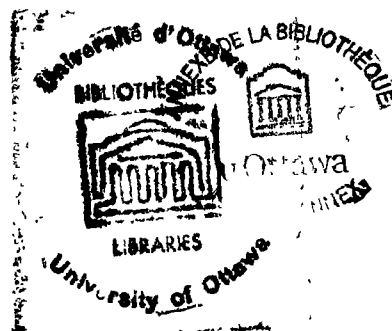


THE RELIGIOUS GARB ISSUE AS RELATED
TO THE SCHOOL QUESTION IN NEW YORK STATE

by William H. Shannon

Thesis presented to the Faculty of
Arts of the University of Ottawa
through the Department of History
as partial fulfillment of the
requirements for the degree of
Doctor of Philosophy.



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CURRICULUM STUDIORUM

William H. Shannon was born in Rochester, New York, on December 6, 1917. Graduated from St. Andrew's Preparatory Seminary in Rochester, he received his Bachelor of Arts degree in 1939 from St. Bernard's Seminary College in the same city. Ordained to the priesthood on June 5, 1943, he received the degree of Master of Arts from Canisius College in Buffalo in 1949. The thesis presented to the History Department of Canisius College as partial fulfillment of the requirements for the degree of Master of Arts was entitled: Constitutional Aspects of the Lima School Case. Since September, 1945 he has been teaching on the faculty of Nazareth College, Rochester, New York.

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INTRODUCTION

The "school question" in the United States is a topic which scarcely admits of exact definition. It had its beginnings in colonial times; some of its problems remain unsolved today. It is a multiple topic with a variety of aspects. Among other things it includes: the gradual transition in American education from the prevalence of private and church schools to the predominance of state-supported, secular public schools; and the establishment, side by side with, and in some cases antedating, the state-supported public school, of a Catholic system of parochial schools. It includes also the efforts of Catholics, through writings and oratory, to effect some kind of rapprochement with the public school system, whereby Catholic parochial schools might either receive a proportionate share of the public school money or be incorporated into the public school system on a basis acceptable to civil and ecclesiastical authorities alike.

It is this last aspect of the "school question", the effort to incorporate Catholic parochial schools into the public school system, that involves the "religious garb" issue. For in the second half of the nineteenth century in a number of communities in the United States, Catholic parochial schools were taken over by local boards of education and conducted as public schools. Religious instructions were excluded during the school hours. Catholic sisters obtained teachers'

certificates, entered into contract with the board of education, and, wearing their religious garb, taught in these schools. The presence of the sisters, and in particular their wearing of the religious garb, in the public schools, caused much controversy locally, in the various states, and even throughout the nation. In New York State, as in other places also, the wearing of the religious garb by a teacher in the public school was eventually declared to be a sectarian influence prohibited by the State Constitution. It is with this aspect of the "school question", (the wearing of the religious garb in the schools, the ensuing controversies, and the decisions forbidding the practice), in so far as it occurred in New York State, that this present work is concerned.

Reverend Richard Gabel in Public Funds for Church and Private Schools has demonstrated¹ that for a considerable period after the American Revolution (at least up to 1820) the almost exclusive tradition in American education was the private and church school. Schools of various denominations were, quite generally, supported out of public funds. This was a situation that people took for granted.

Catholic schools, it is true, were quite generally excluded from this public aid. The reason for this exclusion, if unjustifiable, is at least understandable. Up to the time

¹ Richard J. Gabel, Public Funds for Church and Private Schools, Washington, D.C. The Catholic University, 1937, p. 1-143.

of the great immigrations, beginning in the 1820's and increasing tremendously in the next four decades, Catholics were relatively few in numbers. For the most part they were without wealth or influence; oftentimes they were the objects of active bigotry. Still, in spite of these factors, they were not completely excluded from public aid. Thus in 1806 the Catholic Free School of St. Peter's in New York City received from the State Legislature "a portion of the moneys devoted to educational purposes²". Ten years later St. Patrick's School in the same city received a similar grant³. Slight grants of aid were also given to Catholics in isolated cases in Maryland, Louisiana, and Maine⁴.

Between 1820 and 1865 a marked change began to take place in the educational picture in the United States. The denominational schools were gradually, though by no means entirely, superseded by non-sectarian, secular, public schools supported by the State. Various factors contributed to this gradual secularization of the public schools. These factors are treated at length by Gabel in his above mentioned work⁵.

2 J.A. Burns, The Principles, Origin and Establishment of the Catholic School System in the United States, New York, Benziger, 1908, p. 172.

3 J.A. Burns, op. cit., p. 360.

4 Richard J. Gabel, op.cit., p. 221

5 Richard J. Gabel, op. cit., p. 147-167.

Some of these factors in brief summary are the following:

1° A growing democratic spirit which saw universal education as a necessary means for propagating democratic ideals and as an essential step toward the achievement of social and economic equality.

2° A feeling that denominational schools, split by conflicting sectarian interests, could not serve adequately the cause of universal democratic education.

3° A growing spirit of irreligion under the influence of European liberal thought which disdained doctrinal religion with its creeds, traditions, and authority.

4° Increased interdenominational activity among Protestant sects, stemming from the influence of European liberal thought, and resulting, with the minimizing of doctrine and sectarian differences, in the rallying of the liberal elements in American Protestantism to the cause of the secular, non-sectarian public school.

5° Admiration among some American educators, notably the powerfully influential Horace Mann, for the state-controlled schools embodied in the Prussian school system.

As the state system of public schools slowly but steadily emerged, the private schools for the most part were simply absorbed into that system. For the church schools controlled by the Protestant sects this process of absorption was relatively painless, since elements of Protestantism lingered in

the public schools for many years. Bible reading, the saying of Protestant prayers, the singing of Protestant hymns produced a Protestant-tinged secularism quite acceptable to those who had already lost their fervor for doctrinal religion.

The growing Protestant non-sectarianism of the state-supported public schools presented the Catholic Church in the United States with one of her most serious problems in the nineteenth century. The problem was rendered all the more acute, since the Catholic population of the country had more than doubled during the period from 1820-1860 due to the immense numbers of immigrants who arrived from Europe⁶.

From the very beginning the official Catholic attitude, as expressed in the pronouncements of various provincial councils and in the first Plenary Council of Baltimore, was very clear. Catholics must establish their own separate parochial schools. Thus the First Plenary Council of Baltimore, meeting in 1852, adopted the following decree:

We exhort the Bishops, and in view of the very grave evils which usually result from the defective education of youth, we beseech them through the bowels of the mercy of God, to see that schools be established in connection with all the churches in their dioceses; and if it be necessary and circumstances permit, to provide, from the revenues of the Church to which the school is attached, for the support of competent teachers⁷.

⁶ J.A. Burns, The Growth and Development of the Catholic School System in the United States, New York, Benziger, 1912, p. 11-12.

⁷ Ibid., p. 184.

The Fathers of the Council thus solved the problem in law: parochial schools were to be set up in connection with all the churches in the various dioceses. But there remained unsolved the practical and pressing problem of how these schools were to be supported. It would take large sums of money to set up and maintain so huge a parochial school system; yet Catholics during these years were probably poorer than they have been at any time since. The Catholic immigrants, who constituted a very large percentage of the Catholic population, had on their arrival in this country been glad to get any kind of work; and the kind they got was usually the hardest and the least lucrative. With all the good will in the world, they were scarcely in a position to build and support a nationwide system of parochial schools.

To relieve the crushing financial burden involved in the establishment of parochial schools, Catholics made every effort to obtain for their schools a proportionate share of the public school money. In 1840 the Catholics of New York City, under the leadership of Bishop John Hughes, petitioned the Common Council of the city for a share in the school funds for the seven Catholic schools of the city. After much discussion, bitter controversy, and ten weeks' deliberation by

the Council, the Catholic petition was rejected⁸.

Where Bishop Hughes had failed, others took up the fight - in the pulpit, in the lecture room, in the press. Catholics continued to hope that eventually the non-Catholic population in America would come to recognize the fairness of Catholic claims and remove the burden of double taxation from Catholic shoulders by giving them a share of the public funds according to the proportionate number of Catholic residents in each community. Many Catholics stated their case reasonably and calmly. Others, not so calm, were unrestrained in their attacks on the godlessness and infidelity of the public school and created antagonism rather than sympathy for the Catholic cause. At any rate, Catholic claims, whether calmly or violently proposed, fell on deaf or hostile ears.

The failure of Catholics to obtain a proportionate share of the public funds for parochial schools led Archbishop John Ireland of St. Paul, Minnesota, to inaugurate a new approach to the "school question". In July 1890 he was invited to address a general convention of the National Education Association. In his address, entitled "State Schools and Parish Schools", he laid before the Association a proposal for

⁸ An excellent study of "Bishop Hughes and the School Controversy", constitutes the second chapter of Edward M. Connors' Church-State Relationships in Education in the State of New York, Washington, D.C., The Catholic University, 1951, p. 16-54.

putting religious teaching back into the American public school. The solution he proposed was the plan carried out by the Catholics and Protestants in Poughkeepsie, New York, whereby buildings formerly used as parish schools were taken over by the city Board of Education and run as public schools, with the Catholic teachers being employed by the Board as public school teachers, and with religious instruction excluded during the school hours. Archbishop Ireland not only spoke in favor of the Poughkeepsie Plan; he went further and introduced it into two towns in his diocese: Faribault and Stillwater.

The Archbishop's espousal of this "compromise plan" evoked a bitter controversy among Catholics. Rome, eventually asked to intervene, decreed that the arrangement suggested by Bishop Ireland might be tolerated. The account of the School Controversy occasioned by Archbishop Ireland's celebrated speech is well detailed in Daniel F. Reilly's The School Controversy⁹.

The Poughkeepsie Plan, championed by Archbishop Ireland, was outlawed in 1898 by the New York State Superintendent of Public Instruction. The Superintendent decided that the wearing of the religious garb by teachers in the public schools constituted a sectarian influence and was therefore in violation of the State Constitution.

⁹ Daniel F. Reilly, The School Controversy (1891-1893), Washington, D.C., The Catholic University, 1943.

This was not the first such decision made in New York State; nor was it the last. The purpose of this present thesis is to detail the history of the "compromise plans" worked out by various communities in New York State and of the decisions of the State Department of Public Instruction in prohibiting these plans. Only those cases will be considered which were affected by the decisions of the State Superintendent and thereby became of state-wide or national interest¹⁰. There are eight such cases. They can be conveniently and logically distributed under the following three headings:

1° The Religious Garb Issue Before the New York State Constitutional Convention of 1894.

2° The Religious Garb Issue After the New York State Constitutional Convention of 1894.

3° The Religious Garb Issue after the Lima Decision of 1906.

The New York State Constitutional Convention is chosen as a first logical point of division because of a constitutional provision which it enacted in 1894 and which was ratified by the voters of the State in that same year. This provision, which became section 4 of Article IX of the State Constitution,

¹⁰ There were other cases in New York State that were of merely local importance, terminated by local conditions rather than by decisions of the State Superintendent, e.g. Albion, Elmira, Troy. See appendices.

reads as follows:

Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, wholly or in part under the direction of any religious denomination, or in which any denominational tenet is taught¹¹.

The "compromise plan" in Suspension Bridge, New York, was forbidden by Superintendent Andrew S. Draper previous to the Constitutional Convention. After 1894 the above constitutional enactment was invoked by Superintendent Charles A. Skinner against "compromise plans" in Watervliet, Corning, Poughkeepsie and Lima.

The second point of division is the decision in the Lima School Case. This decision, rendered by the courts of New York State, upheld the State Superintendent of Public Instruction in his prohibition of the religious garb in the public schools of the State. This court decision constituted the basis for prohibiting, in 1906, the "compromise plans" operating in Ogdensburg, Plattsburg and Allegany.

¹¹ New York State Constitution, Article IX, sec. 4

While there is much literature on the "school question"¹², very little has been written on the "religious garb" issue. Inevitably, of course, any book dealing with the "school question" must make reference to the "compromise plan" and the "religious garb" issue that it engendered. But these references are for the most part very general. Within the framework of larger themes, the Corning case and the Poughkeepsie case have been treated in some detail by the Reverend Robert F. McNamara¹³ and the Reverend Edward M. Connors¹⁴, respectively. The legal aspects of the Lima school case have been discussed in an unpublished Master's thesis presented to Canisius College by the Reverend William H. Shannon¹⁵. There exists, however, no detailed, full-length work on the subject

12 The following may be mentioned: J.A. Burns, op. cit.; Edward M. Connors, op. cit.; Richard J. Gabel, op. cit.; Sister Raymond McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945, Washington, D.C., Catholic University Press, 1946; Daniel F. Reilly, op. cit.; Anson Phelps Stokes, Church and State in the United States, 3 volumes, New York, Harpers, 1950; Frederick J. Zwierlein, The Life and Letters of Bishop McQuaid, Rochester, Art Print Shop, 1925-1927.

13 Robert F. McNamara, A Century of Grace, St. Mary's Church, Corning, New York, 1848-1948, Corning, St. Mary's Church, 1948, p. 119-125.

14 Edward M. Connors, op. cit., p. 110-117.

15 William H. Shannon, Constitutional Aspects of the Lima School Case, unpublished Master's thesis presented to Canisius College, 1949, p. 57.

of the "religious garb" issue; yet the facts given above make it quite clear that this subject constituted an important phase of American ecclesiastical and educational history. As such, it is deserving of study in its own right.

