

29, 1941

# In the Privy Council.

No. 28 of 1940.

## ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE BOARD OF EDUCATION FOR THE CITY OF  
WINDSOR ..... *Appellant,*

AND

FORD MOTOR COMPANY OF CANADA LIMITED,  
AND THE BOARD OF TRUSTEES OF THE ROMAN  
CATHOLIC SEPARATE SCHOOLS FOR THE CITY  
OF WINDSOR ..... *Respondents.*

### CASE FOR THE RESPONDENT

#### THE BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada dated the 30th October, 1939, dismissing by a majority of three judges to two an appeal by the Appellant from a judgment of the Court of Appeal for Ontario dated the 12th May, 1938, allowing appeals by the Respondents upon a case stated by His Honour G. F. Mahon, a Judge of the County Court of the County of Essex on the 19th March, 1938. Record.  
p. 50.  
p. 26  
pp. 9-17.

2. The questions for decision arise from the system of public elementary education in Ontario under which separate schools for Roman Catholic children are administered in each municipality where such schools exist by a board of trustees who derive their funds from rates or municipal taxes levied for the purposes of such schools. The system originated in 1841 when the Common Schools Act of the old Province of Canada by section 11 enabled inhabitants of any township or parish professing a religious faith different from the majority of the inhabitants, by trustees chosen by them, to Appendix to  
Case.  
p. 8.

Appendix to establish and maintain common schools and for that purpose to receive from the district treasurer a due proportion according to their numbers of the monies appropriated or raised for the support of common schools in the district. The only separate common schools established in Ontario under this power were Roman Catholic common schools. In 1853 the method of maintaining the schools so established was changed. The right of the trustees to receive a proportion of the monies raised by municipal assessment was abolished; the provincial school grant was apportioned according to the average attendance of schoolchildren; separate school supporters subscribing an amount equal to the amount which they otherwise would have been liable to pay on the common school assessment, were exempted from common school rates; and the trustees were made a corporation with power to levy rates on separate school supporters. The exemption was curtailed in 1855 but was fully restored in 1863. By section 93 of the British North America Act, 1867, the Imperial Parliament restricted the provincial legislative power over education by the provision that no law should prejudicially affect any right or privilege of Roman Catholic subjects with respect to their separate schools.

Case.

pp. 8-10.

p. 10. p. 11.

p. 12.

Record.

**3.** With the development of trade and industry in Ontario an increasing proportion of municipal taxes, including those for school purposes, were paid by companies and in 1886 provision was made for the apportionment of a company's school taxes between the "public" or non-Roman Catholic schools and the Roman Catholic separate schools. Such provision has been varied from time to time. The relevant statutes are set out in an appendix to the record. Their material provisions may be summarised as follows:—

pp. 64-75.

p. 64.

(1) Section 53 of the Separate Schools Act, 1886, by sub-section (1) empowered a company by notice in a prescribed form given in pursuance of a resolution of the directors to the clerk of the municipality, to require a proportion of the company's property to be assessed for separate school purposes. The sub-section contained a proviso that such proportion should bear the same ratio to the whole assessable property of the company in the municipality as the proportion of shares or stock held by Roman Catholics bore to the whole amount of the company's issued shares or stock. By sub-section (3) a notice so given continued in force until withdrawn, varied or cancelled by a subsequent notice. Sub-section (4) provided that any person entitled to inspect the assessment roll might inspect any such notice, and required the assessor to follow and conform to such notice. Sub-section (5) defined "company" as including any body corporate.

p. 64, l. 19.

p. 64, l. 43.

p. 65, l. 6.

p. 65, l. 14.

p. 65.

(2) In the Revised Statutes of Ontario, 1897, this section was re-enacted without material change as section 54 of the Separate Schools Act, and, as a result of a revision of the Assessment Act, it was again re-enacted in 1904 with changes not material to the present dispute and with the omission of sub-sections (3), (4) and (5), possibly by inadvertence, since they were re-instated in 1905.

p. 66, l. 34.

p. 68.



