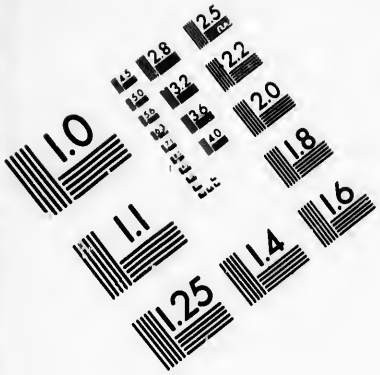

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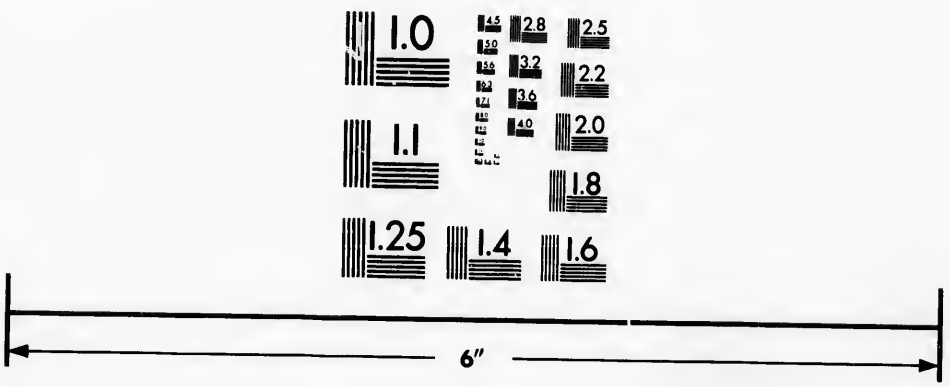

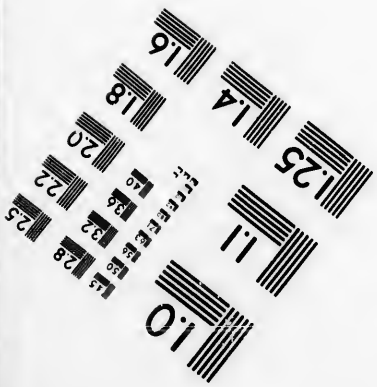

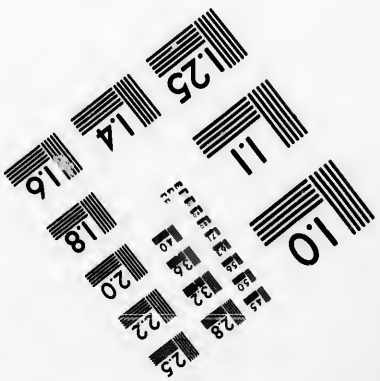

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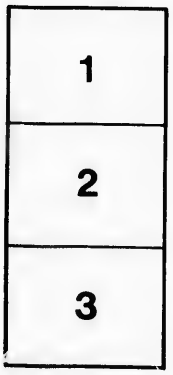

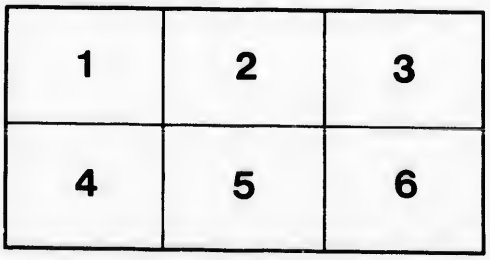

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BATHURST SCHOOL CASE.

THE JUDGMENT OF HIS HONOR,

MR. JUSTICE BARKER,

DELIVERED IN THE

SUPREME COURT IN EQUITY,

OF

NEW BRUNSWICK,

17th MARCH, 1896.

J. & A. McMILLAN,
ST. JOHN, N. B.

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ST. JOHN, N. B.

In the Supreme Court in Equity

OF NEW BRUNSWICK.

ROGERS, *ET AL.*

v.

THE TRUSTEES OF SCHOOL DISTRICT No. 2, OF BATHURST.

JUDGMENT OF MR. JUSTICE BARKER.

Delivered March 17th, 1896.

Argument was heard December 10, 11, 12, 1895.

C. N. SKINNER, Q. C., and GEORGE W. FOWLER, for the Plaintiffs.

L. A. CURREY, Q. C., and R. A. LAWLOR, for the Defendants.

BARKER, J.

The Bill in this case alleges that the Plaintiffs William Rogers, Andrew Norman DesBrisay, Thomas Edwin Carter, John Alexander and Samuel Gammon are seized in fee as joint tenants of a lot of land in the Town of Bathurst, in the County of Gloucester, and that they hold the same in trust for the sole use of Fowler Loyal Orange Lodge, No. 123, and to permit that lodge to use and possess the said land, and to erect a building thereon, to be used as an Orange Hall or otherwise as the lodge might determine. That a building was erected on the lot, which is used as proposed. That the Defendants in the year 1893 made an assessment upon the School District No. 2, to the amount of $1,600 for district school purposes, of which sum $10.80 was laid and levied on the land held by the Plaintiffs. That in the year 1894 the Defendants made a further assessment for district school purposes upon the said district for the sum of over $1,000, of which sum $10 was laid and levied on this lot held by the Plaintiffs. That there are over fifty rate-payers in the district, of which

a small majority are Roman Catholics, though the largest amount of assessable property in the district is owned by Protestants. That the Defendants for a period exceeding five years, have conducted the common schools in District No. 2, and enforced the assessment laid on the rate-payers for that purpose, and that they intend to continue conducting the schools and levying the assessments necessary for the purpose in the future as they have during the past five years. The Bill in the 8th, 9th and 10th sections alleges that the Defendants have not, during the past five years, conducted the schools as non-sectarian schools, that they are not now so conducting them, and that it is their intention to continue to conduct them as sectarian schools. In section 14 it is alleged, that during the past five years and upwards, the Defendants conducted and maintained the schools of the district "in the interests of the Roman Catholic Church, and for the purpose and with a view and intention to promote and secure the prosperity of the said the Roman Catholic Church, and assist in the spreading, maintaining, inculcating and securing the supremacy of the teachings of the religion and doctrines of said church, and imbuing the minds of the children of Protestant parents being taught in said School District No. 2, in said schools, with the doctrines, policy and teachings of said church, and to bring the children of such Protestant parents under the influence of the religion, doctrines and modes of belief taught by the religious teachers and priests, bishops and ecclesiastics of said church." In the 15th section it is alleged that the Defendants are now conducting these schools for the same purposes and with the same intention as is set out above; and in section 16 it is alleged that the Defendants purpose and intend to continue conducting and maintaining these schools for the same purposes and with the same intention. The Bill then goes on to allege specific facts to show how the schools have been and at present are carried on as sectarian schools. These will necessarily be more fully stated when I come to deal with the evidence, but they may be briefly stated thus: (1) The renting by the Defendants of the Convent school house from the Bishop of Chatham, which building it is alleged "is a sectarian school house and sectarian building, built by the ecclesiastical authorities of the Roman Catholic Church for the purposes of promoting the interests of the said church and teaching therein the religion and doctrines of the said church to such pupils as may attend school therein," and it is alleged in this connection that Protestant parents are compelled to send their children to these schools taught in the Convent school