Since there is but little that has thus far been written on the "religious garb" issue, the sources available for research on this topic were, for the most part, primary sources, particularly: Board of Education records, newspapers, and archival materials.

PART ONE

THE RELIGIOUS GARB ISSUE BEFORE THE NEW YORK
STATE CONSTITUTIONAL CONVENTION OF 1894

CHAPTER I

THE SUSPENSION BRIDGE SCHOOL CASE

The first religious garb decision rendered in New York State concerned a school arrangement in the village of Suspension Bridge. The village of Suspension Bridge comprised, previous to 1892, the northern section of what is now the city of Niagara Falls, New York. It was located on the east bank of the Niagara River in the county of Niagara. In 1892 it was incorporated into the city of Niagara Falls.

The first Catholic parish in Suspension Bridge, a mission of St. Mary's Church in Niagara Falls, was originally organized in 1851 by the Reverend William Stephens, pastor of St. Mary's. In 1855 the first Church was built on South Street and named after St. Raphael. For a period of ten years - from 1859 to 1869 - it was cared for by the Vincentian Fathers from Niagara University. In September 1869 a diocesan priest of the diocese of Buffalo, the Reverend P.A. Malloy, went to St. Raphael's as the first resident pastor¹.

Already in 1867 a parish school had been opened and the Sisters of St. Joseph from the Motherhouse in Buffalo had been invited to conduct the school. The first schoolhouse

¹ Thomas A. Donohue, History of the Diocese of Buffalo, Buffalo, Buffalo Catholic Publishing Co., 1930, p. 328-330.

was a small frame-building located on the northside of Michigan Avenue between Tenth Street and the railroad tracks. It was a two-story building. Three rooms on the first floor were used for classrooms; the second floor was used by the sisters as their convent².

On February 23, 1881 the Reverend Thomas Hines - the priest who was to figure prominently in the religious garb issue in Suspension Bridge - was appointed pastor and continued in that capacity until his death in May 1896.

During his stay at St. Raphael's Father Hines did considerable building. In 1883 he made additions to the parochial residence and in 1884 built a fine new brick school next to the rectory on South Street. Two years later, in 1886, he erected a new parochial residence on the corner of South Street and Eleventh Street at a cost of three thousand dollars. The former rectory was converted into a convent for the sisters who up to this time had continued to live in the frame-building on Michigan Avenue, while teaching in the new school building on South Street³.

2 Testimony of Mr. Lawrence Fell and Sister M. Agnita, S.S.J.

3 "Dedicated - Church of Sacred Heart Opened," news article in The Niagara Gazette, vol. 1, no. 14, February 19, 1890, p. 4, col. 1.

The Beginning of the School Arrangement

In the Fall of the previous year, 1885, the trustees of St. Raphael's Parish had addressed a petition to the Board of Education, asking the Board to take over the care and maintenance of St. Raphael's School. The letter enumerated various reasons why the trustees felt justified in making such a request.

We, the undersigned citizens and representatives of St. Raphael's congregation, do most earnestly petition you to take under your care and maintenance our school. We have provided and kept open said school for the past twenty years at a very heavy expense to us, while paying at the same time our portion of the tax toward the support of the public school. In providing for this school we feel that you are performing a just and legitimate act and carrying out the spirit of justice which we believe animates the disposition of every fair-minded citizen. The current expense of running said school is but very small when located in its proper place, while now for us a few individuals it is burdensome. In making our request we do not ask anything beyond the powers conferred on you by your office, only the execution of your powers by taking all the school children of school age in the district under your care⁴.

4 Board of Education of Suspension Bridge, Minutes of the Board Meetings, (Manuscript), November 6, 1885, pages unnumbered).

The trustees requested certain concessions from the Board:

We simply ask under your arrangement that we may be permitted to retain our Sisters for teachers, provided they are competent - which competency will be decided by the certificate of the School Commissioner of the district; we might draw your attention, if it were necessary, to what the school boards of other places have done, such as renting the school house for a period of five or six years; also the selection of our books. We hope that our petition will find a favorable reception at your hand⁵.

The petition was favorably received by the Board of Education; for at a meeting of the Board held Saturday, October 3, 1885, a motion was made and carried that the whole Board go to the Catholic schoolhouse Tuesday afternoon to examine the schoolhouse and report the next Thursday evening⁶.

They visited the school and on the following Thursday, October 8, held a meeting of the Board. At this meeting a committee of three, including the President, was appointed to confer with the authorities of St. Raphael's School to draw up a lease and contract. D.H. Thomas, O.W. Cutler, and R. Hartigan were appointed as this committee⁷. The committee

5 Board of Education of Suspension Bridge, Minutes of the Board Meetings, (Manuscript), November 6, 1885, pages unnumbered).

6 Board Minutes, October 3, 1885.

7 The eight members who comprised the Board of Education at this time were: Marcus Brown, O.W. Cutler, Thomas Hannan, Richard Hartigan, David W. Thomas, Gottlob Murr, Daniel Elsheimer, S.B. Eshelman. Mr. Cutler was President of the Board; Mr. Murr was Secretary.

was to make its report at the next regular meeting of the School Board⁸.

The committee gave its report on November 6 and on November 10 the Board voted to accept the arrangement that had been made by the committee. The following resolution was carried:

That an agreement of lease between the Trustees of St. Raphael's school and the Rev. Bishop Ryan of the first part and this Board of the second part, which is now before this Board for consideration, be accepted and agreed to by this Board and that the President of this Board be authorized and directed to execute the same on the part of this Board and that said agreement of lease be placed on file⁹.

Messrs. Thomas, Cutler, Hartigan, Schmidt, Hannan and Murr voted in the affirmative; Brown and Elsheimer in the negative. Mr. Eshelman was absent.

By the terms of the agreement the Board leased the premises known as "St. Raphael's school lot" together with the schoolhouse, furniture, fixtures, stoves and all the school appliances for a term of one year and at a rental of one dollar per year. The Board agreed to conduct a public school in this rented building and to employ for this school three competent teachers "of the class commonly known as sisters." These

8 Board Minutes, October 8, 1885.

9 Board Minutes, November 10, 1885.

teachers were to receive the same wages as were paid to the other teachers of the district¹⁰.

Immediately after the signing of the lease the Board took over the care and maintenance of St. Raphael's School. For at the Board meeting of December 4, 1885 the Finance Committee, among other bills, presented one for one dollar to pay one year's rental for the new school building. Also at this meeting a motion was made and carried that the janitress for St. Raphael's School should receive ten dollars per month. Mrs. John Dawn was employed as janitress¹¹. The Board also gave a new name to St. Raphael's School, designating it as School No. 2 to distinguish it from School No. 1, the school owned by the district¹².

Not only did the Board take over the care and maintenance of the school, it began at once to exercise authority in the schoolhouse. It ordered the principal of the public school, Professor Browning, to change the school books in School No. 2

10 Thomas E. Finegan, Judicial Decision of the State Superintendent of Common Schools, State Superintendent of Public Instruction, State Commissioner of Education, from 1822 to 1913, Albany, University of the State of New York, 1914. p. 533.

11 Board Minutes, December 4, 1885.

12 Board Minutes, January 2, 1886.

to conform with the books used in School No. 1¹³. This action, it is worth noting, was contrary to what the trustees of St. Raphael's had requested in their petition to the Board. Apparently in the drawing up of the lease the Board of Education had refused this request of the trustees.

Opposition to the School Arrangement

The action of the Board in assuming the care and direction of St. Raphael's School and in employing the three sisters to teach there was opposed by Mr. Leander Colt, a man of wealth and influence in Suspension Bridge¹⁴. Mr.

13 Board Minutes, January 2, 1886.

14 Leander Colt was the owner of the Whirlpool Resort, a popular haven for tourists in Niagara Falls. See: "The Canadian Whirlpool", news article in The Suspension Bridge Journal, vol. 6, no. 51, October 16, 1886, p. 3, col. 3.

Colt's opposition took the form of an appeal to the State Superintendent of Public Instruction¹⁵. James E. Morrison was acting Superintendent at the time.

The Board of Education met on January 11, 1886 to discuss the appeal. The lease entered into on November 10 was discussed. It will be recalled that this lease was an explicit agreement between the trustees of St. Raphael's Parish and Bishop Ryan as the party of the first part and the Board of Education as the party of the second part. Mr. Colt had protested against the renting of a parochial school building and the hiring of three sisters as teachers. With the hope of removing the grounds for his objection and safeguarding their own position, the Board decided to abrogate the agreement of November 10, 1885. Then immediately a new lease was drawn up - this time not with the authorities of

15 In 1854 the office of State Superintendent of Public Instruction was created. The new official succeeded to the powers and responsibilities previously belonging to the secretary of State in his capacity as superintendent of the common schools. In 1904 the Department of Public Instruction was united with the Regents of the University of the State of New York, at which time the office of State Superintendent ceased to exist, his powers and duties devolving on the State Commissioner of Education. The following held the office of State Superintendent of Public Instruction: Victor M. Rice (1854-1857); Henry Herbert Van Dyck (1857-1861); Emerson W. Keyes (1861-1862); Victor M. Rice (1862-1868); Abram B. Weaver (1868-1874); Neil Gilmour (1874-1883); William Benjamin Ruggles (1883-1886); James Edward Morrison (January 1 to April 7, 1886); Andrew S. Draper (1886-1892); James F. Crooker (1892-1895); Charles R. Skinner (1895-1904). See: Charles E. Fitch, The Public School, History of Common School Education in New York from 1633 to 1904, Albany, New York State University, 1904, p. 44, 114-124.

St. Raphael's School, but simply with the owners of lot No. 6 in Block S on South Avenue.

In the course of this meeting four resolutions were passed:

1^o That the lease bearing the date November 10, 1885 be and hereby is abrogated.

2^o That we lease lot No. 6 in Block S situated on the north side of South Avenue in this village and the schoolhouse and appurtenances thereon for the purpose of using said building as a public schoolhouse for District No. 7 to be known and called schoolhouse No. 2 in said district No. 7 for the sum of one dollar per annum for the term of five years from January 11, 1886; and it is agreed that we assume the care and insurance upon said School No. 2 for the benefit of the owners of said building.

3^o That the President and the Clerk of this Board be and hereby are instructed to execute the lease with the owners and controllers of Lot 6 in Block S in behalf of this Board in accordance with the above resolution.

4^o That the President and the Clerk communicate with the Superintendent of Public Instruction and inform him of the action taken by this Board this evening¹⁶.

The three Sisters of St. Joseph, Sister Martha Cleary, Sister Perpetua Kain, Sister Camilla Mullen, who had been teaching in St. Raphael's School, were again engaged by the Board as teachers for School No. 2. The resolution to employ them, however, did not, like the earlier agreement, make reference to the fact that they belong to "the class called sisters." They are simply referred to by their secular names.

16 Board Minutes, January 11, 1886.

Thus the resolution was passed at a meeting of the Board held on February 5, 1886 that: "Miss Martha Cleary, Miss Perpetua Kain, and Miss Camilla Mullen be employed as teachers in schoolhouse No. 2¹⁷".

Morrison Decision

James E. Morrison's decision, rendered on April 1, 1886, sustained the appeal of Leander Colt. The acting Superintendent decided that the agreement to keep three teachers of "the class called sisters" was discrimination in favor of a particular class, which was "contrary to the spirit of the school law and against public policy¹⁸". He therefore, declared the agreement null and void.

The Board of Education of Suspension Bridge, it would seem, took no notice of the decision, apparently reasoning that the decision had been directed at the agreement of November 10, 1885. Since this agreement had been abrogated and replaced on January 11, 1886 by a new agreement removing the objectionable features of the former one, they were satisfied that the grounds for appealing against the school arrangement no longer existed. Mr. Colt, however, was not so easily satisfied. Accordingly on June 4, he again registered a complaint with the school

17 Board Minutes, February 5, 1886.

18 Thomas E. Finegan, Judicial Decisions, p. 1211.

Board against their action in leasing the Catholic school building and in employing the sisters to teach in the school¹⁹. The Board refused to consider his protest. Thereupon Mr. Colt appealed once again to the Superintendent of Public Instruction in Albany. This appeal was received by a new Superintendent, Andrew S. Draper²⁰, who on April 8, 1886 had replaced acting Superintendent Morrison in the Department of Public Instruction.

Mr. Colt informed the Board of the appeal he had made to Albany. This is recorded in the meeting of the Board on July 2, 1886, when the following resolution was adopted:

Whereas Leander Colt has served a copy upon this Board of an appeal to the State Superintendent of Public Instruction asking for discontinuance of the maintenance of School No. 2.

Resolved: That the President and the Clerk of this Board be and hereby are instructed to procure counsel to answer said appeal within ten days²¹.

19 Andrew Sloan Draper (1848-1913) was born June 21, 1848 in Westford, New York. He studied law, served as principal of an high school, was a member of the Albany Board of Education. In 1884 he was appointed by President Arthur as a member of the Court of Commissioners set up to settle the Alabama claims. He served as Superintendent of Public Instruction from 1886 to 1892. In 1904 he was elected for a term of six years to the newly created office of State Commissioner of Education. See: Allen John and Dumas Malone, ed., Dictionary of American Biography, New York, Scribners, 1930, vol. 5, p. 434.

20 Board Minutes, July 2, 1886.

21 Board Minutes, September 10, 1886.

The decision of Superintendent Draper was not immediately forthcoming. Hence the Board of Education continued operating School No. 2 during the next school year. Two of the sisters, Sister Perpetua and Sister Camilla, were transferred by their superiors. Since they had been employed by the Board, they had to submit their resignations. These resignations were accepted by the Board on September 10, 1886. That same day Sister Frances Reilly and Sister Simplicia Johnston were employed to take the places of the two sisters who had left²².