- (3) In the Separate Schools Act, 1913, the legislation was re-cast. Section 66 sub-section (1) empowered a corporation to require the whole or any part of its land and the whole or any proportion of its business or other assessments to be assessed for separate school purposes. Sub-section (2) required the assessor thereupon to enter the corporation as a separate school supporter in respect of the land and proportion specified in the corporation's notice and to assess the corporation's remaining land and other assessments for public school purposes. Sub-section (3) provided that the portion assessed for separate school purposes should not bear a greater proportion to the whole of the corporation's assessment than the amount of stock or shares held by Roman Catholics bore to the whole amount of the stock or shares. Sub-sections (4), (5) and (6) re-enacted in substance sub-sections (3) and (4) of the previous legislation. Section 66 appeared without change in the Revised Statutes of Ontario, 1914, and as section 65 of the Separate Schools Act in the Revised Statutes of Ontario, 1927. Record.  
p. 68, l. 27.  
p. 68, l. 34.  
p. 68, l. 43.  
p. 69, l. 6.
- (4) By an amendment of the Assessment Act in 1936 new provisions for the assessment of corporations for separate school purposes had been enacted and later in 1936 section 65 of the Separate Schools Act was expressly repealed. The new provisions continued in force until repealed in 1937. The Assessment Act as amended in 1936 provided by section 33A sub-sections (1) and (2) that a corporation's assessments for separate school purposes pursuant to notice given by the corporation should bear the same ratio to the total assessments as the number of shares held by Roman Catholics who were separate school supporters and who had filed a prescribed notice with the corporation, bore to the number of issued shares. Sub-section (3) enacted that in the case of a corporation without share capital the ratio should be as the number of such Roman Catholic members was to the total number of members. Section 33B provided for the corporations of whose issued shares more than one-half were held by corporations with a head office outside Ontario and for corporations with shareholders or members outside Ontario where there was difficulty in ascertaining which shareholders or members were Roman Catholics and separate school supporters. The assessments of a corporation within these provisions were by sub-section (3) to be divided, so far as applicable to school purposes, between the public and separate schools in the same ratio as the assessments in the municipality on individuals supporting public schools bore to the assessments of individuals who were Roman Catholics and separate school supporters. Section 33c provided that a notice given by a corporation should continue in force until withdrawn by a subsequent notice, that notices should be open to inspection and that a notice given in any year should be given by the 1st March and relate to the shareholders or members of the corporation on the 1st January. Section 33D penalised false statements in any notice and section 33E enabled any person entitled to appeal in any matter of assessment to p. 69, l. 21.  
p. 69, l. 20.  
p. 72, l. 38.  
p. 69, l. 26.  
p. 70, l. 9.  
p. 70, l. 17.  
p. 70, l. 39.  
p. 71, l. 13.  
p. 71, l. 46.  
p. 72, l. 9.



Record.

appeal from the assessment of a corporation on grounds which included the ground that the notice given by the corporation was not in accordance with the facts.

p. 72, l. 40.  
p. 73, l. 6.  
p. 74, l. 34.  
p. 73, l. 10.  
p. 68, l. 27.

(5) This 1936 legislation was repealed on the 25th March, 1937, and on the same day the Separate Schools Act was amended by the addition of section 65 which is identical in its terms with section 66 of the Separate Schools Act, 1913. The section was re-enacted without change as section 66 of the Separate Schools Act in the Revised Statutes of Ontario, 1937, which came into force on the 24th January, 1938.

p. 75.  
p. 10, l. 23.

pp. 9-12. 4. The facts material to the questions raised are fully set out in the case stated by the learned County Court Judge, and may be summarised as follows:—

p. 12, ll. 1-29.

(1) The respondent company had so many shares held by shareholders so widely distributed and so frequently changing hands, that it was a practical impossibility to ascertain the percentage of shares held by Roman Catholics, and the directors did not inquire of the shareholders what was their religious faith.

p. 12,  
ll. 29-44.

(2) The directors of the respondent company were five in number of whom only one was a Roman Catholic. They reasoned from a number of angles. In good faith and in the belief from the information available to them (but without actual knowledge and only as a guess or an estimate) they then, by resolution at a meeting from which the Roman Catholic director was absent, fixed 18 per cent. as a percentage not greater than the percentage of the respondent company's shares held by Roman Catholics.

p. 10,  
ll. 34-39;  
p. 58, l. 20.

(3) Pursuant to the resolution the respondent company's secretary on the 29th July, 1937, gave notice in the prescribed form requiring 18 per cent. of the respondent company's assessments in the City of Windsor to be assessed for separate school purposes.

p. 10, l. 40.