house, or otherwise provide for the education of their children at their own expense in addition to paying their school taxes. (2) The employment by the Defendants, at the instance and request, as is alleged, of the Roman Catholic Bishop of Chatham and other ecclesiastics of the Roman Catholic Church, of Sisters of Charity as teachers in these schools, which Sisters it is alleged "are a body of persons and an 'order' in connection with the Roman Catholic Church, and part of such church for the purpose of teaching the religion of said church, set apart and separate from the world in all senses except for teaching, and it is the duty of said Sisters, under the guidance of the rules of this order and the ecclesiastical authorities of said church, to teach both the elements of a secular education, and in connection therewith, and at the same time a religious education as well." (3) The wearing by the Sisters the garb or dress of their order while teaching "to denote their calling and connection with the said Roman Catholic Church, and that they are so set apart and a part of the order so belonging to the said Roman Catholic Church, and assisting in the teaching of the doctrines and religion thereof." (4) That these Sisters are not known or called by their ordinary names, but "by names that designate them as a religious and teaching order in said church, and as a part of the intellectual force of said church for the purpose of advancing, spreading and maintaining the religion of the said Roman Catholic Church in said School District No. 2." (5) That the Sisters, while employed as teachers, are subject to the control of the Superiors of their order and the ecclesiastical authority of the Priests and Bishops of the Roman Catholic Church, and that the teaching of the Sisters is directed by such control and authority. (6) That the salaries paid to the Sisters under their contracts with the Defendants, though nominally theirs, in reality belong to their order, by whom they are maintained under the direction of the ecclesiastical authorities of the Roman Catholic Church. (7) That it was agreed by the Defendants and the Roman Catholic Bishop, when the arrangement for the employment of the Sisters was originally made, that the Bible should be excluded from the schools taught by them, and that in pursuance of such agreement the Bible has not been read. (8) That the Defendants permit the Priests and other ecclesiastical authorities of the Roman Catholic Church to interfere in the conduct, teaching and management of the schools, and that "these schools are carried on under the supervision, dominance and will of the Priests attending to and looking after the religious interests of the Roman Catholic

Church in the school district." (9) That the Defendants permit the Sisters to teach the religion of the Roman Catholic Church, and the prayers of that church, to be used and offered during school hours. The Bill then alleges that the renting of the Convent school rooms, the alleged arrangement with the Bishop as to the exclusion of the Bible, and the employment of the Sisters as teachers, were all done with the design of maintaining sectarian teaching in the schools, and "with a view," as it is expressed in section 30, "and for the purpose of inculcating, teaching, spreading and enforcing the religion and doctrines and teachings of the Roman Catholic Church." It is also alleged in the Bill that as a result of the manner in which these schools had, by the permission of the Defendants, been conducted, the Protestant children were not only prevented from attending them, but the Protestant rate-payers had been compelled to sustain a private non-sectarian school in addition to paying the taxes levied on them. The specific relief prayed for was as follows: "That the Defendants be restrained from renting said Roman Catholic Convent school buildings for school purposes in said School District No. 2, and from conducting said schools, or any of them, therein; and from engaging and employing said 'Sisters' as teachers of said schools, or any of them, in said School District No. 2; and from allowing the doctrines and religion of the Roman Catholic Church being taught in said schools, or in any of said schools, in said District No. 2; and from allowing the prayers of the said Roman Catholic Church being used in said schools, or any of them, in said School District No. 2 during the school hours, and from conducting said schools, or any of them, in said School District No. 2 as sectarian schools, or in any way other than according to law."

It is unnecessary for me to refer particularly to the answer, for beyond correcting some errors in the Bill as to the assessment and about which there is no dispute, it is simply a denial of the substantial facts put forward and an allegation that the Defendants are carrying on these schools according to law.

Before discussing the main questions involved in this case, there are two preliminary objections which it is as well to dispose of. It was contended that this Bill should have been filed by the Plaintiffs, on behalf of themselves and others in the same interest, and second, that the suit should have been in the name of the Attorney General *ex relatione*. As to the first objection, it is to be remarked that these Plaintiffs have neither alleged nor proved any damage or invasion of right peculiar to themselves, and not common to all others holding the same views; and the averment of

substantial injury is not that the Plaintiffs, but that the Protestants had been compelled by the Defendants' action to support a private sectarian school. I intimated on the argument that the objection if well taken could be met at the hearing by an amendment, and if the Plaintiffs desire to amend they are at liberty to do so.

Reese River Silver Mining Co. v. *Atwell*, 7 *Eq.* 347.

The second objection is I think fatal to this suit. In *Evan* v. *The Corporation of Avon*, 29 *Bea.* 144, the M. R. says that where there is a public trust for the benefit of all the inhabitants, the proper form of suit in the event of a breach of trust is by an information by the Attorney General at the instance of all or some of the persons interested in the matter. The whole of the money collected by the Defendants for school purposes and of which the amount paid by the Plaintiffs is a part, is held in trust for the whole body of inhabitants entitled to school privileges in the district, and not for any particular number or class. Neither can it be said that the interests of the Crown are not involved. Considering the nature of the school regulations; the powers and position of the Board of Education by whom they are made, and the various other ways in which the rights and interests of the Crown are involved in the administration of the School Act as called in question in this suit, and which will become more apparent as the discussion proceeds, this case is one in which in my opinion the Attorney General should be a party. There is, however, I think, no objection even at the hearing to convert a Bill into an information by the Attorney General by way of amendment, if the Attorney General consents.

Caldwell v. *Pagham Harbour Reclamation Co.*, 2 *Ch. Div.* 221.

It is, however, desirable for the convenient determination of this case by a Court of Appeal that I should pass upon the facts and express my opinion on the case upon its merits. Before doing so it will be convenient to see upon what principle this Court acts where an injunction restraining the action of a public body is asked for as here. In *The Attorney General* v. *The Mayor of Newcastle-upon-Tyne*, 23 *Q. B. D.* 492, Lindley L. J. says: "It has been decided that an action at law may be maintained against a municipal corporation upon a contract under its corporate seal, and that judgment in such an action may be recovered against the corporation, even although there may be no funds or other property properly applicable to satisfy the judgment. On the other hand it is clearly settled that a corporation will be restrained by injunction from misapplying its corporate property; and that a municipal corporation will be restrained from applying its

borough fund to purposes not authorized by the Municipal Corporations Act or by some other Act of Parliament. The same principle applies to other funds obtained under the provisions of other Acts of Parliament for purposes defined by those Acts."

Attorney General v. *Aspinwall, 2 M. & C. 613.*

Attorney General v. *Mayor of Norwich, 2 M. & C. 406.*

Now there is no difficulty here in determining as to the Defendants' intention, for they admit that it is their intention to appropriate the school funds in their hands in carrying on and maintaining these schools as they have done in the past, not wilfully or with any such improper design as that with which the Plaintiffs charge them in their Bill; but because such a course is right and lawful. To enable the Plaintiffs to succeed they must therefore establish, that the schools in question as they are being carried on are not non-sectarian schools, and that in applying school funds raised by assessment on the property of Plaintiffs and other rate-payers for the support of such schools, they are misappropriating these funds, and so guilty of a breach of trust. There are, of course, other considerations by which this Court is governed in granting or withholding the extraordinary remedy asked for, but these will be dealt with more conveniently later on.