On October 11, 1886 the Niagara County Teachers' Institute began its annual meeting in Lockport, New York. Superintendent Draper came from Albany to attend the Institute²³. As might be expected, he was questioned about the school situation in Suspension Bridge. It would appear that the answer he gave on this occasion was quite different from the answer he was to give later in his official decision. A letter to the editor of The Suspension Bridge Journal, signed

22 Board Minutes, September 10, 1886.

23 "Niagara County Teachers' Institute", news article in The Suspension Bridge Journal, vol. 6, no. 46, September 11, 1886, p. 3, col. 4.

by "One Who Was There", contains the following interesting sentence:

When he (A.S. Draper) was at the Lockport Teachers' Institute, he was asked about teachers' dress, in view of this very case, and replied that the law and the Department had nothing to do with teachers' dress and that a certificate of proper qualifications was the sole requisite²⁴.

Before rendering his decision Superintendent Draper sought to obtain further information on the case. With this end in view, he appointed F.J. Swift, who was one of the School Commissioners for Niagara County, to investigate the school situation in Suspension Bridge. This investigation was conducted in January of 1887. In an article entitled "School No. 2 - Is it a Sectarian or a Public School?" The Suspension Bridge Journal gave a report on the investigation.

School Commissioner Swift was engaged Tuesday and Wednesday of this week in taking testimony in regard to School No. 2 which was made a public school a year ago by our Board of Education. An appeal was made to the State Superintendent on the grounds that the school was a sectarian one, and therefore could not be legally supported by public money. Up to the adjournment on Wednesday night eight witnesses had been examined and all agreed that School No. 2 was governed by the same rules as School No. 1 and had substantially the same books²⁵.

24 "One Who Was There", letter to the editor, in The Suspension Bridge Journal, vol. 7, no. 23, April 2, 1887, p. 3, col. 3.

25 "School No. 2 - Is it a Sectarian or a Public School?", news article in The Suspension Bridge Journal, vol. 7, no. 11, January 8, 1886 p. 3, col. 2.

At this investigation the Board of Education had as counsel the Cary Law Firm; the Ely Law Firm represented Mr. Colt and his supporters.

Among the witnesses whose testimony was heard in the investigation were: Professor Browning, who had been principal of School No. 1 the previous year when the rented school was taken over by the Board; Professor Barringer who was the incumbent principal of School No. 1; David W. Thomas who was at that time the president of the Board of Education; and Sister Martha Cleary and Sister Frances Reilly, two of the teachers at School No. 2.

Professor Browning testified to having visited the school and found the same books being used the same way as in School No. 1, with the exception of the arithmetic and grammar books. He considered those being used of equal value with those in School No. 1 and advised their retention.

Mr. Thomas testified to the care taken by the Board of Education to make certain that the education given in both schools of the District would be the same. To this effect, the printed rules of the Board had been hung up in the class rooms; the teachers had been required to possess the usual certificates; they had also been informed that they were under the

direction of the principal. He further stated that, "Whenever complaint had been made, he went personally and investigated and found cheerful compliance with every request²⁶".

The two sisters were questioned at great length. They stated that, since their appointment by the Board of Education they had used the books and followed the courses prescribed by the principal. From November 1885 to March 1886, the school had been closed with the Lord's Prayer, but since that time there had been no religious exercises in the school. In particular the sisters were questioned about the religious community to which they belonged and the religious garb that they wore.

The article in The Suspension Bridge Journal arrived at this conclusion:

The investigation seems to have come down to the point whether the wearing of a garb of a religious order by a teacher constitutes a sectarian school in the eyes of the law.

The investigation was concluded on January 11, 1887 and the testimony was forwarded by Commissioner Swift to Superintendent Draper²⁷.

It would appear that the school situation created by the Board of Education came in for much discussion while it was in force. Nor were the discussions always carried on with

26 Ibid.

27 "School Examination", news article in The Suspension Bridge Journal, vol. 7, no. 12, January 15, 1886. p. 4, col. 2.

calm and equal minds. Miss Lillian Colt, who was graduated from School No. 1 in 1886, has testified that her entire family feared that physical violence would be used against her father. Hence when some one called at the family home, they would make certain that some one other than the father answered the door²⁸.

The school situation also figured prominently in village politics. Thus the Suspension Bridge correspondent of The Lockport Daily Journal writes:

About two years ago our Board of Education decided to devote a part of the school fund toward the support of the Catholic school, and a lease of the ground and building was taken for the nominal sum of one dollar per year annual rental. The lease further provides that no one is to be engaged to teach said school but the Sisters and the school is taught daily by them dressed in their religious garb. At our village election last week an effort was made to change this by electing men on the Board of Education who were not in sympathy with it, but without success²⁹.

This article in The Lockport Daily Journal was severely criticized the very next day by the editor of The Lockport Daily Union. The editor of The Lockport Daily Union at this time was

28 Testimony of Miss Lillian Colt, daughter of Leander Colt. Miss Colt is living at present (1951) in Niagara Falls.

29 "Suspension Bridge", editorial in The Lockport Daily Journal, March 9, 1887, p. 2, col. 2.

O.W. Cutler who had recently moved from Suspension Bridge to Lockport and who, it will be recalled, was president of the Board of Education in Suspension Bridge when the lease in question was drawn up.

The building formerly occupied by the Catholic school has been leased by the Board of Education for public school purposes, but it does not provide that no one is to be engaged to teach such school but the Sisters, and no part of the school funds have been devoted to the support of a 'Catholic school'. This issue came into the canvass at the election of the school trustees both last year and this and the majority vote should be accepted in good faith and we think then that no good can possibly result from further discussion of the subject³⁰.

Draper Decision

Superintendent Draper rendered his decision on March 24, 1887. He declared that the Board of Education, if no longer by explicit agreement (since the original lease had been abrogated,) nevertheless by actual fact, was, in the employment of teachers, discriminating in favor of a particular class. Such discrimination, he agreed with his predecessor, was in violation of the fundamental law of the state. Superintendent Draper in his decision went much farther than his predecessor and ruled on the question of the wearing of the religious garb in the

³⁰ "Suspension Bridge", editorial in The Lockport Daily Union, March 10, 1887, p. 2, col. 1.

public school. In what constitutes the first religious garb decision in New York State, he held that:

The wearing of an unusual garb, worn exclusively by members of one religious sect, and for the purpose of indicating membership in that sect, by the teachers in a public school, constitutes a sectarian influence which ought not to be persisted in³¹.

In his order to the Board of Education at Suspension Bridge, he directed them to require that the teachers discontinue the use in the school room of the distinguishing dress of the religious order to which they belong. The Board was also directed to cause the pupils to address the teachers by their family names "with the prefix 'Miss', as teachers are ordinarily addressed." Immediately action was to be taken by the Board and the orders were to be fully complied with within thirty days from the date of the decision.

The Board of Education wrote to Mr. Draper, requesting permission to postpone the execution of his order till the last week of June. Mr. Draper expressed his willingness to accept this modification, if the appellant in the case would agree. He himself consulted the attorneys for the appellant and received word that the appellant refused to accept any modification of

31 Thomas E. Finegan, Judicial Decisions, p. 537.

the Superintendent's orders. This information the Superintendent communicated to Walter P. Horn, the President of the Board of Education, in a letter of April 9:

I have communicated with the counsel for the appellant in the case recently decided in your district and have received reply in which I am advised that the appellant in that case and other interested parties will not consent to a modification of the orders as requested by your Board. I must decline³².

The sisters were notified of the final decision of the State Superintendent and were requested to give their reply to the Board by April 20.

Father Hines referred the matter to Bishop Ryan of Buffalo for a final decision. The Bishop replied in a letter

32 Board Minutes, April 15, 1887.

to Father Hines which was also intended for publication in

The Suspension Bridge Journal:

After reading very carefully the decision of Superintendent Draper, I had it returned to you by today's mail. A very able legal gentleman to whom I showed it said that in this case there is perhaps no appeal from the decree of the Superintendent; if it were before a court he certainly would appeal it; he was satisfied that before any higher court the decision would not stand. (...)

What right has the school Board to examine and determine the dress of teachers? Is not the Superintendent himself on record as saying publicly: "We have nothing to do with the question of dress, all that we want to know is that the teachers are competent and pass the required examination." The dress is a modest and becoming dress, it is known and recognized that the religious dress has an wholesome and harmonizing and restraining influence on children. They have a great respect for their teachers in that dress, discipline is promoted, and what objection can any reasonable man make to the sweet and tender name of sister. (...)

I cannot offer such an insult and indignity to the good religious who for so many years have made so many sacrifices for the school and the children of Suspension Bridge as to send them away and give their places to others, much less ask them (...) to take off their religious dress in the school room and forbid the children to call them sisters³³.

³³ Stephan V. Ryan, letter to the editor in The Suspension Bridge Journal, vol. 7, no. 25, April 16, 1887, p. 2, col. 2.

In accordance with the Bishop's instructions, the sisters in a note to the Board of Education refused to discontinue wearing the religious garb while teaching and, moreover, signified their intention of holding the Board to the contracts that had been made³⁴.

At the Board meeting on April 20 a resolution was passed instructing the secretary to write to the Superintendent. He was to notify the Superintendent that they desired to carry out his instructions, but were at a loss as to how to proceed. They wished to avoid any litigation as regards the salaries of the teachers. And this they thought would be difficult to avoid "as nothing can be found against these teachers except the dress and that being the same as when we employed them³⁵".

34 Board Minutes, April 20, 1887.

35 Board Minutes, April 20, 1887.

In a reply of April 22, Draper expressed the opinion that the Board would be under "no legal obligation to pay teachers who refuse to comply with the school law of the State."

When these teachers accepted employment of the Board, they impliedly agreed to obey the law and when they refuse to do so the Board is clearly justified in terminating the employment. I had hoped that these teachers and their advisers would see their way clear to acquiesce in the decision of the Department and regret their determination as expressed in their note to your Board. I hope, yet, that they will think better of the matter and decide to comply with the decision and remain in the school. If they cannot do this, it will be the duty of the Board to terminate their employment³⁶.

At the meeting of the Board held on April 25, 1887 a resolution was passed embodying the following points:

1° The teachers of School No. 2 were to be notified that in accordance with the decision of the Superintendent and owing to their being unable to comply, their appointments were revoked - to take effect immediately.

2° The janitress was to be notified that under the circumstances her services would no longer be needed.

3° That an order was to be drawn on the treasury to pay the several amounts due to the teachers and the janitress for services rendered up to the present time.

4° That the owners of the school building were to be notified of the willingness and decision on the part of the Board to cancel the lease with them and return the property to their own control³⁷.

36 Board Minutes, April 25, 1887.

37 Board Minutes, April 25, 1887.

Thus, in 1887, for the first time in New York State, the wearing of the religious garb in the public school was forbidden; and the compromise plan, involving the religious garb issue, was declared illegal. The decision in the Suspension Bridge school case was based not on a constitutional provision but on what Superintendent Draper considered to be the established policy of the Department of Public Instruction. In 1894 the New York State Constitutional Convention, by enacting Article IX, section 4, was to give a basis in law for future religious garb decisions.

The next chapter, after a brief discussion of the Constitutional Convention of 1894, will study the Watervliet school case, wherein the new constitutional provision was first applied to the religious garb issue.

PART TWO

THE RELIGIOUS GARB ISSUE AFTER THE NEW YORK
STATE CONSTITUTIONAL CONVENTION OF 1894

CHAPTER II

THE WATERVLIET SCHOOL CASE

On May 22, 1894, the New York State Constitutional Convention met to draft the State's fourth constitution¹. The liveliest and bitterest discussions of the Convention centered about the introduction of an amendment to prohibit state and local governments from giving aid to institutions under sectarian control.

Some time before the Convention, it had become common knowledge that such an amendment would be proposed. In 1889 the National League for the Protection of American Institutions had been organized for the avowed purposes of protecting the common school system and preventing all sectarian appropriations of public funds². In 1893, as an attempt to forestall the efforts of the National League, the Spellissy bill was introduced into the New York State Assembly. Sponsored by Dennis R. Spellissy of New York City and reputedly written by Dr. Michael Walsh, editor of the Catholic Herald, the bill proposed that: a primary or grammar school, set up by any individual or organization, provided it could secure fifty pupils and pass

¹ The three previous Constitutions were those of 1777, 1821, and 1846.

² Edward M. Connors, Church-State Relationships in Education in the State of New York, Washington, D.C. The Catholic University of America Press, 1951, p. 129.

inspection by state or local school authorities, should be entitled, after being in existence for at least one year, to receive "a share of all State and other moneys now directed to be apportioned and distributed among the common schools³".

The premature introduction of this bill into the Assembly was severely criticized by the Freeman's Journal, as weakening the position of Catholics who hoped for an equitable distribution of the public school funds⁴. Archbishop Corrigan of New York City, through his Vicar-general, Msgr. John Farley, explicitly repudiated the bill, as "unauthorized (...) and gotten up by irresponsible people⁵".

The bill, of course, failed to be passed in the Assembly. Its introduction only spurred the National League for the Protection of American Institutions to greater efforts in opposing Catholic attempts to secure public funds for private denominational institutions. Thousands of leaflets and pamphlets were distributed by the League⁶, attacking the Catholic position and

3 "The Catholics and the Public School Funds", news article in The Independent of New York, vol. 45, December 14, 1893, p. 13, col. 1.