(4) The assessor accordingly apportioned 18 per cent. of the respondent company's assessments for separate school purposes.

p. 10, l. 42;  
p. 58, l. 37.  
Appendix to  
Case.

(5) The Appellant, who administers the public schools in the City of Windsor, appealed, in accordance with section 31 of the Assessment Act, to the Court of Revision which, by a majority, allowed the appeal with the effect that the whole of the respondent company's assessment would have gone to the support of the public schools.

p. 12.  
Record.

p. 11,  
ll. 1-20;  
pp. 60, 61.

(6) The Respondents severally appealed to the County Court Judge and, without prejudice to a contention that the onus was on the Appellant to prove that less than 18 per cent. of the respondent company's shares were held by Roman Catholics, the respondent company in order that the facts might be fully before the court called its secretary to give evidence.

p. 11, l. 21;  
pp. 61, 62.  
p. 11.  
ll. 33-46.

p. 12, l. 45.

(7) Neither of the parties in either appeal proved what proportion of the respondent company's shares was held by Roman Catholics.



5. The learned County Court Judge in his reasons for judgment dated the 19th March, 1938, held that the onus was on the respondent company to prove that 18 per cent. did not bear a greater proportion to the whole of their assessments than the amount of shares held by Roman Catholics bore to the whole amount of shares, and he distinguished observations of the Honourable Mr. Justice Middleton in 1922 in *Re Goderich Roman Catholic Separate School Trustees and the Town of Goderich* reported in 53 Ontario Law Reports, page 79 to the effect that an assessor is not entitled to call upon a corporation to establish affirmatively that its allocation to separate school taxes is not greater than the statutory proportion. On the authority of *Regina versus Gratton* (1915) reported in 50 Supreme Court Reports, page 606, decided on a Saskatchewan statute which required the percentage to bear the same ratio and proportion to the total assessments as the shareholding of Roman Catholics bore to the total shareholding, he held that a company can only exercise the statutory power if it has ascertained with certainty the religious persuasions or beliefs, insofar as the Roman Catholic faith is concerned, of its various shareholders. The learned County Court Judge considered (wrongly, in the respectful submission of the respondent Board) that the basic law was that school taxes are to be applied for the maintenance of the public schools and that the burden was on the party seeking to displace the basic law. In his view, which he thought to be fortified by authority, a notice under sub-section (1) is invalid if it offends against sub-section (3); and sub-section (4) is premised on the notice being regular. He, therefore, held the respondent company's notice to be a nullity and that all their assessments should be for public school purposes.

Record.  
pp. 1-8.

p. 5, ll. 11-28.

p. 6,  
ll. 18-41;  
p. 7, ll. 30-47.

p. 6, l. 42-  
p. 8, l. 15.

p. 8, ll. 30-37.

6. At the request of the Respondents the learned County Court Judge stated a case in their respective appeals for the opinion of the Court of Appeal and by three questions asked whether his decision was correct.

pp. 9-17.  
p. 16, l. 46-  
p. 17, l. 32.

7. The Court of Appeal (the Honourable Justices of Appeal Middleton, Masten and Fisher) unanimously allowed the appeal with costs. Mr. Justice Masten gave the reasons of the Court. Holding that the Court was not bound by any decisions, he referred to the obvious purpose of the legislature to provide for an equitable apportionment of the taxes payable by companies, and if the Appellant's contentions were right, the legislation would be wholly ineffective to accomplish the purpose. After reviewing the cases he summarised his conclusions as follows:—

p. 26.

p. 20, l. 44-  
p. 21, l. 21.

p. 26, l. 1.

(1) The statute ought, if possible to be interpreted and applied so as to effectuate its manifest intention, viz., to provide for an equitable apportionment of public and separate school taxes payable by companies having Roman Catholic shareholders who are supporters of separate schools.

(2) The assessor is bound by the statute to assess and return his roll apportioning the company's assessment on receiving a proper notice from the company requiring him to do so.



Record.

(3) If there is no appeal against the apportioned assessment as returned by the assessor it stands good, and taxes are to be collected accordingly. The statute makes the assessor's roll as returned prima facie valid.

(4) The onus of displacing the prima facie situation rests on the attacking party but this onus was not discharged in the present case.