From the outline of the Bill which I have given it will be seen that the Defendants are charged with having done all that they have done in reference to these so called Convent schools in Bathurst since 1890, *i. e.*, renting the class rooms in the Convent building, employing the Sisters as teachers, allowing the use of the rooms for religious exercises of a sectarian character before and after school hours and other acts of a similar kind, with the deliberate design, as the Bill states it, "of inculcating, teaching, spreading and enforcing the religion, doctrines and teachings of the Roman Catholic Church," or as Mr. Fowler, with somewhat less formality put it on the argument, with the intention of using the School Act as a mere cover for carrying on schools for religious teaching that would be in fact and effect completely under the control of the church and in which the authority of the Trustees would be a mere shadow while the substance remained with the Priest. I have given the evidence on this branch of the case the most careful consideration, all the more so because I knew that the allegation in the Bill had been prepared by those to whom the facts in their minutest details must have become known from the exhaustive investigation made in 1893 by the present Lieutenant Governor when a member of this Court, and I therefore assumed no evidence likely to sustain the allegation had

been overlooked. I do not know that it is material to this case whether any such design existed or not, provided no attempt was ever made to carry it into effect; or, if made, that it failed altogether in accomplishing its object. I can only say that in my opinion the evidence entirely fails in proving any such design or intention as that alleged against the Defendants, either on their part or that of any one else who took part in the transactions. It is disproved by every witness put on the stand who had any knowledge of the subject and was questioned about it; and unless I am to consider their positive assertions as altogether overbalanced by surrounding and attendant circumstances I must hold this part of the Plaintiffs' Bill as disproved. What are these circumstances? The evidence shows that about the year 1864 the Sisters of Charity—members of the same order as those now in the employ of the Defendants—commenced teaching at Bathurst Village, a district near to Bathurst Town, but separate and distinct from it. Though they resided in the village, they taught also in the town, occupying rooms in a building which had been purchased from one Baldwin, and been fitted up for the purpose. This arrangement continued until May, 1871. In the fall of that year, Sisters of Notre Dame came from Montreal and took charge of these schools, and so continued for about nineteen years, down to 1890, when the present arrangement was entered into. Soon after Father Barry's appointment as Priest in charge at Bathurst Town, finding the then existing arrangements inconvenient, he had additions made to the Baldwin property so that the Sisters could reside there as well as teach. This property, originally an hotel, but now converted into a Convent building and used for school purposes, is the building in which are the class rooms rented by the Defendants. Previous to the passing of the Common Schools Act in 1871, and which came into force at the beginning of the following year, the legislature had annually made special money grants to assist certain denominational schools—some sixteen in all are mentioned in the journals of the House of Assembly for 1871—and among them are these Bathurst schools. These special grants were then discontinued. Notwithstanding this the Roman Catholic inhabitants continued to support their Convent schools from 1871 to 1890, and, in addition, to pay the school rates levied on them yearly, for general school purposes under the Act. It is, of course, well known that the school law was distasteful to the Roman Catholic inhabitants of the Province. Its constitutionality was tested before the highest tribunals here and in England—assessments levied under it upon Roman Catholic rate-payers in

many instances could only be collected by resort to extreme measures, and in many cases these assessments were sought to be got rid of altogether. After the lapse of nineteen years, matters had very considerably changed—the school system had become one of the permanent institutions of the country—its advantages were apparent in the increased and marvellously improved school accommodation on all sides, and in the efficient and marvellously improved methods of teaching. A *modus vivendi* has been found in St. John, and other places similarly situated, whereby the advantages of the public schools were being enjoyed by all creeds apparently without friction. Besides this the Roman Catholics in the town of Bathurst were finding the support of the Conventual school in addition to their general school tax a somewhat onerous burthen—the Notre Dame Sisters had insuperable objections to teaching under the School Act—their rules prohibited them even in their own schools from teaching boys, so these must necessarily go to the public schools; and in addition to everything else, they demanded, in case they remained, a substantial advance in salary. These facts and circumstances seem to me to furnish ample reason for supposing that the Roman Catholics of Bathurst then concluded that it was their wisest and perhaps their only feasible course, "to come in under the Act," as the phrase goes, and place all the schools in the district under the control of the Trustees. This would give some ninety additional children for whom school accommodation must be provided by the Trustees, and if the Grammar School building was insufficient for the purpose, it does not seem an unnatural thing that the class rooms in the Convent building rendered vacant by the change, should be rented for the purpose. Neither does it seem to me an unnatural thing, that such additional teachers as might be required should be selected from the Sisters of Charity, as was actually done. Unlike the Sisters of Notre Dame, they had no objections to teaching mixed schools or teaching under the school law as some of them had been doing in Nova Scotia. Teaching was their profession, and their proficiency no one has called in question. The evidence in my opinion shows that in what was done in 1890, when the changes were made, there was an honest intention in all who took part in making them to adopt the school law, and strictly and scrupulously to work under its provisions. At the same time it would be doubting the sincerity of the Roman Catholics in what they had done during the previous nineteen years, to suppose that they were willing or for a moment intended to abandon any right or privilege to which they attached any importance, provided it

could be secured and enjoyed without infringing the law or violating the regulations. If the law has been violated in any of its essential requirements, I see no reason whatever for supposing it to have been done intentionally; much less can I find in the evidence, any warrant for saying that such violation was but the natural result of the dishonest design with which the Defendants and others are charged.

The Plaintiffs' counsel at the hearing formulated nine propositions upon which they relied. These, with two or three exceptions, are substantially the same as the grounds put forward in the Bill, and they contain the reasons why the Plaintiffs say that these schools are sectarian schools. Now, what is a sectarian school? I should say, one in which the particular religious tenets of some sect are taught. Chief Justice Leonard, in the case of *Nevada* v *Halleck*, 16 Nevada, 385, says: "It is what is taught, and not who are instructed, that must determine the question. If the instruction is of a sectarian character, the school is sectarian." Judge Dean, of the Supreme Court of Pennsylvania, in the case of *Spires* v. *The Treasurer, &c., of Gallitzin District*, decided in 1882, says: "Therefore any school established and controlled by a sect which teaches or propagates the peculiar or special doctrines of that sect is a sectarian school." In *Ex parte Renaud*, 1 Pug. 273, the late Mr. Justice Fisher gives the following definition of a denominational school: "It is a school under the exclusive government of some one denomination of Christians, and where the tenets of that denomination are taught." These definitions are, perhaps, not altogether exhaustive, but they are sufficiently so for the purposes of this discussion.

The Plaintiffs' first proposition is that the Defendants rented a building from the Roman Catholic authorities which is known as a sectarian building—is the home of the Sisters and a part of the church property, and as much a church building as a church edifice itself. It is but right to say, not only as to the renting of these class rooms, but also as to some of the other matters complained of, it was not very strongly urged that of themselves they sectarianized the schools; but the argument was that they were parts of a whole scheme or general course of conduct and action which did produce that result. These class rooms were held under a verbal arrangement from 1890 to 1892, subject, I think, to a nominal rent. In 1892 the Defendants entered into the following lease, which is still in force:

"This Indenture made this first day of September, in the year of our Lord one thousand eight hundred and ninety-two, between

the Reverend Thomas F. Barry, of Bathurst, in the County of Gloucester, and Province of New Brunswick, of the one part, and the Trustees of School District Number Two, of the Parish of Bathurst, in the County and Province aforesaid, of the other part. Witnesseth, that the said Thomas F. Barry does hereby lease and demise to the said Trustees of School District Number Two, in the Parish of Bathurst, the three class rooms in the upper flat, together with the hall, stairs, and the entrance thereto, in the building in the Town of Bathurst, being an erection on the property formerly owned by the late Thomas Baldwin, and now in the custody of the said Reverend Thomas F. Barry.