4 Quoted in "The Catholics and the Public School Funds", news article in The Independent of New York, vol. 45, December 14, 1893, p. 13, col. 1.

5 "Dr. Michael Walsh's School Campaign", editorial in The Independent of New York, vol. 45, December 14, 1893, p. 10, col. 1.

6 Edward M. Connors, Church-State Relations, p. 130.

campaigning for the passage at the Constitutional Convention of an amendment that would prohibit state aid to any institution under denominational control.

It was in this atmosphere of controversy that the Constitutional Convention met on May 22, 1894. Soon after the opening of the Convention, amendments were introduced prohibiting the state or any subdivision thereof from aiding in any way institutions under sectarian control. Since the institutions involved included not only schools but also charitable institutions, these amendments became the subject of discussion in two committees of the Convention - the Committee on Education and the Committee on Charities and Charitable Institutions. After much debate in both committees⁷ the matter was resolved by a compromise. By Article IX, section 4 of the Constitution,

⁷ Charles Z. Lincoln, Constitutional History of New York State, Rochester, Lawyers Cooperative Publishing Co. 1906, vol. 3, p. 560-576.

public aid was forbidden to schools and institutions of learning "wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught⁸", while section 14 of Article VIII permitted the State to provide for the care, support, maintenance and secular education of inmates of charitable and correctional institutions, whether under public or private control.

Both of these proposed amendments were adopted by the Convention on September 15, 1894 and ratified by the voters of the State in November.

The amendment affecting schools and institutions of learning (Article IX, section 4) was first applied to the religious garb issue in the Watervliet school decision rendered by State Superintendent of Public Instruction, Charles R. Skinner. The circumstances leading to that decision will be detailed in the following pages.

8 In its entirety the amendment reads as follows: "Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught." See: Charles Z. Lincoln, op. cit., p. 560.

The city of Watervliet, New York, is located six miles north of the city of Albany in Albany county. It borders the west bank of the Hudson River opposite the city of Troy.

What is now known as Watervliet originally comprised three villages: Port Schuyler whose northern boundary was the United States arsenal, Gibbonsville which extended from the arsenal to Fifteenth Street, and West Troy, the section north of Fifteenth Street. On April 30, 1836 these three were united and incorporated as the village of West Troy - at the time the largest village in the State of New York. By an act of the Legislature of the State of New York on May 26, 1896 West Troy became the city of Watervliet⁹.

The population of Watervliet has for generations been predominantly Catholic. Indeed, today it is one of the few if not the only city in the United States to have more children in parochial than in public schools. At present it possesses nine parochial schools and seven public schools¹⁰.

One of the parochial schools located in what was once known as Port Schuyler is St. Bridget's School. The parish Church of St. Bridget was built in 1850 under the direction of

⁹ Amasa J. Parker, ed., Landmarks of Albany County, N.Y., Syracuse, D. Mason and Co., 1897, vol. 1., p. 411, 423.

¹⁰ Testimony of Miss Mary O'Connell, secretary of the Board of Education of Watervliet.

Reverend Thomas Kyle, pastor of St. Patrick's Church. The first resident pastor appointed was the Reverend William Cullinan¹¹. During his pastorate a single-room ungraded school was begun - taught by Father Cullinan himself and a group of lay women, among them, Miss Arts, Julia Grady, Mary Jane Harrigan, Anna Boyle, Miss Dolan, Anna Riordan, Elizabeth Hogan, and Julia D. Walsh¹².

In May 1883 the Reverend James A. Curtin succeeded Father Cullinan and remained as pastor for eighteen years.

Under him the original facilities were extended. School was conducted in a double frame-house which stood close to the site of the present parish hall on Fifth Avenuel^{2a}.

In 1883 Father Curtin obtained two sisters of St. Joseph from Troy to teach in his school. In that same year Sister Irene O'Hara and Sister M. Urbana Byrne, together with two lay teachers opened the parochial school. The sisters came each day from the Provincial House in South Troy. The sisters crossed the Hudson by rowboat as long as the season permitted; during the zero months they journeyed by foot across the ice.

Two years later, in 1885, a permanent convent was built and five sisters came to teach. Sister M. Regina Desmond was

¹¹ Amasa J. Parker, op. cit., p. 426.

¹² St. Bridget's Parish, Golden Jubilee Souvenir of St. Bridget's School, Watervliet, (no publisher), 1937, p. 13.

^{12a} St. Bridget's Parish, op. cit., p. 13.

Superioress. The others were Sister Joanna Sullivan, Sister Alfreda Berry, Sister M. Gertrude Sullivan, Sister M. Gabriella Davey¹³.

The year following the building of the convent construction was begun on the present school building. It was completed in 1887. At the time, according to the history of the Sisters of St. Joseph of Troy, St. Bridget's was proclaimed as one of the finest school buildings in the Capital district. There were eight classrooms and in them the sisters taught eight years of grade school and four years of high school¹⁴.

Beginning of the School Arrangement

The people of St. Bridget's Parish were for the most part very poor¹⁵. It was difficult to meet expenses. Hence Father Curtin offered to lease the school to the trustees of

¹³ Sisters of St. Joseph, History of Sisters of St. Joseph of Carondelet in the Troy Province, Troy, Argus, 1936, p. 167.

¹⁴ Sisters of St. Joseph, History of Sisters of St. Joseph of Carondelet in the Troy Province, p. 167.

¹⁵ Testimony of Sister M. Leonie.

the Union Free School District No. 1. This offer was made certainly in the year 1888¹⁶; possibly it may have been made even earlier¹⁷. According to the conditions of the lease the Union Free District was to pay one dollar a month for the use of the school rooms. Father Curtin agreed to supply fuel, a fireman and a janitor. The trustees of the district were to enter into contract with the teachers and pay their salaries¹⁸. It was apparently understood that the sisters would be hired to teach.

It was probably at this time that the name of the school was changed to Watervliet Academy - under which title it was chartered in 1891 by the Regents of the State of New

16 "West Troy Varieties", news article in The Argus of Albany, N.Y., vol. 75, no. 251, Aug. 29, 1889, p. 3, col. 4. This article lists as one of the items voted for school purpose at the First Ward School Meeting: "rent \$10." According to the lease entered into between Father Curtin and the West Troy School District, the District was to pay one dollar a month rental fee for the use of St. Bridget's School building.

17 The Respondents's Brief sent to the State Superintendent of Public Instruction in answer to the Durant appeal states: "During the past ten years the Board of Education of the Union Free School District no. 1... hired the building belonging to St. Bridget's school and conducted school therein." This Brief was written in September 1895 and would, therefore, suggest that the arrangement may have begun as early as 1886. See: West Troy Board of Education, Minutes of Board Meeting, Respondents' Brief, between p. 62-71 of Board Minutes.

18 Appeal of Fayette B. Durant et. al. vs. the Board of Education of the West Troy School District, a copy of which is contained in Minutes of the Board Meeting of the West Troy School District, September 9, 1895, p. 45.

York. (Previous to the obtaining of the charter the pupils had to go to St. Peter's High School in Troy for the regents examinations¹⁹.)

The first three graduates of the High School were Mary A. Hannan, Mary F. Taylor, and Mary A. Walsh. All three of them taught in their Alma Mater.. In 1889 Miss Mary A. Walsh did practice-teaching at the Academy from the feast of St. Joseph to the end of the school year. In September 1889 Mary Taylor and Mary Walsh became members of the faculty. They entered into contracts with the trustees of the District. Miss Walsh received her contract from Thomas Cullen and Matthew Carr who were trustees at that time²⁰.

It was in this same school year that Mary Taylor and Mary Walsh represented the Watervliet Academy at the Teachers' Conference for Albany County held at Altamont, N.Y. At the conference 125 teachers took part in a written spelling contest. Mary Taylor and Mary Walsh won first and second prize respectively²¹.

While the arrangement with the Union Free District was in force, there were no religious exercises, prayers or catechism

¹⁹ Sisters of St. Joseph, History of Sisters of St. Joseph of Carondelet in the Troy Province, p. 167.

²⁰ Testimony of Miss Mary Walsh.

²¹ Sisters of St. Joseph, History of Sisters of St. Joseph of Carondelet in the Troy Province, p. 168.

lessons during the school hours. All the statues and sacred pictures were removed from the school rooms. Prayers and catechism lessons were held before the beginning of the regular school sessions which commenced at nine o'clock²².

Opposition

It was in 1895 that opposition was voiced against the arrangement between the Board and Father Curtin. This opposition was to generate a great deal of bitterness and antagonism among the people of West Troy. The immediate circumstances leading up to this opposition are the following.

On August 14, 1895 the Board of Education of West Troy, including the former Union Free School District No. 1, was organized under chapter 88 of the laws of 1895²³. The Board was a bi-partisan Board, made up of eight commissioners: four Republicans and four Democrats. The Republican members of the first Board were: Dr. Adam T. Van Vranken, M.D., Dr. William B. Sabin, M.D., James M. Ball and Arthur T. Phelps. All of these men were non-Catholics. The Democratic members of the Board were: James B. McLeese, who worked for the firm of J.M. Jones Car Works where electrical trolley cars were made; John H. McKeever, who ran a grocery store at the corner of Thirteenth

22 Testimony of Sister M. Leonie.

23 West Troy Board of Education, Minutes of the Board Meeting, August 22, 1895, p. 18.

Street and Sixth Avenue; John T. Mace; and Thomas A. Neason. All of these men were Catholic²⁴. At the meeting of the Board held August 14, 1895 Dr. Van Vranken was elected President; James K. Gatchell was elected Superintendent of Schools and Secretary of the Board²⁵.

On August 19, 1895 the Reverend James A. Curtin submitted to the Board of Education of West Troy the same proposition that he had submitted in previous years to the Union Free School District - a proposition offering to lease the school rooms in St. Bridget's School. His offer read as follows:

We hereby offer to lease for one year to the West Troy School District the school rooms in the building at the corner of 5th Avenue and 8th Street. We propose to furnish fuel and pay the fireman and janitor. The Board of Education will have entire control of all school rooms during school hours. The consideration asked from your honorable body for this lease is one dollar per month.

Corporate Board of Trustees: Thomas M.A. Burke²⁶
James A. Curtin
James Fitzgerald
Michael Walsh²⁷

²⁴ "New School Board", news article in The Argus of Albany, N.Y., vol. 82, August 7, 1895, p. 6, col. 3; testimony of Miss Mary Walsh.

²⁵ Board Minutes, August 14, 1895, p. 3.

²⁶ The Bishop of Albany.

²⁷ Board Minutes, August 19, 1895, p. 9.

At the meeting of the Board of Education held on August 19 this offer was unanimously accepted by the Board.

At this same meeting the Commissioners recommended the teachers whom they were proposing for appointment. The salaries for the teachers was fixed at \$432 per annum²⁸. The teachers were hired for one year. The salary was to be paid in twelfths; but at the tenth payment three-twelfths of the yearly salary was to be given. If for sickness or any other good cause a teacher was obliged to resign during the school year, she was to receive a pro rata share of the two-twelfths according to the time she had taught²⁹.

Among the teachers appointed for the first district were six Sisters of St. Joseph. Only their secular names are listed in the Minutes' Book: Anna G. Conway (Sister Gertrude), Victoria Melinda (Sister Adelaide), Kate Rice (Sister Ludwine), Catharine Walsh (Sister Leonie), Jennie Higgins (Sister DeChantal), and Hannah Keefe (Sister Ignatia³⁰).

At the meeting of the Board, held August 26, 1895 the Superintendent of Schools, James K. Gatchell, submitted a form of teacher's contract. The Board approved the contract and

28 Board Minutes, August 22, 1895, p. 15.

29 Board Minutes, August 22, 1895, p. 18.

30 Board Minutes, August 22, 1895, p. 10.

authorized him to have the necessary number printed. At the same meeting the President and the Superintendent were authorized to arrange a meeting to examine the licenses of the teachers and to make contracts with them³¹. This meeting was held on or about August 31³².

Sometime between August 31, and September 8, certain citizens of West Troy protested against the action of the Board of Education in leasing St. Bridget's School. Their protest took the form of an appeal to the State Superintendent of Public Instruction. In the appeal the facts of the case were stated: That six of the fifteen teachers appointed to teach in the First Ward School of West Troy were known as "sisters" who resided in St. Joseph's convent; that these sisters all dress in a garb peculiar to their religious order and are usually addressed in school, not by their family names, but by the names assumed by them as members of the religious order to which they belong, prefixed by the term "sister".

31 Board Minutes, August 26, 1895, p. 20.

32 Sister M. Leonie, the only one of the six sisters who is now living (February 1952) recalls going to this meeting, together with the other teachers of the public schools of West Troy and entering into contract with the School Board.

The following allegations were made:

1^o That the Sisters did not properly pass the teachers' exam and therefore did not possess the requisite certificates qualifying them to teach.

2^o That the school is "wholly or partly under the control or direction of a religious sectarian denomination and denominational doctrines or tenets are taught therein³³".

The petitioners requested the State Superintendent of Public Instruction to annul the action of the Board of Education in leasing St. Bridget's School; to invalidate the contracts made with the sisters; to instruct the Board to provide suitable school rooms; to employ qualified teachers, irrespective of their religious affiliations and to prohibit the teachers from teaching denomination doctrines or tenets³⁴.

