was to convey the property vested in him by the agreement to M. on completion of the contract, and could not so convey the ice, which M. was to deliver on board vessels, and which he could not do unless it was his property.

*Held*, further, that the declaration in the application did not make M. pledge himself to the truth of the statements therein absolutely, but only so far as known to him and as material to the risk, and questions of materiality and knowledge were for the jury who found them in favour of M.

*Held*, also, Strong, J., dissenting, that the declaration was not a warranty of the truth of the statements, but a mere collateral representation.

*Per* Strong, J.—It was a warranty, but as it was confined to matters within the knowledge of M. and material to the risk, the result is practically the same.

*Held*, as to the further insurance, that the condition should have been pleaded, but if available without plea it was not proved; what evidence was given should not have been received.

*Per* Strong, J.—It was not shown that P.'s insurance was on the ice insured by M., who was not bound to deliver any specific ice under the contract.

*Per* Gwynne, J. — The damages should be reduced by the amount received by P.

Appeal dismissed with costs.

*Weldon*, Q.C., and *Jack* for appellants.

*F. E. Barker* for respondent.

June 28, 1892.

Ontario.]

TOWNSHIP OF SOMBRA v. TOWN OF CHATHAM.

*Municipal corporation—Drainage work—Non-completion—Mandamus—Ontario Mun. Act (R.S.O., 1887, c. 184, s. 583—Ont. Jud. Act (R.S.O., 1887, c. 44.)*

The corporation of the town of C., by by-law, undertook the execution of a scheme of drainage on a road between the town of C. and the township of S., pursuant to a report of an engineer appointed to examine the land proposed to be drained. A surveyor was appointed to execute the work by letting it out under contract, which he did, but the contractors were unable to carry it out, and abandoned it. The work was then let in parcels to different contractors. An action was brought against the town of C. by the township of S. and one M., a landowner whose land was alleged to have been injured by flowing caused by the wrongful and negligent manner in which the drainage work was done. The plaintiffs claimed that the work was never fully executed, and each asked for a *mandamus* to compel the defendants to complete it according to the plans and specifications adopted by the by-law. M. also claimed damages for the injury to his land.

The trial resulted in a judgment for plaintiffs for all the relief claimed, the decree directing that the work be completed according to the plans and specifications with proper and sufficient outlets at both ends of the drain to carry off all the water entering the same from time to time, the same to be done at the cost of the defendants. To M. was awarded $150 damages. The Court of Appeal (18 Ont. App. R. 252) reversed this judgment so far as the township of S. was concerned, and dismissed the action of the township. The judgment in favour of M. was affirmed. The plaintiffs appealed and the defendants gave notice of cross-appeal against the judgment in favor of M.

*Held*, reversing the judgment of the Court of Appeal, Taschereau, J., dissenting, and Patterson, J., with hesitation, that the township of S. was entitled to retain the *mandamus* or mandatory injunction granted by the original decree, and that it was entitled to such relief, irrespective of s. 583 of the Mun. Act (R. S.O. 1887, c. 184), under the Ont. Jud. Act (R.S.O. 1887, c. 44); the decree to be varied by striking out the direction that the work should be done at the cost of defendants, which is only

warranted where the original assessment was sufficient to cover the cost, and the fact that the contractors were unable to do the work could only be explained on the assumption that the amount was insufficient; the decree to be further varied by striking out the provision as to outlets, and to direct a mandatory injunction to issue requiring defendants to complete the drain to the width and depth and in the manner provided by the said plans and specifications, or providing some substitution therefor under the statute, reserving leave to plaintiffs to apply for further relief as occasion may require if the work is not proceeded with as directed.

Under s. 583 of the Mun. Act, a *mandamus* only issues where one of two municipalities bound to repair refuses to do so after notice. In such case *mandamus* is a remedy in addition to an action by the owner of property injured by such refusal. Damage from neglect after notice is conclusive evidence of negligence.

The section has no reference to a case in which the drainage work has never been fully completed.

The township of S. could not claim pecuniary compensation for negligence causing injury to private land or even causing a general nuisance. Its right to such compensation is confined to cost of repairing and restoring roads washed away by floods caused by such negligence.

Appeal allowed with costs and cross-appeal dismissed.

*Meredith, Q.C.*, for appellants.

*Pegley, Q.C.*, for respondents.

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June 28, 1892.

Ontario.]

PENMAN MFG. CO. v. BROADHEAD.