"To Have and to Hold from the day of the date hereof from year to year, the said Trustees paying to the said Reverend Thomas F. Barry the yearly rent of thirty dollars.

"In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

"(Sgd.) THOS. F. BARRY, Pt. [L. S.].

"(Sgd.) J. E. O'BRIEN, [Corporate Seal],
"Sec. School District No. 2, Bathurst."

It is not suggested that in these class rooms there was anything improper. The furniture belongs to the Defendants, and these rooms are fitted up in all respects as ordinary school rooms are. It is not easy to see how the name of a building, in a part of which are class rooms under lease to Trustees of Schools, and used for public school purposes, can render the schools sectarian. It is no more logical to say that schools like these in question are *ex necessitate* sectarian because the building in which they are taught is used like this is as a Convent, than it is to say that a school taught in a room fitted up for the purpose in a barn or a temperance hall is *ex necessitate* non-sectarian. Regulation 10 (I cite from the Manual of 1892) provides for the leasing of rooms in a building, and enacts that they "shall be under the supervision and control of the Trustees, for school purposes, during school hours, and at such other times as the necessities of the school may require." It is well known that the St. John Board of School Trustees have had under lease and in use for school purposes for many years a building owned by the Trustees of the Leinster Street Baptist Church, and which is, in fact, structurally a part of the church edifice itself. It has never been thought, so far as I am aware, that such an arrangement was not fully warranted by the Regulation I have just cited, or that the peculiar tenets of the Baptist denomination were being day by day taught

to the school children by the name, or the design, or the use of the building within which they were assembled.

The second proposition is that the Defendants employed the Sisters of Charity as such, because they are Sisters of Charity and Roman Catholics, for church purposes, and to carry on the mission work of the church.

I can scarcely think that the mission work of the Roman Catholic Church in Bathurst was so carelessly or inefficiently looked after, under Father Barry's supervision, as to require the aid of the Trustees of Schools, and induce a misappropriation of trust funds for the purpose. It is in no sense illegal to employ Sisters of Charity as teachers in the Public Schools. If they comply with the requirements of the law they are as much entitled to employment as any one else. And, in my opinion, where a Sister of Charity is so employed, and discharges the obligation into which she has entered with the Trustees, it is mere impertinence in any Court to inquire whether she is or is not engaged in the mission work of her church at times when she is not engaged in school duties. As to anything like mission work or actual sectarian or religious teaching in the schools during school hours, it is absolutely and positively disproved by the teachers themselves and by every witness who was at all competent to speak on the point. It seems quite beside the question what the negotiations were which resulted in the employment of the teachers. Concede, if you choose, that their employment was directly due to the influence of the Bishop of Chatham and those acting with him, what does it amount to? If it be legitimate to employ Sisters as teachers, surely it cannot be wrong in any one to use his influence to have them so employed. The important question here is what they did while so employed. Did they impart sectarian teaching during school hours, or did they violate either the law or the regulations? If not, what useful purpose can be served by inquiring into all the previous negotiations or discussing whether, in entering into their teachers' contracts with the Defendants, they were influenced by this priest or that? The contracts under which the Sisters are teaching are in the form provided in Regulation 2, the last clause of which provides that both parties to the contract shall be in all respects subject to the provisions of the chapter of the Consolidated Statutes relating to schools, and any Acts in amendment thereof and in addition thereto, and the regulations thereunder made by the Board of Education. If an action were brought by the teacher for her salary, what evidence is there to sustain as a defence that she had

violated either the Act or the Regulations, or that she was teaching a sectarian school? I am unable to see any.

The eighth and ninth propositions are similar in character to the second, and I can deal with them more appropriately here. It is put forward as the eighth point that the Sisters were engaged by the Defendants through the church authorities and the Superior of the Order, remained under their control, were supported by the Order, and could not accept independent employment, but their actions were subject to the direction of their Superiors. The ninth point is, that Protestants have a right to send their children to any and all of the schools of the district without having them brought under the influence of Roman Catholic teaching and sectarian education, as they necessarily are in these Convent schools.

No one will dispute the existence of the right of Protestants substantially as stated in this last proposition. It begs the whole question however, because it assumes that the schools in question are sectarian, which is the whole point in controversy. It appears by the evidence that the Sisters of Charity now teaching, are members of an order, the Mother house of which is in Halifax. As a condition of membership they make certain renunciations of property, and of course agree to be governed by the rules made for the proper management of the order and its affairs. The salaries received by them are devoted primarily to their support and maintenance; and any surplus goes into the general treasury of the order; and where there is a deficiency the same treasury is drawn on to make it up. These facts were dwelt upon at some length as exemplifying how completely these Sisters were under ecclesiastical control, and how little under the control of the Trustees. The obvious answer to this is that by law the Trustees have precisely the same control over them as over any other teachers; and the church authorities do not have, nor do they assume to have or exercise any control over these teachers as to their school work. In what possible way can the ultimate destination of a teacher's salary, or its possible appropriation for religious uses, sectarian in their character, render the school taught by such teacher a sectarian school? In the case of *Hysing* v. *School District, etc., 164 Penn. State Reports*, cited at the argument—a case identical with this in all its material features—the Court say: "Nor does the fact that these teachers (Sisters of St. Joseph), contribute all their earnings beyond their support to the treasury of their order, to be used for religious purposes, have any bearing on the question. It is none of our business, nor that of these

Appellants, to inquire into this matter. American men and women of sound mind, and twenty-one years of age, can make such disposition of their surplus earnings as suits their own notions. We might as well, so far as any law warranted it, inquire of a lawyer, before admitting him to the bar, what he intended to do with his surplus fees, and make his answer a test of admis ion."

The Plaintiffs also attach much importance to the Defendants' action in reference to the school accommodation provided in 1890, as indicating a design to make concessions to the Roman Catholics wholly unwarranted, and involving the District in unnecessary expense. It is said that the Grammar School building was sufficiently large to accommodate all the school children; and, with perhaps one additional teacher, the whole work could have been easily done. More than that, it is alleged that the class rooms in the Convent building are not, as the Trustees knew when they leased them, up to the requirements of the Regulations in the height of ceiling and other particulars. I am not convinced that the Grammar School building is ample for the purpose, but if I were, I should not consider it the province of this Court to supervise the action of the Defendants in any such particular. At all events, the circumstances would require to be very exceptional in their character to warrant it.

It is the spirit and policy of the school law that all such matters should be in the discretion of the Trustees under the Board of Education. The rate-payers who provide the money have ample means of protecting themselves against unnecessary extravagance, and are not likely to be very slow in adopting them. The occupation of the two buildings—the teaching of the parallel grades, and the general arrangement, have the sanction of the Chief Superintendent; and so far as the expense is concerned, the Defendants' action has received the approval of the rate-payers, and the Trustees, who incurred it, have been re-elected. Of the three Trustees, two are Roman Catholics, and one a Protestant—an apparently fair arrangement for a population about two-thirds Roman Catholic. The Plaintiffs, however, find even in this a ground of complaint; and it is asserted that Mr. O'Brien, the Protestant Trustee, and who has been for some years past Secretary of the Board, was a mere tool in the hands of his colleagues and their friends—clay in the hands of the potter. Mr. Skinner speaks of Mr. O'Brien "as a Protestant or a Catholic as he may be wanted to act, or as he wants to act himself—a gentleman of character and shrewdness, who acts with a semblance of doing

justice to the Protestants when he is simply assisting the Catholic majority on the Board of Trustees to handle matters just as they please." Evidence was given as to Mr. O'Brien's history. It seems he was born a Roman Catholic, but afterwards became a member of the Church of England, to which church he still belongs; his wife is a Roman Catholic, and of his six children one-half is Roman Catholic and the other Protestant. One would suppose that a gentleman whose religious balance was so admirably adjusted had especial qualifications for a position in which the rule of the road required such strict observance.