On September 9, 1895 a copy of this appeal was served on the Board of Education. The commissioners from the first district were appointed to take up the matter and engage counsel to answer the appeal³⁵. The law firm of Tracey and Cooper was engaged and at the meeting of the Board of Education on September 25 Mr. James F. Tracey submitted an answer to the appeal. The answer was discussed by the Board. Several

33 Board Minutes, September 3, 1895, p. 47.

34 Board Minutes, September 3, 1895, p. 47.

35 Board Minutes, September 9, 1895, p. 50.

changes were suggested by the members of the Board. In a final vote the answer to the appeal was accepted and signed before a notary public by seven of the eight commissioners. Commissioner James M. Ball refused to sign.

The statement presented by Mr. Tracey defended the action of the Board on three scores:

1^o The Leasing of the School Rooms. - The school buildings owned by the district are inadequate to accommodate the children. The school building belonging to St. Bridget's Church was leased by the Board of West Troy, as it had for the past ten years been leased by the Union Free School District No. 1, for the best interests of the district. During school hours the building is in no way under sectarian control, but is entirely controlled by the Board. The school has been visited frequently by Superintendent James K. Gatchell, who is a Protestant and who has informed the Board that he observed no improper sectarian influence in the school.

We believe that this Board and its predecessors in Union Free District No. 1 have saved the taxpayers of West Troy great sums of money by annually renewing this lease³⁶.

2^o The Hiring of the Teachers. - The sisters were hired as teachers because they were already teaching under contracts

36 Respondents's Brief, p. 2.

signed by the Board of Education of Union Free School District No. 1 and there was no reason for refusing to renew the contracts; because they are competent teachers whose excellent work has been frequently praised by the commissioners of the district; because they are duly qualified teachers, holding licenses from the Department of Public Instruction obtained in an examination in West Troy, conducted in November, 1895 by five examiners from the Department of Public Instruction including Chief Examiner Thomas E. Finègan.

30 The Charge of Sectarian Influences. - In the rooms leased and during the time governed by the lease there are no religious exercises or prayers, no religious doctrines are taught nor are any religious emblems displayed. The dress worn by the sisters does not constitute a sectarian influence.

The Respondents' Brief states:

The dress worn by these teachers is suitable for their work. We would not refuse to employ teachers who wear the garb of Quakers or Shakers nor would we reject them for wearing a string of beads or a cross or other device, either as ornaments or as signs of their faith. We would not exclude from our school men or women wearing the badge of Masons or Odd Fellows or of the Society of Christian Endeavor; hence we can see no valid reason why we should object to the garb worn by these teachers³⁷.

37 Respondents' Brief, p. 4.

On September 30, 1895 James F. Tracey filed at the office of State Superintendent of Public Instruction in Albany the answer to the appeal. As mentioned above seven of the commissioners signed. The one who did not was James M. Ball. Attached to the answer was an affidavit of Commissioner James M. Ball, in which he stated that, while he concurred in the statement of facts as to all the transactions of the Board mentioned in the answer to the appeal, he was unable to agree with the conclusion as to the absence of sectarian influences³⁸.

On October 21, 1895 the rejoinder of Fayette B. Durant and the others who had made the appeal was filed with Superintendent Skinner. They were careful to point out that the appeal was not directed against the Roman Catholic Religion.

They have no objection to any person's faith, creed, or religion. They would make the same objection to any other denomination maintaining a sectarian school at public expense as to the Catholic. And they submit that it is clearly a violation of the constitution of the State to appropriate money in support of a school conducted in a church (sic) used for religious denominational services³⁹.

The rejoinder maintained that soon after the erection of St. Bridget's School building, a Union Free District was

38 Respondents' Brief, p. 8.

39 "A Parochial School", news article in The Argus of Albany, New York, vol. 82, October 22, 1895, p. 7, col. 3.

created. St. Bridget's School was included in that district for the purpose of "obtaining a portion of the public school money for the support of a parochial school, and not for the purpose of making said school a public school⁴⁰".

In the rejoinder a pamphlet issued by the Reverend James A. Curtin, the priest of St. Bridget's Church, to the voters of the district following the creation of a Free School District, is quoted as follows:

If we put our school under the control of the trustees of this district, our teachers would become 'qualified teachers' and this district would be entitled to twelve 'distributive quotas' instead of seven. This increase would help us and cost the district nothing⁴¹.

Several arguments were proposed as demonstrating the point that St. Bridget's School was a parochial and not a public school. It was known as St. Bridget's parochial school to the community; it was so designated in the newspaper. It was exempted from taxation by the assessors on the ground that it was used for religious worship. The school children were required to be present in the school rooms each morning on school days at 8:30 A.M. for religious instruction. A large gilt cross similar to the one on St. Bridget's Church surmounts the school building and indicates its connection with the Church.

40 Ibid.

41 Quoted in The Argus, loc. cit.

The rejoinder finally maintained that if the public money now devoted to St. Bridget's School were properly distributed, all the children of the West Troy School district, desiring to attend the public schools, could be properly cared for without additional expense⁴².

On November 11, 1895 James F. Tracey, counsel for the Board of Education, submitted a second brief to the office of the Superintendent of Public Instruction in reply to the rejoinder of the appellants. In this brief the respondents denied that denominational doctrines and tenets of the Catholic Church had been taught in any school under their direction. They denied that the other schools of the district were sufficient to accommodate all the school children. They denied further that any child was required to be present in the school building by 8:30 A.M. Any child who came before nine o'clock did so voluntarily⁴³.

As in the case of the first brief presented by the Board of Education, Commissioner James M. Ball disagreed with

42 Ibid.

43 "West Troy's Schools", news article in The Argus of Albany, New York, vol. 82, November 12, 1895, p. 7, col. 3.

his colleagues and filed a separate reply. As stated in the Minutes of the Board of Education

A separate reply to the rejoinder filed in the Department of Public Instruction has been served on the President by Commissioner Ball and was read to the Board by the Secretary. Upon motion the separate reply was accepted and referred to the committee on the counsel⁴⁴.

In his statement Commissioner Ball showed himself in agreement with the fundamental issues raised by the appellants. He declared:

The school is commonly known in the community as St. Bridget's parochial school and is commonly designated at meetings of the Board of Education as 'the Church school' or as 'St. Bridget's School'.

His own personal investigation, he declared, satisfied him that the schools of the first ward were sufficient to accommodate all the school children. While he agreed with his colleagues that the Board of Education had not required the children to attend the school at 8:30 A.M. for religious instruction, nevertheless, he was informed on reliable authority that the Church authorities did require such attendance on the part of the children⁴⁵.

44 Board Minutes, November 11, 1895, p. 85.

45 "The Board is Divided", news article in The Argus of Albany, New York, vol. 82, November 21, 1895, p. 4, col. 6.

Each side had pleaded its case. All that remained was to await the decision of the State Superintendent of Public Instruction. In the second brief sent to the State Superintendent the respondents declared that

They welcome the opportunity afforded by the appeal to obtain an adjudication by the State Department as to the validity of the lease and contract and the legality of such teaching and they unite with the appellants in praying for the Superintendent's definite and decisive direction in the matter⁴⁶.

Superintendent Skinner did not render his decision immediately. In the meantime a political issue arose in West Troy which while it temporarily placed the school question in the background, was in no small measure to affect the final outcome of that question. On December 18, 1895 a group of political leaders of West Troy met to formulate plans for a campaign to incorporate West Troy as a city⁴⁷. The proposal was made that the city be called Watervliet and a committee was chosen to draft a bill creating the city of Watervliet, to be presented

⁴⁶ "West Troy Schools", The Argus, November 12, 1895, loc. cit.

⁴⁷ "Agitation for City", News article in The Argus of Albany, New York, vol. 82, December 19, 1895, p. 6, col. 4.

to the legislature as soon as possible. The members of this committee were: C. Wilbur, John H. Jones, Lewis V. Thayer, William Hollands, Fayette B. Durant, Joseph H. Hollands and Charles A. Richardson⁴⁸.

By an act of the legislature of May 26, 1896 West Troy became the city of Watervliet. The act provided that the village officers in power at that time should hold their place until January 1, 1897.

By the end of the school term, Superintendent Skinner's decision on the appeal had not yet been made. On July 30, 1896, therefore, the Reverend James A. Curtin again sent a communication to the Board of Education offering to lease for the coming school year the school rooms in the building owned by the parish. The proposition was identical with the one made by Father Curtin on August 19 of the previous year.

At a meeting of the Board of Education held on July 30, 1896 the proposition was accepted, Commissioner Ball alone voting against its acceptance. At this same meeting the six sisters who had been engaged to teach the previous year in the rented school rooms were reappointed.

⁴⁸ "West Troy", news article in The Argus of Albany, New York, vol. 82, December 23, 1895, p. 6, col. 2.

The Skinner Decision

Superintendent Skinner's long-awaited decision was rendered on November 25, 1896. Some of the citizens of Watervliet evidently were confident that the decision would vindicate the action of the Board of Education. Thus on November 27, 1896 the Watervliet column of The Argus had the following item:

It is expected that Superintendent Skinner will make public his decision in the St. Bridget's School matter today, which will be unfavorable to Mr. Durant and others⁴⁹.

Contrary to these expectations the Superintendent's decision sustained the appeal. The Board was told that it had no right to rent the rooms in question for school purposes. It has always been the policy of the State Department, the Superintendent declared, to require a school district to own its own property. The renting of school facilities is permissible only to solve an unforeseen emergency. The decision also required the Board to order the teachers to discontinue wearing the religious garb while teaching in the public school.

Much space is given over in the decision to a discussion of the religious garb issue. Superintendent Skinner admitted that there existed no statutory law nor any New York State court decision either prescribing or prohibiting the wearing of a particular garb by the teachers in the public schools.

⁴⁹ "West Troy", news article, in The Argus of Albany, New York, vol. 84, November 27, 1896, p. 6, col. 7.

He based his decision, therefore, on precedent and on the application of the recently approved amendment to the State Constitution (Article IX, section 4.) He cited, first of all, the decision of Superintendent Draper in the Suspension Bridge case as a precedent establishing the official policy of the State Department of Public Instruction. Secondly, he analyzed the recent amendment to the State Constitution and declared that the school situation at West Troy clearly came under the prohibition of this Constitutional amendment. Considered in itself, the wearing of the religious garb, he asserted, "comes dangerously near the line of prohibition laid down in the Constitution." But when this practice is considered in conjunction with the other sectarian elements present in the West Troy school arrangement, such as the emblem surmounting the building, the inscription over the doorway, and the fact that only Catholic children attend the school in question, the conclusion becomes "irresistible" that the State, to all external intents and purposes, is maintaining a sectarian school. The Superintendent concluded that it was clearly the intent of the recently approved amendment to the Constitution that such practice should be prohibited⁵⁰.

50 Thomas E. Finegan, Judicial Decisions, p. 552-553.

The decision occasioned considerable excitement in Watervliet. In a news despatch of November 29, 1896, "Schools Must Be Closed - Many Children are Thrown upon the Streets in the City of Watervliet," The Argus reported

The decision handed down by Superintendent Skinner in the West Troy case has caused considerable discussion among the residents of Watervliet. It is now necessary for the Board of Education to annul the lease with the Sisters of St. Joseph instructing at St. Bridget's School, Port Schuyler (...)

St. Bridget's has a seating capacity of 500 and the rooms are taxed to their utmost. Now that it has been decided that the school is a sectarian institution, it can no longer be used as a public school, thereby throwing 500 children on the streets with no school rooms for their accommodation. The tax payers, taxed this year more than double what they were taxed in the past, think it rather rough that they are compelled to pay a large school tax and at the same time their children are unable to obtain an education in the city⁵¹.

The Board of Education met on December 14, to consider Superintendent Skinner's decision. Since by reason of the provisions of the act of the legislature incorporating the city of Watervliet, the terms of office of the Board were to expire on December 31, the members of the Board felt that there was not sufficient time for them to devise ways and means of meeting the emergency occasioned by the Superintendent's decision.

⁵¹ "Schools Must Be Closed", news article in The Argus, vol. 84, November 29, 1896, p. 14, col. 4.

They recommended, therefore, to their successors the advisability of presenting to the tax-payers as soon as possible the necessity of erecting a new school building in the southern part of the district⁵².

On January 11, 1897 the new School Board, chosen in the November elections, met for the first time. According to the charter of the new city the number of commissioners was reduced from eight to four. The Board continued to be a bipartisan Board made up of two Republicans and two Democrats. The two Democratic commissioners were men who had the previous year served on the Board of Education of West Troy: John H. McKeever and James B. McLeese. The two Republican commissioners were newcomers to the Board: Isaac G. Braman, President of the Republican organization of Watervliet, and William H. Flewwellin. The meeting, presided over by the Honorable Michael J. Day, the first mayor of Watervliet, was held in the Board of Education rooms on Sixteenth Street - which throughout that year was to be the scene of violent verbal disagreement between the Democratic and Republican members of the Board. The disagreement centered around two issues in particular: the appointment of a superintendent of schools and the use of the rooms in St. Bridget's School for public school purposes.

⁵² Board Minutes, December 14, 1896, p. 153-154.

Indeed so violent did the discussion become that after one of the meetings Commissioner McKeever suggested that "The superintendent of schools be employed to purchase a set of boxing gloves to be used at the next meeting⁵³".