(5) Practical means of displacing such prima facie case existed by summoning and cross-examining the directors or officers of the Ford Company on the hearing before the Court of Revision or before the County Court Judge. 10

(6) For these reasons the appeal should be allowed with costs, and the questions submitted by the learned County Court Judge answered in accordance with these reasons.

p. 50.  
p. 34, l. 21.  
p. 50,  
ll. 17-20.

8. From this judgment the Appellant appealed to the Supreme Court of Canada which by a majority adopted the judgment of the Court of Appeal and dismissed the appeal with costs. The majority also held that the statutory provision was altered with the object of relieving companies from ascertaining the precise ratio of the shareholding of Roman Catholics, but the Appellant's construction would require the company to do the very same thing. 20

pp. 30-34.

9. A dissenting judgment was delivered by The Right Honourable The Chief Justice of Canada who found that the statute contemplated a notice given only after the ratepayer corporation had ascertained as a fact that the proportion of its assessment directed to be applied for separate school purposes was not greater than the proportion defined by sub-section (3) and that unless that condition was fulfilled the corporation could not be said to be exercising the statutory power in conformity with the directions of the statute. In his view the respondent company had no substantial foundation for the conclusion of fact which was the essential condition of a valid notice; though he apparently recognised that if evidence had later been obtained and put before the Court of Revision to justify the conclusion, the notice would be valid. 30

p. 33,  
ll. 36-48.

p. 34,  
ll. 10-14.

pp. 34-44.

10. The Honourable Mr. Justice Davis agreed with The Right Honourable The Chief Justice but proceeded to state his reasons also and found that unless it was affirmatively proved that the percentage of the company's assessment set out in its notice did not bear a greater proportion to the whole of its assessment than the amount of shares held by Roman Catholics bore to the whole amount of the shares of the company, the notice was not effective under the section in question. On the question of onus, since the facts in issue were peculiarly within the knowledge of the respondent corporation, he held that the burden of proving the proposition rested upon the corporation. 40

11. It is respectfully submitted that the opinions of The Right Honourable The Chief Justice of Canada and the Honourable Mr. Justice Davis are predicated upon an assumption that the right of Roman Catholics to support separate schools is an exception to a general rule; and that the history of the school legislation of Ontario shows that assumption to be unsound.

12. The respondent Board accordingly submits that the judgment of the Supreme Court of Canada affirming the judgment of the Court of Appeal for Ontario is right and should be affirmed for the following amongst other

### REASONS.

- 10
1. Because the assessor properly in the discharge of his statutory duty entered, rated and assessed for the purposes of the separate schools in the City of Windsor 18 per cent. of the assessment of the respondent company.
  2. Because on the Appellant's appeal from such assessment the Appellant failed to adduce any evidence that 18 per cent. was a greater proportion of the respondent company's shares than at the material time was held by Roman Catholics.
  3. Because no such evidence has been given.
- 20
4. Because on the facts proved and on the proper construction of the relevant legislation the notice given by the respondent company was a valid notice.
  5. Because of the other reasons given by Mr. Justice Masten and Mr. Justice Kerwin.

J. ALOYSIUS KENNEDY.  
FRANK GAHAN.





## APPENDIX.

## STATUTES OF CANADA

4 AND 5 VICTORIA (1841) CHAPTER 18.

AN ACT TO REPEAL CERTAIN ACTS THEREIN MENTIONED, AND TO MAKE FURTHER  
PROVISION FOR THE ESTABLISHMENT AND MAINTENANCE OF COMMON SCHOOLS  
THROUGHOUT THE PROVINCE.

(18th September, 1841.)

\* \* \* \* \*

11. Provided always, and be it enacted, that whenever any number of the inhabitants of any Township, or Parish professing a religious faith different from that of the majority of the inhabitants of such Township or Parish, shall dissent from the regulations, arrangements or proceedings of the Common School Commissioners, with reference to any Common School in such Township or Parish, it shall be lawful for the inhabitants dissenting, collectively, to signify such dissent in writing to the Clerk of the District Council, with the name or names of one or more persons elected by them as their Trustee or Trustees, for the purpose of this Act; and the said District Clerk shall forthwith furnish a certified copy thereof to the District Treasurer; and it shall be lawful for such dissenting inhabitants, by and through such Trustee or Trustees, who for that purpose shall hold and exercise all the rights, powers and authorities, and be subject to the obligations and liabilities hereinbefore assigned to and imposed upon the Common School Commissioners, to establish and maintain one or more common schools in the manner and subject to the visitation, conditions, rules and obligations in this Act provided with reference to other common schools, and to receive from the District Treasurer their due proportion, according to their number, of the monies appropriated by law and raised by assessment for the support of common schools in the School District or Districts in which the said inhabitants reside in the same manner as if the common schools so to be established and maintained under such Trustee or Trustees were established and maintained under the said Common School Commissioners, such monies to be paid by the District Treasurer upon the warrant of the said Trustee or Trustees.