"Steer straight as the wind will allow; but be ready
To veer just a point to let travellers pass.
Each sees his own star—a stiff course is too steady
When this one to Meeting goes—that one to Mass."

It is quite possible that Mr. O'Brien may have made mistakes, and in some respects disappointed the expectations of many of the rate-payers, but these are questions between him and them with which this Court has no right to interfere, unless, as an officer of the Defendants, he has committed them to some unlawful act or course of action.

The third, fourth, fifth and sixth points, which relate to the religious exercises in the schools, may be stated under two heads: (1) That the schools are sectarian by reason of the religious exercises immediately before the opening of the school in the morning and immediately after the closing of the session in the afternoon; and (2) because, by Defendants' permission, these particular schools are closed on certain holy days of the Roman Catholic Church—not regular holidays as fixed by the Regulation. The facts which bear upon the first point are these: Previous to November, 1893, Reg. 20, sec. 6, provided as follows: "The hours of teaching shall not exceed six each day, exclusive of at least an hour allowed at noon for recreation." The Sisters, as well as the Defendants, construed this rule as meaning that the noon hour was not one of the school hours, and religious exercises were therefore permissible during that hour; and as a fact, catechism was taught at the noon hour. To remove all doubt on the question, the Board of Education, on the 10th November, 1893, amended this section by enacting that the term "school hours" should include all the time between the opening and close of the school for the day. The noon teaching was then discontinued, and was not in practice when this suit was commenced. How this religious teaching is conducted is described by Sister Mary Stephen in her evidence. She has been teaching

in the school since 1891. She has charge of the primary department; teaches the first and second grades; has a mixed school, the children varying in age from five to eight years, of whom a small number are Protestants. Her school hours extend from 9.30 a. m. to 3 p. m. She says that she takes the Roman Catholic children into the class room for instruction from about ten minutes to 9 until the school bell rings at 9.25 or 9.30, when all the children come in, the roll is called, and the school work for the day begins. When the afternoon session closes at 3 o'clock, the Protestant children leave. About ten minutes are then spent by the Roman Catholic children in the repetition of the Lord's Prayer or other prayers taken from the Roman Catholic prayer book. By Regulation 23, section 8, it is made the duty of the teacher, "subject to the arrangements of the Board of Trustees, to see that the school house is kept in proper order in respect of cleanliness, neatness, heating and ventilation; and especially *that the school room is ready* for the reception of pupils at least *twenty minutes* before the time fixed for opening the school." It was contended that the occupation of these class rooms for the half hour before opening the school in the morning was a direct violation of this Regulation, because it is impossible that the teacher can perform the duty thereby imposed upon him, of having the room ready for the reception of pupils twenty minutes before the time fixed for opening the school, without having the right to occupy the room for the purpose, which the use of it by the Sisters prevented. More than that, it is said that by a fair construction of the Regulation, any pupil has the right of entering the room at any time during the twenty minutes before the opening of the school, which Protestant children are prevented from doing by the Roman Catholic religious services going on there at that time. It is impossible to expect children to arrive at school on scheduled time as one expects a railway train to do; and it was argued that this Regulation recognized that fact, and the provision of the twenty minutes was made to meet it. I do not feel called upon to express an opinion on this point for reasons which I shall presently state, though I must confess to having been much impressed with the Plaintiffs' argument. The Bill in this case does not ask for relief in consequence of the infringement of a Regulation or in consequence of the school property being used, by Defendants' permission, for illegal purposes. There is no such allegation in the Bill. The sole ground put forward is that the schools, as carried on, are sectarian, and in endeavoring to establish that proposition the Plaintiffs put forward,

among other things, this violation of the Regulation and improper use of the class rooms as rendering the schools sectarian. I can understand how it might be contended that the use of school property for any purposes other than school purposes is illegal *per se*, quite irrespective of any effect on the schools. That point, however, does not arise here, for the use of the class rooms for the purpose of religious teaching is only questioned, and its legality denied, because such use renders these Convent schools sectarian schools. The argument is simply this—that the Roman Catholic religious teaching prefixed to the school work in the morning and affixed to it in the afternoon, virtually and practically become part and parcel of the school work for the day, and thus sectarianize it. I cannot state the contention better than by an extract from Dr. Inch's evidence, given in his examination by Mr. Skinner:

"Q. When it comes to your knowledge that the school rooms are used immediately before and immediately after the opening and dismissal of the school respectively for the purpose of teaching the doctrines of some particular church, whereby the children of any other church must either be brought under that teaching, and the influence that it inculcates, or be sent away, is it allowed to go as a matter of right by the Board of Education?

"A. I wish to say that I have no disposition to evade at all in regard to this matter. I may say this: that as Superintendent of Education, I have not thought it my duty to prohibit the use of a school building for religious meetings, or other moral meetings, after the close of school hours, provided that the Trustees unanimously consented to the use of the building for such purposes. As a matter of fact, throughout the whole Province school buildings are used for holding religious meetings, political meetings, and temperance meetings, in various places, and I have not thought it my duty, even if I had the authority to do so, to interfere in such cases as that, and so it would be in the case of the teaching the Roman Catholic catechism, I would not feel, after school hours, that it was my duty to interfere.

"Q. Take for example—supposing a building is used for a school, and the school is dismissed at 4 o'clock, and after that hour, and what is generally the case when religious meetings are held in school houses, they have nothing to do at all with the pupils as such, or any connection with the school as such, would you not consider it a very different matter from a teacher sending away a portion of his or her pupils and keeping the other portion

as a continuation of the school, so to speak, and teaching religion? Is there not a great difference in a matter of that kind?

"A. I do not see essentially there is a very great difference.

"Q. What do you mean by 'essentially'?

"A. If you called the meeting at 6 o'clock.

"Q. For the public?

"A. For the public, or children, or any one who chose to go, essentially to my mind it does not differ from having the meeting at 4 o'clock for the same purpose—just on the dismissal of the school—to my mind it does not essentially differ.

"Q. If you had sent away a portion of your scholars, and retained another portion, does it not bring up to the mind of those sent away the thought that they are excluded from that which the other pupils get? It must inevitably bring that right up, does it not? You would have to accede to that, I fancy?

"A. In the same way that they may be said to be excluded from a place of worship on Sunday or at other times. Their parents do not wish them to attend.

"Q. Would you say that is just the same as if church on Sunday held at that school house and the children excluded from that?

"A. It differs from it in the fact that the public generally attend in the one case and they are not supposed to attend in the other.

"Q. Is there not a marked difference in the mind of a child and must not the child be influenced to either have an abhorrence of the religion they are sent away from so as not to be taught it, or that they are excluded from something—some benefit—that they ought to reap? One or the other must be brought to them?