At the meeting of the Board held on February 1, 1897 Commissioner McKeever moved that the salaries of the teachers be audited and ordered paid for the month of January. Commissioner Flewellin amended the motion by proposing that the names of the six sisters be omitted to comply with the decision of the Superintendent. Commissioner McKeever thereupon withdrew his motion. After much discussion Commissioner Flewellin offered a motion that the salaries of the teachers (he mentioned them by name, omitting, however, the names of the six sisters) be ordered paid. This motion was passed. At the beginning of each of the three following months the same procedure was repeated: the Democratic commissioners proposing that the sisters' salaries be paid; the Republican commissioners refusing. In each case the salaries of all the teachers, except the six sisters, were audited and ordered to be paid.

Meanwhile in spite of the fact that their salaries were not being paid, the sisters continued to teach under the contract they had entered into with the Board of Education. They continued also to wear the religious garb of the Sisters of St.

⁵³ "Watervliet School Board", news article in The Argus, vol. 85, February 16, 1897, p. 2, col. 3.

Joseph while teaching. Hence it was that at a meeting of the Board of Education held on February 22, 1897 Commissioner Flewwellin proposed a resolution that the Clerk of the Board be instructed to notify the sisters "to discontinue the use in the school room of the distinguishing dress or garb of the religious order to which they belong⁵⁴". The resolution was lost by a tie vote, Braman and Flewwellin voting in the affirmative, McLeese and McKeever in the negative.

Commissioner McKeever explained after casting his dissenting vote, that he was willing to obey the Superintendent's ruling, but he felt that "the welfare of the people should also be considered." If the sisters were forbidden to wear the religious garb St. Bridget's School would be closed and that would throw 356 pupils "in the streets, as it was impossible to accommodate them in the other school buildings⁵⁵". Hence he felt that St. Bridget's School should be kept open "until a new building or more commodious quarters can be procured in the lower part of the city⁵⁶".

The failure of the Board of Education to enforce the decision of the Superintendent prompted another appeal to the State Department of Public Instruction. The appeal of Samuel

54 Board Minutes, February 22, 1897, p. 181.

55 Board Minutes, February 22, 1897, p. 181.

56 "No Superintendent Now", news article in The Argus of Albany, New York, vol. 85, March 1, 1897, p. 6, col. 1.

Kennedy, Edward M. Getman and James Forsyth vs. the Board of Education of the city of Watervliet was received in the Superintendent's office on March 1, 1897. The appeal referred to the failure of the Board to carry out the previous decision of the Superintendent. Pointing out that the Superintendent's decision of November 25, 1896 had been directed to the West Troy School District, which with the incorporation of the city of Watervliet had ceased to exist, the appellants requested the Superintendent to order the Board of Education of Watervliet to require the teachers to discontinue wearing the religious garb while teaching in the public school.

Soon after receiving this second appeal, and before rendering his decision, Superintendent Skinner on March 10, 1897 issued an order to E.L. Barckley, Treasurer of the County of Albany, restraining payment of the school funds apportioned to the city of Watervliet⁵⁷.

This second appeal was answered by two members of the Board (McKeever and McLeese). The answer was filed with the Superintendent's office by John H. Gleason, counsel for Board on April 3, 1897. In their answer they pointed out that the Board had entered into contract with these teachers and could not set aside those contracts without risking the danger of litigation. They also denied that the wearing of the religious

57 Thomas E. Finegan, Judicial Decisions, p. 559.

garb was in any way contrary to the laws of the State of New York. The Argus has the following report of the Board's answer to the appeal:

The respondents allege that the teachers are legally employed under a written contract to teach in the school until the close of the present school year; that such teachers refuse to wear any other than their distinctive garb, and that to attempt through the Board to require them to discontinue their distinctive garb would be an infringement of their legal rights and an interference with their personal freedom; also that such an enforcement would be equivalent to an illegal dismissal of the teachers before the end of their contract term ending in June, and that the city would be liable to pay them for the unexpired term of the contracts; that the dismissal of the teachers at this stage of the school year would impair the present school system; that the Board of Education is advised that it has not the legal authority to require such teachers to discontinue the use of such distinctive garb; and finally that the Board of Education denies that the wearing of such garb is in violation of any law of the State⁵⁸.

On May 15, 1897 Superintendent Skinner rendered his decision on the appeal. The Board of Education was ordered to notify the sisters that they were to discontinue wearing the religious garb. If they refused to do so, they were to be dismissed. The Board was required to make a report to the Superintendent by June 1. In the meantime the restraining order withholding the school funds from the city of Watervliet was to be kept in force⁵⁹.

⁵⁸ "Watervliet School Case", news article in The Argus of Albany, New York, vol. 85, May 25, 1897, p. 6, col. 1.

⁵⁹ Thomas E. Finegan, Judicial Decisions p. 559.

On May 24 the Board of Education met to consider the Superintendent's decision. The meeting is thus described in The Argus:

The Watervliet school commissioners last evening held a stormy session at their rooms on 16th Street, over the decision recently rendered by Superintendent Skinner in the Watervliet School Case⁶⁰.

After much discussion, the following resolution was proposed by Commissioner McLeese:

Whereas the Superintendent of Public Instruction has in the late decision of Samuel Kennedy and others ordered that the six teachers named must discontinue wearing the distinctive garb of their religious order while teaching in the public school,
Be it resolved:

That in compliance with said decision and order, the six teachers be and are required to discontinue wearing the distinctive garb of their religious order during the hours of teaching in the public school and that a copy of this resolution be served personally upon each of the said teachers⁶¹.

This resolution was carried unanimously and upon motion of Commissioner Flewellin, Commissioners Braman and McLeese were instructed to serve a copy of the above resolution on each of the six teachers.

Commissioners Braman and McLeese went to the convent to notify the sisters of the decision of the Board. They were received in the parlor and told the sister portress that they

⁶⁰ "Watervliet School Case", news article in The Argus of Albany, New York, vol. 85, May 25, 1897 p. 6, col. 1.

⁶¹ Board Minutes, May 24, 1897, p. 201.

had come to inform the sisters that they must put off the religious garb while teaching in the public school. None of the other sisters went to the parlor to see the commissioners⁶².

At the Board meeting held on June 10, Commissioner McKeever proposed that the salaries of the teachers in question in the appeal be audited and ordered paid for five months;

January, February, March, April, and May, 1897. The motion was lost, Braman and Flewellin voting in the negative, McKeever and McLeese in the affirmative. Commissioner Flewellin declared that he would refuse to audit the pay of these teachers as long as he remained a member of the School Board. He further stated that he understood that a suit was to be instituted against the School Board by these teachers to compel them to audit the salaries⁶³.

Commissioners Flewellin's information was correct. The sisters did bring suit against the Board of Education to recover their unpaid salaries. At a Board meeting held June 17, 1897, Chairman Michael J. Day informed the Board that he had been served with an order issued by Supreme Court Justice Chester to show cause at Kingston on June 19 at ten o'clock why the salary of Anna G. Conway (Sister Gertrude) should not be audited

62 Testimony of Sister M. Leonie.

63 "Watervliet School Case", news article in The Argus of Albany, New York, vol. 85, June 11, 1897, p. 6, col. 2.

and ordered paid. Commenting on the order, Commissioner Flewellin remarked: "I won't vote to audit the salaries of the six teachers in question until I am compelled to do so by law⁶⁴".

The case was argued before Justice Chase at a special term of the Supreme Court held at Kingston on June 19. Tracey and Cooper of Albany represented the teachers; John H. Gleason, the School Board. County Judge Atwood, of Ulster County, represented Commissioner Flewellin. After listening to the arguments of the counsels on both sides, Justice Chase issued a mandamus ordering the payment of salary amounting to \$180 to Anna G. Conway for the months of January, February, March, April, and May⁶⁵. Justice Chase also issued an order to the Board of Education of Watervliet to show cause at Kingston on June 26 why the salaries of Kate Rice, Hannah Keefe, Victoria Melinda, Jennie Higgins and Catherine Walsh (the other five sisters) should not be audited and ordered paid for the same period of time⁶⁶.

At a special meeting of the Board held on June 22, 1897 the motion of Commissioner McLeese that, in compliance with

64 "No Agreement Reached", news article in The Argus, of Albany, New York, vol. 85, June 18, 1897, p. 6, col. 2.

65 "Sisters Must Be Paid", news article in The Argus, of Albany, New York, vol. 85, June 21, 1897, p. 6, col. 1.

66 Board Minutes, June 17, 1897, p. 211.

Justice Chase's order the salary of Anna G. Conway be paid for the time specified, was carried unanimously. McKeever then moved that the salaries of the other five teachers be paid. This also was carried unanimously⁶⁷.

On June 25, 1897 St. Bridget's School graduated the last class that studied under the arrangement made with the Board of Education. The exercises were presided over by Mayor Day. Mr. Clement of the Regents's Department delivered an address to the graduates.

During the summer the Board had not yet obtained accommodations for all the school children. Hence on August 2, 1897 Father Curtin communicated to the Board an offer to lease part of St. Bridget's School at an annual rental of nine hundred dollars. The communication read as follows:

I offer to lease to your Honorable Board the four westerly rooms and the basement in the building at the corner of Fifth Avenue and Seventh Street for an annual rental of nine hundred dollars (\$900.00) to be paid in twelve month installments of seventy-five dollars (75.00) each. The owner or the Board of Education may terminate this lease at anytime after three months notice of intention to terminate has been given. The owner will furnish fuel and provide a fireman and keep the rooms properly heated.

The Board of Education will appoint and pay a janitor to keep the rooms in order⁶⁸.

67 Board Minutes, June 22, 1897, p. 211.

68 Board Minutes, August 2, 1897, p. 218.

At the Board meeting of August 30, Commissioner McKeever introduced a resolution that the Board of Education "hire part of the school building at the corner of Fifth Avenue and Seventh Street subject to the terms and conditions of said proposal⁶⁹".

The resolution was voted upon and declared lost by a tie vote, the Democrats voting in the affirmative, the Republicans in the negative. A similar resolution was proposed on September 3, 1897 and was lost by the same vote.

Not only did the Board fail to agree on the leasing of the rooms in St. Bridget's School, they also failed to arrive at any agreement on the appointment of teachers in the other schools. The opening of the schools was deferred until finally, by reason of an order of the State Superintendent of Public Instruction, the Board was forced to open the schools on October 4, 1897. Since St. Bridget's School did not open, the other schools were so overcrowded that they were unable to accommodate all the children. The Argus in the October 19 issue reports that 312 children were sent home from four of the schools. The paper places the blame for this unfortunate situation on the

⁶⁹ Board Minutes, August 30, 1897, p. 221.

Republican members of the Board. Thus the Watervliet reporter for The Argus writes:

Residents of the city lay the blame at the door of the Republican school Commissioners, Braman and Flewellin, who refuse to vote for the temporarily hiring St. Bridget's school in Port Schuyler which is lying idle and has the facilities for accommodating all the children who are at present compelled to remain out of school⁷⁰.

It was probably the end of October or the beginning of November of 1897 that St. Bridget's School was reopened as a parochial school⁷¹.

⁷⁰ "Schools Overcrowded", news article in The Argus of Albany, New York, vol. 86, October 19, 1897, p. 6, col. 1.

⁷¹ Miss Mary Blaney, who at present (1952) works in the office of the Superintendent of Education of Watervliet and who was attending school in Watervliet in 1897, recalls that St. Bridget's School reopened two or three weeks after the public schools. This testimony is corroborated by Mrs. Mary Sheehan who was also attending school in Watervliet at that time.

CHAPTER III

THE CORNING SCHOOL CASE

The first "religious garb" decision outlawed the school plan in Suspension Bridge, a village located in the extreme western part of New York State. The second such decision applied to the "compromise plan" in Watervliet, a city on the extreme eastern border of the state. The third decision, with which this chapter deals affected the school arrangement in the city of Corning, situated in the southern part of New York State.

In February 1848, St. Mary's Parish in Corning, New York, was organized by the Right Reverend John Timon, first Bishop of Buffalo. A site for the new church was obtained on the southwest corner of First and State Streets; and on July 24, 1849 Bishop Timon came to Corning to bless the church. It was dedicated to the Blessed Virgin Mary under the title: Our Lady, Help of Christians; however, it soon came to be known simply as St. Mary's Church. Originally a chapel administered by the pastor of SS. Peter and Paul's Church in Elmira, St. Mary's was given its own pastor in 1854. The first pastor was the Reverend Thomas Cunningham. In 1860 he was succeeded by the Reverend Peter Colgan who, except for a brief intermission, was in charge of St. Mary's from 1860 to 1896. In 1866 the

construction of a new church was begun. On June 10 of that year Bishop Timon came to lay the cornerstone; and on October 8, 1871 the church was dedicated by the Right Reverend Stephen Vincent Ryan, the second Bishop of Buffalo¹.

Already in 1860 a parish school had been opened. Two lay teachers were employed to conduct the school. The first years of its existence it was supported by the people of the parish out of their poverty². At some period between 1862 - 1865 it was placed under the Corning Board of Education and became part of the Corning Union School System. Apparently the Board paid the teachers' salaries, a nominal rent, and repairs for the school building. The treasurer's report, given at the annual meeting of School District No. 9 held on October 14, 1862, listed as one of its items: Rent of schoolhouse: twenty dollars³. This may very possibly refer to St. Mary's School, since the Hill Street School (School No. 1) was undoubtedly owned by the Board. It is certain that St. Mary's School was under the Board of Education for the year 1865-1866.

1 Robert F. McNamara, A Century of Grace, The History of St. Mary's Roman Catholic Parish Corning, N.Y. 1848-1948, Corning, St. Mary's Church, 1948, p. 1-63.