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## STATUTES OF CANADA

16 VICTORIA (1853) CHAPTER 185.

THE UPPER CANADA SUPPLEMENTARY SCHOOL ACT OF 1853.

AN ACT SUPPLEMENTARY TO THE COMMON SCHOOL ACT FOR UPPER CANADA.

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4. And be it enacted, That in all cities, towns and incorporated villages and school sections in which Separate Schools do or shall exist according to the provisions of the Common School Acts of Upper Canada, persons of the religious persuasion of each such Separate School sending children to it or supporting such school by subscribing thereto annually an amount equal to the sum which each such person would be liable to pay (if such Separate School did not exist) on any assessment to obtain the annual Common School grant for each such city, town, incorporated village or township, shall be exempted from the payment of all rates imposed for the support of the common public  
10 schools of each city, town, incorporated village or school section and of all rates imposed for the purpose of obtaining the Legislative Common School Grant for such city, town, incorporated village or township; and each such Separate School shall share in such Legislative Common School Grant only (and not in any school money raised by local municipal assessment) according to the average attendance of pupils attending each such Separate School (the mean attendance of pupils for winter and summer being taken) as compared with the whole average attendance of pupils attending the Common Schools in each such city, town, incorporated village or township; and a certificate of qualification signed by the majority of the Trustees of such  
20 Separate School shall be sufficient for a teacher of such school; Provided always, firstly that the exemption from the payment of such school rates as herein provided shall not extend beyond the period of such persons sending children to or subscribing as aforesaid for the support of such Separate School; nor shall such exemption extend to school rates or taxes imposed or to be imposed to pay for school houses, the erection of which was undertaken or entered into before the establishment of such Separate School; Provided, secondly, that the Trustees of each such Separate School shall on or before the thirtieth day of June and thirty-first day of December of each year transmit to the local Superintendent a correct return of the names of all persons of the  
30 religious persuasion of such Separate School who shall have sent children to or subscribed as aforesaid for the support of such Separate School during the six months previous, and the names of the children sent and amounts subscribed by them respectively, together with the average attendance of pupils in such Separate School during such period; And the Superintendent shall forthwith make a return to the Clerk of the Municipality and to the trustees of the school section or municipality in which such Separate School is established, stating the name of all the persons who being members of the same religious denomination contribute or send children to such Separate School, and the Clerk shall not include in the Collector's Roll for the general or other school  
40 rate and the Trustees or Board of Trustees shall not include in their school rolls, except for any rate for the building of school houses undertaken before the establishing of such Separate School as herein mentioned, the name of any such persons as appears upon such return then last received from the said Superintendent; and the Clerk or other officer of the Municipality within which such Separate School is established, having possession of the Assessor's or Collector's roll of the said Municipality, is hereby required



Appendix. to allow any one of the said Trustees, or their authorised Collector, to make a copy of such roll as far as it shall relate to their school section; provided thirdly, that the provisions of the *thirteenth section* of the said Upper Canada School Act of 1850 shall apply to the trustees and teachers of Separate Schools the same as to trustees and teachers of other Common Schools; Provided fourthly, that the trustees of each such Separate School shall be a corporation and shall have the same power to impose, levy and collect school rates or subscriptions upon and from persons sending children to or subscribing towards the support of such Separate School as the trustees of a school section have to impose, levy and collect school rate or subscriptions from persons having 10 property in such section or sending children to or subscribing towards the support of the Common School of such section; Provided fifthly, that the foregoing provisions in this clause shall take effect from the first day of January, one thousand eight hundred and fifty-three, and shall extend to the Separate Schools established or intended to be established under the provisions of the Upper Canada Common Schools Act; Provided sixthly, that no person belonging to the religious persuasion of such Separate School, and sending a child or children thereto or subscribing towards the support thereof, shall be allowed to vote at the election of any trustee for a Public Common School in the city, town, incorporated village or school section within the limits of which 20 such Separate School shall be situate.