"A. I think, naturally, few children would draw such an inference."

After some questions as to objective teaching, the examination proceeds:

"Q. Then the state of things described as existing here are very strong objective lessons from the teaching in connection with the school hours, although immediately after?

"A. I think the pupils of more mature mind at any rate would be drawing inferences no doubt—thinking something of the matter—calling their attention to the subject at least, no doubt about that.

"Q. When these things (it must from the existing state of things and circumstances we are talking about) arise in the presence of the pupil, so to speak, must they not so far as the particular

pupil is concerned turn that school into a sectarian school as contra—distinguished from a non-sectarian school?

"A. I do not think that follows.

"Q. Why not?

"A. Because I draw a distinction between the work done up to the dismissal of the school and whatever may take place after that. The question as I understand it is, 'do I think that the allowing of religious instruction after school hours would make the school a sectarian school?'

"Q. No—question repeated.

"A. I would have to answer that in the negative from my standpoint. I think the very fact that there is a distinction drawn that some of the pupils at the request of their parents remain and others do not remain at that time, would tend to emphasize the distinction of religious belief in the community no doubt, but the fact that they are not allowed to give this religious instruction until after the school hours have closed would emphasize the fact that is forbidden and that it is no part of the school work at all.

"Q. Is not that to that extent a mere evasion of the non-sectarian principle of the School Act?

"A. I do not think I can answer that question. Of course it appears to me that you ignore altogether the fact that certain compromises were made to meet individual views, and for what was supposed to be the general good, and would stand squarely perhaps upon all the original principles of the thing, there might be some questions raised, but to my mind *under the School Law and the Regulations as they exist to-day, it is not regarded by the Board of Education as an evasion at all.* I could not answer that question otherwise."

At another part of the examination the question is asked:

"Q. I do not object to the school houses being used for political or religious meetings in the usual way; but what we do object to is that the Protestant pupil is brought up to the verge of Catholic teaching and then told to go away, and we say, that impresses the child that it is something horrible—that is not intended, but that is the effect, we say, of telling him to go away—and if he has confidence in his teacher, does not the exclusion of him from something, have effect upon him as being an exclusion from some benefit, or otherwise, and tend to destroy the intellect of the child with reference to its future aspirations, and so on?"

"A. I do not agree with you."

It is evident from this that the Board of Education are not only fully conversant with these grounds of complaint, but that they do not consider the religious teaching outside of actual school hours as involving a violation of either the law or the Regulations, or as in any way having the effect attributed to it by the Plaintiffs. This Board composed as it is of the Governor, the Executive Council, the Chancellor of the University of N. B. and the Chief Superintendent of Education, is invested with the fullest powers under the School Act. As the late *C. J. Ritchie in ex parte Renaud*, says: "It, on behalf of the inhabitants of the Province at large, is responsible for the general working of the system." I should require a very clear case before restraining the Defendants from continuing a practice which has the approval of the Board of Education, especially when its determination involved distinctions so subtle and refined, as many of these suggested by Mr. Skinner in the examination, from which I have just given extracts. The legal question to be decided is this: Are the schools converted from non-sectarian to sectarian schools by the religious teaching before and after school hours? The use of the class rooms for the purpose and the alleged violation of Regulation 23, are but evidences of that fact. It seems to be conceded that no such result would follow if a substantial period intervened between the school hours and the closing of the religious teaching in the morning and its commencement in the afternoon. Is not this distinction almost too refined? The hours for opening and closing the schools are fixed and well known; and children of fourteen years of age and under, who are sufficiently astute to acquire a knowledge of the distinctive teachings of the Roman Catholic Church, by the method suggested, are certainly entitled to be credited with knowing the precise time at which they are expected to be at school in the morning, and the precise time at which they are at liberty to leave in the afternoon. Having this knowledge, I am unable to see how a child by seeing some of his fellow scholars remain for religious teaching at the close of the school while he is at liberty to go away, can be in any more danger of thereby imbibing Roman Catholic doctrines, than if he saw the same scholars going to the same room for the same purpose an hour later. What period of time is the Court to fix between the closing of school and beginning of prayers, at which the sectarian influence ceases and the prayers become innocuous? Regulation 22 gives to any teacher the privilege of opening and closing the daily exercises of the school by reading a portion of scripture (out of the Common or Douay version as he may prefer), and by

offering the Lord's Prayer; but no teacher can compel any pupil to be present at these exercises against the wish of his parent or guardian. Now this is something authorized to be done *in* school hours, and part and parcel of the daily school work. Suppose a Roman Catholic teacher in the exercise of this privilege reads the Douay version, and the Protestant pupils withdraw, or a Protestant teacher reads from the common version, and the Roman Catholic pupils withdraw, the sectarian influence—whatever it may amount to—is to my mind, much more marked than in the case of Protestant pupils at the close of the school for the day, going home and leaving their Roman Catholic fellow-pupils in the class to be instructed in their Catechism.

I come now to the sixth ground relating to holy days. The facts bearing on this point are as follows: During the school year there occur three Church Festivals—Ascension Day, Corpus Christi, and one other which, I think, was not mentioned. These are, according to Roman Catholic rules, holy days of obligation. The Sisters, as well as the Roman Catholic children, were therefore under a duty to attend religious services on these days. To meet this difficulty the Trustees consented, so far as the Convent building schools were concerned, that on these three days they should be closed, and three Saturdays—not teaching days—substituted in their place. This course the Defendants justify under Regulation 20, sub-section 3. That Regulation provides that all week days, except Saturdays and some special days mentioned, are teaching days; and by sub-section 3 it is provided that the Board of Trustees are authorized, under certain circumstances, to change teaching days into holidays, and to require the school to be kept in operation on Saturdays instead. These circumstances are (*a*) to allow a teacher to visit another school; (*b*) the illness or other unavoidable absence of the teachers; (*c*) *other extraordinary circumstances which may render the substitution desirable or necessary in the judgment of the Board of Trustees.* It is said that extraordinary circumstances did exist which justified the Defendants in consenting to these substitute days. The circumstances are these: A very large majority of the children attending these schools are Roman Catholics, and while the teachers might be compelled to teach, if required to do so by the Trustees, the children of Roman Catholic parents would not have attended. It was, therefore, thought better to use the substitute days, when all would attend. Besides this, it was said that under section 15 of the Act, the amount apportioned to the Trustees is based upon the average number of pupils in attend-

ance at each school as compared with the whole average number of pupils attending the schools of the county, and the length of time in operation; and if the teachers were compelled to teach on these three holy days to but a small percentage of pupils, the large majority of scholars would not only lose three days schooling, but the average for the purposes of section 15 would be materially reduced.

The point is not put forward in the Bill as a ground for holding the schools sectarian, or in any way as a cause of complaint; and I think in strictness Mr. Currey's objection to my considering it should prevail. There is however nothing in it. I am not sure that the Regulation was intended to provide for a change like this one, practically permanent in its character, and thus amending the Regulation so far as this Bathurst district is concerned. No doubt the change was made to meet the wishes of the Roman Catholic majority on a religious question. It has however much to be said in its favour—it in no way impaired the efficiency of the schools—it in no way altered their character. At most it is a matter of administration which must be left to the Defendants, under the supervising power of the Board of Education.

I pass on to the seventh ground, in which it is alleged that the schools in the Convent building are sectarian because the Sisters wear the distinctive garb of their order during school hours.

