Privy Council Appeal No. 127 of 1917.

The City of Regina and Others - - - *Appellants*

v.

J. McCarthy - - - - - - *Respondent.*

FROM

THE SUPREME COURT OF SASKATCHEWAN.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST JULY, 1918.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD BUCKMASTER.
LORD DUNEDIN.
LORD ATKINSON.

[*Delivered by* LORD DUNEDIN.]

In the city of Regina there is a public school district and there is also a separate school district, the territorial boundaries of the districts being coterminous. The separate school district is a Roman Catholic separate school district. One Bartz, who is a Catholic and who in 1915 was entered in the assessment roll as a separate school supporter, applied in 1916 to be entered as a public school supporter. The request was granted by the official making up the roll and he was so entered. An appeal against this entry was taken by McCarthy, another separate school supporter (title to that effect being given by a clause in the statutes) to the Court of Revision, who confirmed the entry. Appeal was taken from this decision to the Local Government Board, who allowed the appeal and directed his name to be entered as a separate school supporter. This judgment was affirmed by the Supreme Court unanimously, to whom appeal had been taken. From the Supreme Court this appeal has been taken to this Board.

The case accordingly raises the straightforward issue, can a person of the faith of the minority, who have established a separate school district, demand that he should be entered as a public school supporter? The question depends entirely on the statutory provisions which are contained in the three Acts, the

School Act (ch. 23 of 1915), the School Assessment Act (ch. 25 of 1915), and the City Act (ch. 16 of 1915).

The Local Government Board delivered a most careful and reasoned opinion, and the result at which they arrived was confirmed by equally careful and elaborate opinions delivered by the learned Judges of the Supreme Court. These various opinions express with so much precision and accuracy the views which are entertained by their Lordships that they can really add nothing to what has been already said. It is only in respect of the general importance of the question that they desire to state succinctly and in general terms what they think the gist of the matter.

The scheme of the Acts seems to their Lordships to be this. There is a power given to the community after certain preliminary steps to erect a public school district. Whether there is to be such a district or not is decided by vote, and by the result of that vote the majority binds the minority. If the district is erected and nothing more is done then all persons holding property in the district are assessable for school rates. The religious complexion of the school as between Protestant and Catholic is controlled by the majority who have voted for the creation of the district. But there is a conscience clause to protect parents having their children instructed in religious education which is not to their liking. There is, however, a power given to the minority, which means the members of the religious faith, be it Protestant or Catholic, who form the minority (for no other faiths have in this matter official recognition) to establish a separate school district with a separate school of their own religious complexion. In such a case the ratepayers establishing such a district are only liable for their self-imposed rate and not for public school rates. The legislation as to the formation and form of the assessment roll provides for a return by each assessable person, and prescribes a descriptive entry of P.S.S. (public school supporter) or S.S.S. (separate school supporter), as the case may be.

It seems to their Lordships that in this arrangement there are two guiding principles. The first is that after a vote the majority binds the minority. The majority settle as against the minority whether there shall be a district at all (there is a provision for the erection of a district on the motion of the Minister of Education, but this may be disregarded as extraneous to the present question). The second is that it is the criterion of religious faith which forms what may be called the subordinate constituency, and here again the majority compels the minority, either establishing or refusing to establish a separate school. If the school is established all must be rated.

It is true that the subordinate constituency form the minority of the whole constituency. As such they would have been assessed as public school supporters, were it not for the

special exemption which is to be found in Section 39 of the School Act. But it is the very enfranchisement from the liability to pay public school rates that they get as a community, which subjects them to the rule, so to speak, of the majority of their own community. It is impossible, their Lordships think, to read the words in Section 39, "ratepayers establishing a separate school," as applicable only to the majority of the minority.

It is evident that there is a great practical advantage in working the scheme if the respondent's argument is sound. For the minority constituency to come to a common sense determination as to whether they shall or shall not establish a separate school it is necessary that they shall calculate what assessments are available. If the religious test is taken, that is simple enough, but if the minority constituency is liable to be depleted by some of its members leaving its ranks and enrolling themselves as public school supporters it is evident that all calculations would be upset.

There are other arguments to the same effect, but as has been already said they are most adequately dealt with in the judgments below.

It should be added that the point as to whether the legislation in question was *ultra vires* was not pressed before the Board.

Their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

THE CITY OF REGINA AND OTHERS

v.

J. McCARTHY.

DELIVERED BY LORD DUNEDIN.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1918.