*Contract—Manufacture of patented articles—Substitution of new agreement for—Evidence.*

B. was the patentee of a machine called the Windsor Loom, for making skirtings, etc., and in 1884 she entered into an agreement with the defendant company to supply them with the looms on which they were to manufacture the goods and pay a royalty of one cent a square yard thereon, the minimum of such royalty to be $50 a month. The patent of B. was to expire in 1891. Prior to this agreement, in 1882, B. had granted to P., the head of the defendant company, a license to manufacture blankets under another

patent for a like royalty. These agreements were carried out until 1887. In the meantime B. had patented another device for making blankets, and considerable correspondence had taken place between her and the company with regard to the manufacture of the latter patented article, and the company, who had been unable to sell the skirtings, offered to take both patents for a year, paying therefor $1,000 royalty, which B. accepted. At the end of the year B. claimed that the original agreement was still in force and was to continue until the patent expired, and she brought an action for royalties due her under the same.

*Held*, reversing the judgment of the Court of Appeal, Taschereau, J., dissenting, that the correspondence and other evidence showed that the agreement made in 1887 was in substitution for, and superseded the original agreements, and B. had no right to claim any royalty under the latter.

Appeal allowed with costs.

*Crerar, Q.C.*, for appellants.
*Masten & Moffatt* for respondent.

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## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, July 30, 1892.

*Coram* LORD WATSON, LORD HANNEN, LORD MACNAGHTEN, LORD SHAND, LORD MORRIS, SIR RICHARD COUCH.

CITY OF WINNIPEG v. BARRETT.—CITY OF WINNIPEG v. LOGAN.*

*Constitutional law—The Manitoba and B. N. A. Acts—Denominational schools in Manitoba—Right of Roman Catholic or English Church thereto—Manitoba Schools Act of* 1890.

1. *The Manitoba Public Schools Act of* 1890, 53 *Vic. cap.* 38, *is* intra vires *of the Legislature of that Province.*
2. *The provisions of subsections* 2 *and* 3 *of section* 22 *of the Manitoba Act 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.*
3. *The establishment of a national system of education upon an unsectarian basis is not 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.*

*3 W. L. T., 147.

4. *There were no rights or privileges with respect to denominational schools existing by law or practice in Manitoba at the time of the Union with Canada, which were prejudicially affected by said Public Schools Act.*

5. *The schools established by said Act are not Protestant schools but unsectarian schools, and no right or privilege of any denomination is prejudicially affected by the fact that, owing to religious convictions, its members feel compelled to support their own separate schools, and find themselves unable to partake of the advantages of the public unsectarian schools for which they are taxed in common with other denominations.*

6. *The word "practice" in subsection 1 of section 22 of the Manitoba Act is not to be construed as equivalent to "custom having the force of law."*

The Manitoba Act, sec. 22, provides :

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.

(2) 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.

(3) 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 the section 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 require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section.

The B. N. A. Act, sec. 93, provides :

(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 in the Province at the union.....

By the "Act respecting the Public Schools" and the "Act respecting the Department of Education," both assented to on March 31, 1890, the Legislature of Manitoba purported to abolish the system of Separate Schools for Protestants and Roman Ca-

tholics, which at that time was in existence in said Province, and established instead a system under which the public schools were organized in all the school districts without regard to the religious views of the ratepayers.

The City of Winnipeg on July 14, 1890, passed a by-law, No. 480, to authorize an assessment for city and school purposes in that city for the current municipal year. On July 28 another by-law, No. 483, was passed amending the former by-law.

On October 7, 1890, one John Kelly Barrett, a Roman Catholic ratepayer of said city, obtained, under Municipal Act, 53 V., c. 51, s. 258, a summons for an order to quash said by-laws for illegality, and that upon the following among other grounds:

1. That because by the said by-laws the amounts to be levied for school purposes for the Protestant and Catholic schools are united, and one rate levied upon Protestants and Roman Catholics alike for the whole sum."

No other ground was stated.

On November 24, 1890, the Hon. Mr. Justice Killam delivered judgment in the matter and made an order dismissing the summons with costs. (1 W. L. T. 157.)

The applicant appealed to the Full Court of Queen's Bench for Manitoba from the judgment of Killam, J., and on February 2, 1891, the last mentioned Court, (Taylor, C. J., Dubuc and Bain, JJ.,) gave judgment dismissing the appeal with costs, Dubuc, J., dissenting. (1 W. L. T. 195.)

Barrett thereupon appealed to the Supreme Court of Canada, which on October 28, 1891, gave judgment unanimously in his favour, over-ruling the judgments of the Manitoba Courts.

Shortly thereafter the respondent Logan, a member of the Church of England, and a ratepayer, made application to quash by-law No. 514, of the city of Winnipeg, for levying and raising the assessment for the year 1891, on the grounds "(1) That by the said by-law the amount estimated to be levied for school expenditure is levied upon members of the Church of England and all other religious denominations alike. (2) That it is illegal to assess members of the Church of England for the support of schools which are not under the control of the Church of England, and in which there are not taught religious exercises prescribed by said church."