It is not denied that Regulation 21, in terms meets this objection; but it is said that this Regulation is *ultra vires*, because, in permitting the garb to be worn, it is permitting that which renders the school sectarian.

It may be assumed that this view is not in accord with that of the Board of Education, or else the Regulation would never have been made or allowed to exist for so many years. I confess that I am wholly unable to concur in the Plaintiffs' view on this question. The garb is the ordinary dress of a Sister, the same as the uniform of a soldier is his, or the dress of a Bishop is his. It is not worn in school for the purpose of teaching anything; it had its origin in a desire for neatness, simplicity and economy. I know of no law in force in this country imposing any limitation whatever upon a man as to the style of male attire he shall adopt, or upon a woman as to the style of female attire she shall adopt, provided always it be modest. To hold that the ordinary garb worn by a Sister of Charity, while engaged in teaching a public school, converts that school into a sectarian school, is in effect either to exclude her from being a teacher altogether, or else to deprive her of the right while teaching of wearing her usual dress.

In my opinion there is no warrant for either the one or the other. What particular dogma of the Roman Catholic Church is taught a child simply by the dress of a Sister of Charity. If the child eventually arrives at the conclusion that the teacher is a Sister of Charity and a member of the Roman Catholic Church, that is a mere fact which might have been made known to her at the outset, one would think without jeopardizing the child's own views. I concede great possibilities to the system of teaching by object lessons, but to ask me to hold that the sectarian doctrines and tenets of the Roman Catholic Church are being inculcated into the minds of Protestant school children simply by their looking upon the garb of the Sister who is teaching them, is asking much more than my belief in the system will warrant. In speaking of denominational schools and the exclusion from school libraries provided under the Parish Schools Act, of all books upon controversial theology, Mr. Justice Fisher, in *Ex parte Renaud* (p. 296), says: "What sort of denominational school would that be, where the master would not be aided in his dogmatic teaching by the writings of men of his own faith?"

One can with more point ask, what sort of a sectarian school would that be where the teacher's dress is the only text book? In my opinion, however, the validity of this Regulation is practically settled by authority. The original Regulation dealing with this subject differed materially from the present. Originally the Regulation provided "that symbols or emblems distinctive of any national or other society, political party, or religious organization, shall not be exhibited or employed in the school room, either in its general arrangement or exercise, or *on the person of any teacher or pupil.*" The present Regulation is as follows: "Symbols or emblems distinctive of any national or other society, political party or religious organization, shall not be exhibited or employed in the school room in its general arrangements or exercises; but nothing herein shall be taken to refer to any peculiarity of the teachers' garb or to the wearing of the cross or other emblem worn by the members of any denomination of Christians or temperance organizations." The original Regulation was in force in 1873, when *Ex parte Renaud* was decided. In that case the constitutionality of the Common Schools Act was attached; and one of the grounds was that this very Regulation took from Roman Catholics a right or privilege which they enjoyed under the Parish Schools Act, thereby rendering it invalid, at least to that extent, by force of the educational clauses in the British North America Act. Though the point for deter-

mination then was the validity of the Act, and not the validity of the Regulation made under the Act, the discussion covered both. As to the Regulation, the late Chief Justice Ritchie, in delivering the judgment of the Court, says (1 Pug. 290): "It may be that the Board of Education have disregarded the general policy of the Common Schools Act, and interfered with the rights of teachers, parents and children, in excluding from the schools alike teachers and pupils who may exhibit on their persons, in dress or ornament, symbols or emblems distinctive of any national or other society, political party or religious organization; for however clear the right of the Board of Education may be to make regulations necessary for the good government and discipline of the schools; to make arbitrary, restrictive regulations, as to the dress or personal adornment of the teachers and pupils, or which are calculated unnecessarily to interfere with the feelings, national, social or religious, in matters not calculated to give any just cause of offence to others or to interfere with good order in the schools, is quite another question. And while it is by no means clear to us, that any power exists in the Board of Education under the Common Schools Act, by regulation, to deprive teachers, parents and children, of their right of access to the free schools of the country, to the support of which they and all others are forced to contribute, unless they submit to such regulation; and though the assumption of such a power of practical expulsion by the Board of Education raises a question involving important and delicate rights—rights which in this land of civil and religious freedom, few may be willing to see infringed—or at any rate, raising discussions which must be unpleasant to those engaged in them, and calculated to result in consequences which can scarcely fail to produce acrimonious feelings and in the end be injurious to the cause of free education, which we must presume the Regulation objected to was intended to further; all we can say is, as the case stands, the Regulations are not before us in such a way that we can deal with them, and therefore we are not called upon to express any decided opinion as to their validity, because the constitutionality of the Act cannot, in our opinion, be effected by any regulations made under it, there being nothing unconstitutional in the Act itself that we can discover."

It is very clear from this language that the Court thought that Regulation invalid, though the case as presented did not call for a decision of that particular point. Mr. Justice Fisher thought the Regulation within the powers of the Board of Education. As to the unwisdom of the Board in passing it, all the

members of the Court seem to have been of the same opinion, though, being a question of policy, it was not a matter for their determination. The present Regulation, which was passed, I think, in 1877, removes exactly the clauses which a majority of the Court thought rendered the original one invalid, and which all the Judges thought rendered it unwise and impolitic. If a Regulation be bad because it excludes from the schools as teachers those who wear religious emblems as part of their daily and ordinary dress, it surely cannot be a bad Regulation which restores that privilege.

In the case from Pennsylvania already cited (*Hysing* v. *School District*), decided in 1894, the Court dispose of this question as follows:

"But it is further argued that, if the appointment of these Catholic teachers was lawful, they ought to be enjoined from appearing in the school room in the habit of their order. It may be conceded that the dress and crucifix impart at once knowledge to the pupils of the religious belief and society membership of the wearer. But is this, in any reasonable sense of the word, sectarian teaching, which the law prohibits? The religious belief of many teachers, all over the commonwealth, is indicated by their apparel. Quakers or Friends, Ommish, Dunhards, and other sects, wear garments which at once disclose their membership in a religious sect. Ministers or preachers of many Protestant denominations wear a distinctively clerical garb. No one has yet thought of excluding them as teachers from the school room on the ground that the peculiarity of their dress would teach to pupils the distinctive doctrines of the sect to which they belonged. The dress is but the announcement of a fact that the wearer holds a particular religious belief. The religious belief of teachers and all others is generally well known to the neighborhood and to pupils, even if not made noticeable in the dress, for that belief is not secret, but is publicly professed. Are the courts to decide that the cut of a man's coat or the color of a woman's gown is sectarian teaching, because they indicate sectarian religious belief? If so, then they can be called upon to go further. The religion of the teacher being known, a pure unselfish life, exhibiting itself in tenderness to the young and helpfulness for the suffering, necessarily tends to promote the religion of the man or woman who lives it. Insensibly in both young and old, there is a disposition to reverence such an one, and at least to some extent, consider the life as the fruit of the particular religion. Therefore, irreproachable conduct, to that degree, is sectarian teaching. But shall the

education of the children be intrusted only to those men and women who are destitute of any religious belief? * * * In the sixty years of existence of our present school system, this is the first time this Court has been asked to decide, as matter of law, that it is sectarian teaching for a devout woman to appear in a school room in a dress peculiar to a religious organization of a Christian Church. It was not assumed that the fact of membership in a particular church, or consecration to a religious life, or the wearing of a clerical coat or necktie, would turn the schools into sectarian institutions."