2 Robert F. McNamara, op. cit., p. 65.

3 Records of School District No. 9, Corning, N.Y. Sept. 2, 1839 - Sept. 30, 1882, (no pages given).

Indeed this year marked the first evidence of opposition to the plan. The Corning Journal gives a report of the Annual Prize Exhibition of the Corning Free Academy and Union School held on April 6, 1866. After praising the teachers and the pupils for their work, the reporter states, in passing, that the number of pupils attending the public schools was about one thousand, "including those under instruction in the Catholic School⁴".

In the very next issue of The Journal this reference to "the Catholic School" was taken up by one of The Journal's readers who signed himself, "Free School" and who proposed the following questions:

1° Have we a "Catholic School" under the care of our Board of Education, receiving a part of the Public School Funds?

2° Is there a school composed of children of Romanists under the immediate charge of Romanist teachers; are the Board accustomed to consult the Roman priest, as they do not consult clergymen of other denominations?

3° If the Board of Education think that the public school interests will prosper best by supporting such a school, would they think it proper to vote a portion of the school funds toward a Presbyterian, a Methodist, a Baptist or an Episcopal school⁵?

4 Editor, "City and Vicinity", news article in The Corning Journal, vol. 20, no. 15, April 12, 1866, p. 3, col. 2.

5 Free School, "The Catholic School", letter to the editor in The Corning Journal, vol. 20, no. 16, April 19, 1866, p. 3, col. 3.

The editor hastened to add, as a footnote to this letter, that he had used the term "Catholic School" simply as a convenient means of designating the former Catholic school building which had but recently come under the supervision of the Board of Education. The implication made by "Free School" that the school was only nominally under the direction of the Board of Education was a matter on which the editor declared he had no definite information.

Two weeks later definite information was supplied by Mr. P.J. Farrington, Secretary of the Board of Education.

There is no Catholic School in Corning under the direction of the Board of Education. The school buildings owned by the Catholics of this village are now occupied by the Departments of the Corning Union School which are entirely under the control and care of the Board of Education. The books used, the studies pursued, and the teachers employed in these Departments are all prescribed and selected by the Board, all without consulting the Catholic priest more than any other clergyman in the village (...)⁶.

Mr. Farrington suggested that "Free School" would have acted more prudently, had he consulted the Board of Education to obtain an accurate knowledge of the true condition of affairs instead of "resorting to the public press in language that is more likely to stir up sectarian animosity than elicit useful information."

⁶ P.J. Farrington, "Catholic School", letter to the editor in The Corning Journal, vol. 20, no. 19, May 3, 1866, p. 3, col. 3.

The Coming of the Sisters

Just a year later, in May of 1867, Father Colgan went to Batavia to apply to Reverend Mother Mary Stanislaus for Sisters of Mercy to take charge of St. Mary's School. The sisters consented to come; and the following month Reverend Mother Stanislaus and Assistant Mother Mary DeSales visited Corning to inspect the proposed convent. It was a large, two-story frame building, serving at the moment as a rectory during the construction of the new brick priest's house. The Reverend Mother also conferred with the members of the Board of Education who agreed to employ the sisters and pay them the same salaries that the public school teachers received⁷.

As employees of the Corning Board of Education the sisters would be required to possess certificates empowering them to teach in the public schools of the State. Hence during the summer of 1867 a summer school was conducted at Batavia. One Saturday morning in the middle of August, School Commissioner Rumsey from the State Department of Public Instruction came to Batavia to give the examination to the sisters. After the examination he praised Mother Mary De Sales, who had presided over the summer school, on the competence of the teachers and granted the necessary certificates⁸.

⁷ Annals of the Sisters of Mercy of the Diocese of Buffalo, p. 12.

⁸ Annals of the Sisters of Mercy of the Diocese of Buffalo, p. 12.

On September 2, 1867, Father Colgan escorted the sisters from Batavia to the Corning mission. Six sisters were installed in the convent. Mother Mary De Sales Dalton was local superioress. She was assisted by Sister M. Gertrude Bradley, Sister M. Alexius Hennessey, Sister M. Stanislaus Jerome, Sister M. Joseph Reid, and a postulant, Sister M. Bridget McGarr⁹.

The Board of Education and the Rented School

A few days after the opening of the school, the President of the Board of Education, accompanied by Professor Wildman, Principal of the Corning School, paid a visit to St. Mary's School.

After observing the various classes, the gentlemen expressed their astonishment at the excellent discipline that such young teachers had gained over their pupils in so short a time. After a visit to the convent, a refreshing drink of lemonade (the day was very warm), and a discussion on educational matters with Reverend Mother Stanislaus (who had accompanied the sisters to Corning and had not yet returned to Batavia), the representatives of the Board left well satisfied with the work the sisters were doing¹⁰.

⁹ Annals of the Sisters of Mercy of the Diocese of Buffalo, p. 12.

¹⁰ Annals, p. 16-17.

In June 1868 the Board of Education entered into new contracts with the sisters and a new lease with Father Colgan. They agreed to pay Father Colgan two hundred dollars annual rental and about \$150 for immediate repairs on the school building¹¹. An article in The Corning Journal for June 25, 1868 suggested that this greater financial burden assumed by the Board was due to the influence of the three additional trustees who were chosen at the recent school election and who were prominent Democrats in village and town politics. The article also suggested that these trustees were very interested in maintaining the good will of the Catholic priest.

One of the Trustees met Reverend P. Colgan, the Catholic priest, the day after the election and said to him, "We would like to know what you want so that we can do as you wish." This was making a bid for political favors¹².

This article was answered in a letter written to The Corning Democrat on July 2, 1868. This anonymous letter upbraids the editor of The Journal for ignoring the fact that Father Colgan had also wielded a strong influence with the

¹¹ The editor, "The School Board", editorial in The Corning Journal, vol. 22, no. 26, June 25, 1868, p. 4, col. 2.

¹² Ibidem.

former, all-Republican, Board of Education. The writer asks:

Why did not the well informed local of The Journal also inform its readers what pledges were made by the President of the old Board to the Catholic priest, and who helped the President of the Board make out his slate¹³?

At any rate, despite this flurry of political tempers, the arrangement between the Board and St. Mary's School continued. Father Colgan continued to receive \$200 rental for the wooden schoolhouse; indeed, in 1878 the payment was raised to \$300. Then, in 1883 when Father Colgan built the new brick schoolhouse, the rental was increased to \$700; and in 1893, when a new lease was drawn up, the payment was raised to \$1000. This final sum continued to be paid until 1898 when the arrangement terminated.

In addition to the rental for the building the Board of Education also paid the salaries of the sisters. The Principal received the highest salary: \$400 per year in 1889, increased to \$550 in 1893. Her assistant came next with a salary of \$300 per year in 1889 that became \$400 in 1893. The other teachers had their salary increased from \$270 to \$300 over the same period of time, and from \$300 to \$350 in 1897¹⁴.

¹³ "For the Democrat", letter to the editor in The Corning Democrat, vol. 13, no. 1, July 2, 1868, p. 3, col. 2.

¹⁴ Corning Board of Education, Minutes of the Board June 14, 1889, p. 172; May 3, 1893, p. 229; August 1897, p. 290.

During the time that the school arrangement was in operation, the Board of Education took very seriously its obligation of supervising the running of the rented school (referred to first as the Church St. School and later as School No. 2). They made certain that the teachers passed the required examinations. Thus, the Minutes of the Board of Education for July 16, 1881 record the passing of a resolution to rehire for the next term the teachers employed the previous term in the Church Street School, "provided that they appear and pass a satisfactory examination to be held at the Church Street School building on August 10¹⁵."

Again on June 11, 1883 Professor Slocum, Principal of the Corning schools, reported to the Board on the examinations given in the primary and intermediate departments. He informed the Board that all the teachers of the Church Street School had been present, and that the examinations were good, in fact much better than usual¹⁶.

The Board of Education also took an active interest in the physical condition of the school. On August 2, 1884 the Board agreed to pay up to \$435 to have the condition of the water closets at School No. 2 improved by a competent plumber¹⁷.

15 Board Minutes, July 16, 1881, p. 36.

16 Board Minutes, June 11, 1883, p. 70.

17 Board Minutes, August 2, 1883, p. 100.

On December 10, 1888 the Board appointed a committee to see that the heaters in School No. 2 were repaired during the Christmas holidays¹⁸.

When in 1883 Father Colgan built a new brick schoolhouse, the Board again demonstrated that it did not consider its authority over the rented schoolhouse merely nominal. A committee from the Board of Education inspected the building, and at a meeting of the Board, held on August 27 of that year, reported that the building required some changes to be made before it could be used as a public school building. Father Colgan who was present at this meeting agreed to make the changes suggested by the Committee¹⁹.

It was at this meeting of August 27 that a new lease was entered into between Father Colgan and the Board. The lease was to run for five years. Father Colgan was to receive four hundred dollars rent and a three hundred dollar fee for janitor work. The following year at a Board meeting held August 2, after Father Colgan had agreed to assume a share of the financial responsibility for some necessary repairs on the school, the lease was extended for five more years - to 1893²⁰.

18 Board Minutes, December 10, 1888, p. 163.

19 Board Minutes, August 27, 1883, p. 79.

20 Board Minutes, August 2, 1884, p. 100

The final lease under which the plan operated was entered into in 1893. It also was a five year lease. This time, besides the seven hundred dollars for rent and janitor's fee, Father Colgan was given an additional three hundred dollars for heating the school building²¹. As will be seen below, at the conclusion of this lease, the school arrangement was, by order of the State Superintendent of Public Instruction, discontinued.

Opposition

The "Corning Plan" was in operation for about thirty-five years. During this period the relationship between the sisters and the Board of Education was friendly and cordial. Representatives of the Board visited School No. 2 regularly. They found the arrangement satisfactory and the sisters cooperative. There were in Corning, however, those who disapproved of the agreement that the Board had made with the Catholic pastor. It has already been detailed above how in 1866 the Board of Education was called upon to defend its action in incorporating St. Mary's School into the public school system²².

21 Board Minutes, May 19, 1893, p. 230.

22 Vide Supera, p. 64-65.

There is no certain evidence of any outward display of opposition between 1866 and 1889²³. From 1889 to 1898 the opposition seems to have grown stronger and more articulate - due, in great measure perhaps, to the encouragement it received from certain decisions of the State Superintendent of Public Instruction and from certain enactments of the Constitutional Convention of 1894.

An instance of opposition occurring in 1889 was occasioned by the remarks of one who was not a resident of Corning. On December 8 and 9, Bishop John H. Vincent spoke in the Corning Methodist Church. In discussing his topic "Young Life in the Church", he took occasion to question the constitutionality of the Corning school arrangement. In the December 14 issue of The Corning Daily Democrat a letter to the editor written by one who signed himself "J" accused the Methodist Bishop of efforts, inspired more by "the spirit of bigotry than the spirit of the Gospel", to awaken a crusade against the Catholic Church.

²³ In an editorial entitled "Important Decision", in The Corning Daily Journal, vol. 8, no. 79, April 4, 1898, p. 3, col. 3, the editor says: "About twenty-five years ago in the village of Corning there was an agitation of this same matter causing much discussion and general excitement." There is, however, no documentary evidence of any such agitation twenty-five years previous to 1898. The expression "about twenty-five years ago" may have been used very loosely by the editor and may indicate the agitation of 1868 or that of 1889.

The letter concludes:

We in Corning have been enjoying perfect religious peace, and it was thought that none but a most unscrupulous theologian would have the gall to incite the community against itself and disturb this harmony²⁴.

A week later this accusation was answered in another letter to the editor, written by the local Methodist minister, Rev. Mr. C.E. Millspaugh. Mr. Millspaugh claimed that the Methodist Bishop's remarks had been misconstrued. The Bishop, he declared, had attacked, not the Roman Catholic Church, but the violation of the Constitution in the distribution of public school funds in the village of Corning, "by which the Roman Catholic Church has, to all intents and purposes, a parochial school at the expense of the taxpayers²⁵".

On December 26, "J" wrote his rebuttal in a letter to the same paper. Reiterating his original contention, he suggested that Bishop Vincent's singular interest in the taxpayers of Corning was but a cloak to hide his animosity for the Catholic Church. Not only Catholics, he stated, but even members of the Bishop's own church had been offended by the churchman's remarks²⁶. There the exchange of letters on this incident ceased.

²⁴ "J", letter to the editor in The Corning Daily Democrat, vol. 12, no. 12, December 14, 1889, p. 2, col. 3.

²⁵ C.E. Millspaugh, letter to the editor, in The Corning Daily Democrat, vol. 12, no. 18, December 21, 1889 p. 2, col. 1.

²⁶ "Reply of J", letter to the editor in The Corning Daily Democrat, vol. 12, no. 21, Dec. 26, 1889, p. 2, col. 3.

Words of opposition were voiced once again in 1892. In that year the American Flint Glass Workers' Union held its annual national convention in Corning. A writer in the Union's national magazine started the story that Father Colgan had offered the parish schoolhouse to the Union for its meetings. A letter to The Corning Daily Democrat of June 17, 1892 by one who signed himself "Taxpayer" challenged Father Colgan's right to make such an offer without consulting the Board of Education²⁷. The very next day The Democrat published Father Colgan's denial that he had given any such invitation to the Union. The article in The Democrat said:

Rev. Dean Colgan states positively that he never invited the Convention to come to Corning and that it is ridiculous to suppose that a convention of so many members could gather in a room large enough to hold only 45 children. He said that no such thought ever entered his mind²⁸.