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STATUTES OF CANADA  
18 VICTORIA (1855) CHAPTER 131.

AN ACT TO AMEND THE LAWS RELATING TO SEPARATE SCHOOLS  
IN UPPER CANADA.  
(Assented to 30th May, 1855.)

WHEREAS it is expedient to amend the laws relating to Separate Schools in Upper Canada so far as they affect the Roman Catholic inhabitants thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the 30 Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, "An Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada," and it is hereby enacted by the authority of the same, as follows:—

\* \* \* \* \*

12. Every person paying rates, whether as proprietor or tenant, who, on or before the first day of February of any year shall have given notice to the Clerk of the Municipality in which any Separate School is situated, that he is a Roman Catholic and a supporter of such Separate School, shall be 40 exempted from the payment of all rates imposed within such ward or school section for the support of Common Schools and of Common School Libraries



for the year then next following, and every Clerk of a Municipality, upon receiving any such notice, shall deliver a certificate to the person giving the same to the effect that such notice has been given, and showing the date of such notice ; but any person who shall fraudulently give any such notice, or shall wilfully make any false statement therein, shall not secure any exemption thereby, but shall, on the contrary, be liable to a penalty of ten pounds currency, recoverable, with costs, before any Justice of the Peace at the suit of the Municipality interested : Provided always, that nothing herein contained shall exempt any such person from paying any rate for the support of Common Schools or Common School Libraries, or for the erection of a school-house or school-houses which shall have been imposed before such Separate School was established.

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STATUTES OF CANADA

26 VICTORIA (1863) CHAPTER 5.

AN ACT TO RESTORE TO ROMAN CATHOLICS IN UPPER CANADA CERTAIN RIGHTS IN RESPECT TO SEPARATE SCHOOLS.  
(Assented to 5th May, 1863.)

WHEREAS it is just and proper to restore to Roman Catholics in Upper Canada certain rights which they formerly enjoyed in respect to Separate Schools, and to bring the provisions of the law respecting Separate Schools more in harmony with the provisions of the law respecting Common Schools : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :—

\* \* \* \* \*

14. Every person paying rates, whether as proprietor or tenant, who, by himself or his agent, on or before the first day of March in any year, gives, or who, on or before the first day of March, of the present year, has given to the Clerk of the Municipality notice in writing that he is a Roman Catholic and a supporter of a Separate School situated in the said Municipality, or in a Municipality contiguous thereto, shall be exempted from the payment of all rates imposed for the support of Common Schools and of Common School Libraries, or for the purchase of land or erection of buildings for Common School purposes within the city, town, incorporated village or section in which he resides, for the then current year, and every subsequent year thereafter, while he continues a supporter of a Separate School ; and such notice shall not be required to be renewed annually ; and it shall be the duty of the Trustees of every Separate School to transmit to the Clerk of the Municipality or Clerks of Municipalities (as the case may be) on or before the first day of June in each year, a correct list of the names and residences of all persons supporting the Separate Schools under their management ; and every ratepayer whose name shall not appear on such list shall be rated for the support of the Common Schools.

\* \* \* \* \*

## IMPERIAL ACT

30 AND 31 VICTORIA, CHAPTER 3.

(BRITISH NORTH AMERICA ACT, 1867.)

93. In and for each Province the 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 in the Province at the Union.

2. All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

3. Where in any Province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor General in Council from any Act or decision 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.

4. 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 this 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.

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REVISED STATUTES OF ONTARIO (1937) CHAPTER 272.

## THE ASSESSMENT ACT.

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31. The Court of Revision shall hear and determine all complaints with regard to persons alleged to be wrongfully placed upon or omitted from the roll as Roman Catholic separate school supporters, and any person so complaining or any ratepayer may give notice in writing to the clerk of the municipality of such complaint, and the provisions of this Act as to giving notice of complaints against the assessment roll and proceedings for the trial thereof shall apply to complaints under this section. R. S. O. 1927, c. 238, s. 32.



In the Privy Council.

No. 28 of 1940.

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CASE FOR THE RESPONDENT  
THE BOARD OF TRUSTEES OF THE ROMAN  
CATHOLIC SEPARATE SCHOOLS FOR THE  
CITY OF WINDSOR.

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