The affidavit filed in support of the application alleged that at the time of the union with Canada of what is now the province of Manitoba, there were in operation a number of parochial

schools, in which the distinctive principles and doctrines of the Church of England were taught, and which were supported by members of that church, and out of the funds of the church.

The Full Court of Queen's Bench for Manitoba on December 14 last, gave judgment in the applicant's favour, following the Supreme Court's decision in *Barrett* v. *Winnipeg, supra*, and holding that the members of the Church of England in Manitoba had the same right to denominational schools as the Roman Catholics. (3 W. L. T. 11.)

The City of Winnipeg appealed from the judgment of the Supreme Court in the first case and from the judgment of the Court of Queen's Bench, founded on that of the Supreme Court, in the second.

The appeals were argued (July 12-15) before the above members of the Committee.

*Sir Horace Davey, Q. C., Dalton McCarthy, Q. C.* (Canadian Bar), and *Joseph Martin*, (Canadian Bar) for the appellants.

*The Attorney General, S. H. Blake, Q. C.*, (Canadian Bar) *J. S. Ewart, Q. C.*, (Canadian Bar) and *F. C. Gore* for respondent Barrett.

*Ram* for respondent Logan.

The facts, other than those above stated, sufficiently appear in the judgment which was delivered by Lord Macnaghten as follows :—

LORD MACNAGHTEN :—

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 by-laws 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 and 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 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."

Then follow two other subsections. Subsection 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." Subsection 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 subsections 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. Subsections 1, 2 and 3 of section 22 of the Manitoba Act, 1870, differ but slightly from the corresponding subsections of section 93 of the British North America Act, 1867. The only important difference is that in the Manitoba Act, in subsection 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 that 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 on which all parties are agreed. The statement on the subject by Archbishop Taché, 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 con- "trolled by the Roman Catholic church, and others by various "Protestant denominations. The means necessary for the sup-

" port 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 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 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 to 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 the 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 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 prac-

tice" 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 ascribe 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. 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, Protestant and Roman Catholic. Each section was to have under its control and management the discipline of the schools of the section. Under the Manitoba Act the province had been divided into twenty-four 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. Twelve electoral divisions, "comprising mainly a Protestant population," were to be considered Protestant school districts; twelve, "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 schools, 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 the 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 a 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 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 Vict. 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 Vict. c. 38) enacted that all Protestant and Roman Catholic school districts should be subject to the provisions of the act, and that all the 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 any 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 the school districts, for the election of the 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 favour if the assets of their district exceeded its 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 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 favourable 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 members of the Church of England find themselves unable to partake of the 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 views 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 condition of school houses, imposing rates for the support of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort. In the result their lord-

ships will humbly advise Her Majesty that these appeals ought to be allowed, with costs. In the *City of Winnipeg* v. *Barrett*, 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.

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## *GENERAL NOTES.*

CRIME IN THE UNITED STATES.—It has to be confessed that there is a larger number of crimes of violence committed in the United States than in any other civilized country in the world. The number of such crimes is out of proportion to the population. President Andrew D. White, in a lecture addressed at Chautauqua, discussed the whole problem in this country. The number of deaths by murder in the United States is more than double the average in the most criminal countries in Europe, and the number is increasing apparently in a ratio much greater than the population. In 1890 the number of reported murders was about four thousand; in 1891 very nearly six thousand. The chief explanation of these extraordinary numbers is even more ominous. The great majority of the murderers are at large; they never have been punished, and never will be. In 1891, with nearly six thousand murders, there were only one hundred and twenty-three inflictions of the death penalty, only one to forty-eight murders. It is evident that the lax administration of the law is a chief cause for what we discover. There are portions of our country where murderers are seldom punished. That is true in some of our large cities. The lax administration of the law and the delay which our local methods allow, are responsible for an enormous amount of the evil. Men kill and expect to go free, and they succeed. The Charleston *News* deserves great credit for its effort to expose the homicidal mania in South Carolina. It had occasion to record fifty-two murders in the first six months of last year, as a result largely of a lax administration of the law. We suppose there is, on an average, about one man lynched a day in the United States. To be sure these things are confined to sections of the country. In some portions we hear nothing of them, but the grand aggregate makes a record which is terrible to contemplate. We need legislation which shall make justice more swift and sure in the interests of the public instead of in the interests of the criminal, and then we need more elementary instruction in morals in all our schools, from the lowest to the highest, and more preaching of righteousness in our pulpits.—*The Independent*.