These sentiments and opinions are entirely in accord with my own.

I have considered the different points made, and have shown that in my view at all events, the Plaintiffs have failed in proving the schools in question to be sectarian schools; and that whatever objections the Plaintiffs may have to the Defendants' mode of administering the law, are not matters for the supervision of this Court. Mr. Skinner however endeavoured to impress upon my mind that while some of the individual facts relied on as showing the sectarian character of the schools might possibly fail in doing so, the whole of them together forced one to the conclusion that the effect was really what the Plaintiffs allege. I do not agree with this. One certainly is impressed with the fact that concessions in the management of school affairs were made to meet the views of the Roman Catholics for the purpose of harmonizing the grave differences which had existed. If you concede that the Defendants' action has resulted in an unnecessary expense to the rate-payers—that the Grammar School building afforded ample accommodation for all the school children of the district—that the employment of the Sisters as teachers was not only unnecessary, but done solely to meet the preferences of Roman Catholic parents—that the closing of the school on Ascension Day was a mistake, none of these things are in themselves illegal so as to call for the intervention of this Court. The Board of Education has a controlling power over all of them, and its power to withhold its money grant gives it ample means of enforcing its orders. On the other hand, if it be altogether legal to employ Sisters of Charity as teachers—that while teaching they are entitled to wear the usual habit of their order—and that both before and after school hours they may impart Roman Catholic teaching in the manner described, there remains nothing upon which this Court can act.

There is an allegation in the Bill to which some reference

must be made. The 32nd Section alleges that by reason of the schools in the district being conducted in the manner described, the Protestant rate-payers have been compelled to pay school taxes, *but have been deprived* of the right of sending their children to non-sectarian schools, and that they are now sustaining a private school which Protestant children attend. The private school referred to is one conducted in the Orange Hall building standing on the lot owned by the Plaintiffs. Some twenty-five children were attending it when this cause was heard. As school accommodation is furnished nowadays, I judge these premises to be poorly suited for the purpose—in fact the opening of the school seems to have been for a temporary purpose altogether, and in no way as the result of anything in controversy in this suit. The statement in the Bill is quite misleading—it must be regarded simply as an allegation of the pleader. It must be obvious to any one that want of accommodation was not the moving cause. The Trustees are charged with extravagance in renting the class rooms from Father Barry, because the accommodation in the Grammar School building was ample for all the school children in the district. *A fortiori* it was ample for that number, less all who were attending the Convent building. The fact is that the schools in the Grammar School building had got in bad repute for reasons into which it is unnecessary to inquire here. Charges had been made against Cowperthwaite, one of the teachers, by Gammon, one of the Plaintiffs in this case, which eventually led to his dismissal; and complaints had been made in reference to other matters which had considerably impaired the character and efficiency of the schools. Mr. Gammon, one of the Plaintiffs, and who is described as feeling especially aggrieved by all that has taken place, gave the following evidence in his cross-examination—*at page 210:*

"Q. Did your complaint go simply to the acts or conduct of Cowperthwaite, or was it generally to the conduct in the whole School?

"A. The whole school, I presume it was.

"Q. Do you not know?

"A. I am certain that it was to that extent.

"Q. Then it went to the whole school taught in that building?

"A. I referred to the schools taught in that building.

The witness, it must be remembered, is here speaking of the Grammar School, or public school, as many of the witnesses call

it—not the Convent School building. At page 220, when under examination by his own Counsel, he said as follows:

"Q. Mr. Lawlor asked you a great deal about the private school. Tell me the history of its formation—why it was opened or why it was started?

"A. The one reason I had personally myself was, that this public school was run so careless in several ways, it was hardly fit to send children to. I thought so and I intended to keep my children home.

"Q. Then you have stated, have you, any other reason in regard to the matter?

"A. I don't know I had any other reason at the time, only just the careless way the schools were conducted."

It is clear from this evidence that the Convent building schools had nothing whatever to do with the so called private school.

If the allegation in the Bill means, as perhaps it was intended to mean, that as the schools in the Convent building were then conducted, the influences were so Roman Catholic in their character and tendency as to preclude any Protestant child from going there, that is a different question. If I am correct in my view that these schools are not sectarian, that the employment of Sisters as teachers, their wearing their usual garb while teaching, having religious instruction of a sectarian character before and after school hours, and the occupation of rooms in a Convent building under lease for school purposes to the Defendants, are all lawful, or at all events do not render the schools sectarian, it follows as a legal proposition that Protestants have nothing to complain of, because they have everything the law guarantees to them—free education in non-sectarian schools. If their fears of Roman Catholic influences, or their prejudices against the Roman Catholic Church, or their conscientious religious scruples prevent them from accepting what the law offers to them, in common with everyone else, it is their misfortune and no fault of the law. It is simply a case of persons feeling unable, for reasons of whose sufficiency they alone must be the judges, to avail themselves of privileges afforded to them by an Act of Parliament. Many persons, from reasons of a social character, object to sending their children to a public school where they are obliged to mingle, as they say, with the masses and the classes there assembled, and therefore pay their taxes and private tuition fees as well. Such persons are deprived of no right because the classes and masses are thus assembled because the law was not intended to preserve such

social distinctions. Others refuse to send their children on account of some real or fancied objection to a locality, a building, or a teacher. They are deprived of no right because a locality, a building, and a teacher to their exact liking was never guaranteed them. So others, as in this case, either from prejudice or in the conscientious belief that if their children attended schools conducted as are those in the Convent building, would necessarily or probably from Roman Catholic teaching acquire Roman Catholic beliefs, or be injuriously influenced in their religious education and faith, refuse to place their children in such an environment or within the sphere of such influences. They are, however, deprived of no right, because the law never guaranteed more than free education in a non-sectarian school, and free education in a school so taught is free education in a non-sectarian school.

In *The City of Winnipeg* v. *Barrett*, App. Cases 1892, p. 458, Lord MacNaghten, in delivering the judgment of the Privy Council, and speaking of the Manitoba Schools Act of 1890, says as follows:

"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 members of the Church of England find themselves unable to partake of advantages which the law offers to all alike."

So here, it is owing to prejudices or religious convictions which are of course entitled to every respect, that prevent those who entertain them from partaking of advantages which are open to all alike.

There is neither allegation in the Bill nor express proof, that all or any of these matters were ever made specific grounds of complaint to the Board of Education. It is evident however that the Board is fully aware of them, and has been always aware of them. If they remain unredressed I must assume they were not considered substantial grievances, or else there were good and sufficient reasons for the Board's inaction. If the Defendants were about to use their trust funds for illegal purposes, this Court would find no difficulty in restraining them; but where the causes of complaint arise from unwise administration or breaches of regulations involving no such misappropriation the Plaintiffs must look for redress to the Board of Education, under whose control and supervision the whole School system is worked.

ORDER.—That the Plaintiffs be at liberty to amend the Bill, by converting it into an information at the suit of the Attorney General, with the Plaintiffs as relators, provided a draft of such amendment signed by the Attorney General as consenting thereto be filed with the clerk, at any time before the n..nutes are settled, which is not to be done before the 1st April next. The information will then stand dismissed, with costs to be paid by the relators. Otherwise the Bill will stand dismissed with costs.