²⁷ Taxpayer, "Editor - Democrat", letter to the editor in The Corning Daily Democrat, vol. 18, no. 15, June 17, 1892, p. 3, col. 4.

²⁸ The editor, "The A.F.G.W.U. Convention", news article in The Corning Daily Democrat, vol. 18, no. 16, June 18, 1892, p. 3, col. 4.

"Taxpayer", whose interest in the situation apparently went deeper than a mere desire to defend the rights of the Board, replied on June 20 as follows:

We are glad to see Rev. Dean Colgan's denial (...). He is too wise an ecclesiastic to have been guilty of such folly; and his interests too great to have imperilled them by such a mistake. The Board of Education are paying him a good rent for the "parish" school house, Sisters are employed as teachers, Mr. A. Houghton, the President of the Glass Works, is one of the Board of Education, and the whole matter has been allowed to drift along good naturedly, and no one, whatever he may have thought, has questioned the legality of supporting what looks very much like a denominational school at the expense of the taxpayers. The idea seems very ridiculous that the very Rev. Dean would do an act which might stir up active opposition to a scheme which long antedates Bishop Ireland's "Faribault-Stillwater" denominational educational scheme, at the expense of the taxpayers by the Board of Education of Corning²⁹.

Two years later the Corning school arrangement was again under attack by one of the local clergymen. In 1889 it had been the Methodist minister; this time it was the pastor of the Baptist Church. On Saturday, October 13, 1894 the rumor was circulated in Corning that one of the local clergymen was to preach a sermon the next day attacking the parochial school system. On Sunday, however, the attack was not forthcoming. The editor of The Corning Daily Journal in the Monday issue of his paper suggested that wiser counsels had prevailed³⁰.

²⁹ Taxpayer, "A.F.C.W.U.", letter to the editor, in The Corning Daily Democrat, vol. 18, no. 18, June 20, 1892, p. 2, col. 2.

³⁰ The Editor, "City and Vicinity", news article in The Corning Daily Journal, vol. 4, no. 242, October 15, 1894, p. 3, col. 1.

The local clergyman in question, the Rev. Mr. Philip Wendell Crandell, pastor of the Baptist Church, wrote to the editor the very next day, claiming the paper had done him an injustice by implying that he had yielded to pressure and omitted the sermon he had intended to preach. His original intentions were carried out on Sunday, he declared, and no "counsels" whatever had been offered him. He wrote:

It is true I did not specifically attack "St. Mary's School", nor had I intended to do so. But I did most emphatically condemn and oppose, as every true American citizen must do, the whole system of which it is a part, that system which under whatever form or modification uses the public money for the support of sectarian schools (...) The founders of this Republic would turn in their graves at the very name applied to a public school in free America - St. Mary's School³¹!

In 1894 the constitutional provision enacted by the New York State Constitutional Convention deprived the Corning Plan of whatever legal foundation it may have previously enjoyed. The fourth section of Article IX of the new State Constitution read as follows:

Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, wholly or in part under the direction of any religious denomination, or in which any denominational tenet is taught³².

³¹ Philip Wendell Crandell, letter to the editor in The Corning Daily Journal, vol. 4, no. 243, October 16, 1894, p. 3, col. 2.

³² New York State Constitution, Article IX, section 4.

This article was ratified in November, 1894 by the voters of State of New York.

Even before the ratification of the Constitution by the voters, "the question of the new constitution in reference to the teachers in No. 2 building" was brought up and discussed by the Board of Education at its meeting of October 24, 1894. After some discussion the matter was referred to the counsel of the Board to obtain his construction of the Constitution³³. In the extant minutes of the Board there is no further reference to the matter. Apparently the counsel of the Board did not deem it necessary to apply this constitutional provision to the Corning school arrangement.

There were others in Corning, however, who felt otherwise and were determined that the newly enacted article of the Constitution should be applied in Corning. They were undoubtedly encouraged in their efforts by decisions of the State Superintendents of Education outlawing the "compromise" school plan in other communities in New York State³⁴.

At any rate, on September 27, 1897 a memorial, signed by twenty-one Corning citizens, including three Protestant ministers (one of whom was the Rev. Mr. Philip Wendell Grandell, mentioned above) was addressed to the Corning Board of Education.

33 Board Minutes, October 24, 1894, p. 251.

34 Vide supra, Suspension Bridge School Case, Watervliet School Case.

The memorial protested that seven teachers in School No. 2 were members of a religious order and wore the distinctive garb of that order while teaching. This, they submitted, constituted a sectarian influence and, therefore, came under the prohibition of Section 4 of Article IX of the Constitution of New York State. Hence they petitioned the Board to require these teachers to discontinue wearing the religious garb while teaching in School No. 2³⁵.

The Board failed to act on the memorial; hence on November 29, 1897, the signers of the memorial appealed the case to Charles R. Skinner, the State Superintendent of Public Instruction. To their appeal opposing the wearing of the religious garb, they added an appeal from the action of the Board in leasing St. Mary's School.

Already on November 26 the Board had discussed the appeal and written to the Superintendent at Albany asking for more time to prepare their answer to the charges. The Board's defense was filed in Superintendent Skinner's office on January 8, 1898. The Superintendent reviewed the facts of the case as presented in the appeal and in the defense of the Board, and on March 31, 1898 rendered his decision. The question relating to the religious garb, he pointed out, had been several

³⁵ "A Petition", news article in The Corning Daily Journal, vol. 7, no. 232, October 2, 1897, p. 3, col. 3.

times decided by the Department of Public Instruction; and it had been uniformly held that the wearing of such a distinctive garb constituted a sectarian influence such as the Constitution of the State forbade. Hence he sustained the appeal and ordered the Board to require all teachers employed in the public schools of Corning to cease wearing a distinctive religious garb while teaching in the schools. He further ordered that the Board should not rent the parish schoolhouse after the expiration of the lease on September 1, 1898, but should make provisions for its own schoolhouse³⁶.

The Board was not obliged to proceed immediately to the building of a new schoolhouse, for, even before Superintendent Skinner had rendered his decision, Father James M. Bustin (who had become pastor of St. Mary's in 1896) had decided to open St. Mary's School as a parochial school in the fall.

Thus concluded an arrangement that with few exceptions had worked quite harmoniously for about thirty-five years.

³⁶ Thomas E. Finegan, Judicial Decisions of the State Superintendent of Common Schools, State Superintendent of Public Instruction, State Commissioner of Education, from 1822 to 1913, Albany, University of the State of New York, 1914, Decision 4642 in Appeal of Eugene Lockwood et al. v. Board of Education of School District No. 9, Corning, Steuben County, p. 568-572.

CHAPTER IV

THE POUGHKEEPSIE SCHOOL CASE

Of the various "compromise plans" operating in New York State during the latter half of the nineteenth century, the Poughkeepsie Plan is of particular significance, because of the wide-spread publicity given to it. The Poughkeepsie Plan was an arrangement made between the Board of Education of the city of Poughkeepsie and the first Catholic church to be established in that city.

The first Catholic church in the city of Poughkeepsie, New York, St. Peter's Church, was begun in 1836 and dedicated on November 27 of the following year by Bishop John Dubois of New York City. An anti-Catholic faction in Poughkeepsie opposed the building of the church and threatened to burn or destroy it. To meet this threat a vigilance committee, composed of Catholics and non-Catholics, was formed. Dr. Pyne, a non-Catholic, offered the loan of a small cannon to defend the church! The determined stand of this vigilance committee apparently frightened the would-be-attackers and the church was never molested¹.

¹ Michael J. Riordan, The Catholic Church in the United States of America, New York, The Catholic Editing Company, 1914, vol. 3, p. 426.

In September 1844 the Reverend Michael Riordan was appointed by Bishop John Hughes as pastor of St. Peter's Parish. During his pastorate which lasted till his death June 13, 1870, Father Riordan engaged in an extensive program of parish expansion and building. In 1853 he enlarged the church. In 1860 he built a large parochial school for girls on North Clover Street. Nine years later a similar school building for boys was erected on Mill Street. Father Riordan also purchased a parish rectory on Mill Street next to the church and a convent for the sisters on North Clover Street².

Origin of the Poughkeepsie Plan

In February 1872 the Reverend Patrick Francis McSweeney became pastor of St. Peter's. It was he who entered into the celebrated agreement so widely discussed as the Poughkeepsie Plan. On June 11, 1873, accompanied by Alderman Clifford and Mr. Mulrein, Father McSweeney attended the regular meeting of the Board of Education of the city of Poughkeepsie³. Informing the Board that he intended to discontinue the two parochial schools of St. Peter's Parish, he expressed the hope that the Board would provide for the education of the children. Coupled with this information was a proposition from Father McSweeney

² Michael J. Riordan, op. cit., p. 426.

³ Poughkeepsie Board of Education, Minutes of the Board of Education of the City of Poughkeepsie, (manuscript), vol. 3, June 11, 1873, p. 182.

specifying conditions under which he would be "willing and desirous" of placing his parish schools under the direction of the Board of Education. He offered to make the following concessions:

1° The school houses on Clover Street and Mill Street to be let to the Board at the annual rental of one dollar each.

2° The male teachers to be subjected to oral or written examinations or to both by the Board, and the female teachers to a written examination, if such examination should be desired by the Board as proof of competency.

3° No religious exercises to be held nor religious instructions given during the school hours.

4° The school to be thrown open to all denominations and no interference made with any religion.

5° The Board to be entitled to inspect the schools and give examinations to the children.

He asked in return the following concessions from the Board of Education:

1° The Board to pay the salaries of the teachers, keep the school buildings and their equipment in repair and pay the heating expenses.

2° The teachers to be nominated by the pastor.

3° The female teachers to be exempted from oral examinations.

4° The pastor to retain the right of using the school houses at hours other than those devoted to school exercises⁴.

4 Board Minutes, vol. 3, June 11, 1873, p. 185.

The Board showed itself sympathetic to his proposition and appointed a special committee to study it and report at a later meeting. The Committee made up of commissioners O.D.M. Baker, A.B. Smith, R.E. Taylor, C.N. Arnold, and L.B. Sackett, submitted its report at the July 9 meeting of the Board. The report began with the enunciation of a fundamental principle concerning the obligation of the Board of Education:

The children who attend this class of schools are residents within the city and entitled at any time to attend the public schools under the charge of the Board, and when they do come, there can be no doubt of the duty of the Board to provide for them⁵.

This principle, the Board suggests, has particular application in this case, since the children involved and their parents have been a continual source of revenue to the Board without themselves profiting in any way from that revenue.

This duty becomes all the more apparent when we consider the fact that for years the parents, as taxpayers, have been and are contributing to the education fund of the city, and in addition to this the children have been enumerated, and thus materially enlarged the amount allotted to the Board by the State authorities. Thus both parents and children have been a continual source of revenue, which has been applied to the maintenance of the public schools, while these people have provided for the education of their children at their own expense⁶.

5 Board Minutes, vol. 3, July 9, 1873, p. 192.

6 Board Minutes, vol. 3, July 9, 1873, p. 193.

Hence it was that the Committee approached the consideration of the question "with the conclusion that a claim to a right (had) been made⁷". This approach to the problem was quite significant, implying as it did an acknowledgment of the fairness of Catholic claims to a partial share of the public school funds.

After considering the principle involved, the report proceeded to examine the practical state of educational affairs in Poughkeepsie. In the school year 1872-1873 the average attendance at the public schools had been 1671; at St. Peter's, 820. The public school buildings were already overcrowded; they could not possibly accommodate 820 additional pupils. To meet the emergency occasioned by the closing of the parochial schools, the Board would be forced to rent rooms or to build. Practical considerations, therefore, as well as fairness to Catholic taxpayers, suggested the advisability of accepting Father McSweeny's offer. Accordingly, the Committee

⁷ Board Minutes, vol. 3, July 9, 1873, p. 194.

recommended that the Board acquire the use of the school buildings of St. Peter's Parish for school purposes under the following conditions:

1° The Board to pay the owner one dollar per year rental for each building and its equipment and in addition to keep the buildings in repair and insured.

2° The Board to establish according to its rules and regulations a public school in each building and to have absolute and unrestricted control of the buildings and their equipment during school hours; at other times the owner to have control.

3° The teachers for these schools to be selected, employed, paid and subject to dismissal by the Board in the same manner as the other teachers in its employ; the teachers and pupils at all times during the school hours to be subject to the control and authority of the Board and its rules and regulations; the schools to be open for the attendance of pupils and visitations by members of the Board the same as the other public schools.

4° Either the Board or the owner of the buildings might terminate the lease at the end of any scholastic year by giving the other thirty days notice of the intention to terminate⁸.

It is worth noting that these conditions are substantially the same as those suggested by Father McSweeney, with one notable exception: Father McSweeney's request for the right to nominate the teachers was denied. Nor were any special considerations to be given the sisters regarding examinations.

On July 16, 1873 the recommendations of the Committee were adopted. The President of the Board, Judge Egbert Q.

8 Board Minutes, vol. 3, July 9, 1873, p. 194.

Eldridge, was authorized to acquire the use of the parochial school buildings and to have a lease properly drawn up⁹. The "Committee on the Catholic School Question" was continued and directed to do whatever was necessary to prepare the school buildings for use in the fall. A lease, which was to run for ten years was entered into on August 21, 1873. Father McSweeny, representing Archbishop John McCloskey, signed the lease in behalf of St. Peter's Church and Judge Eldridge signed for the Board of Education¹⁰. The special committee, meanwhile, examined the schools and suggested various repairs that needed to be made. A contract for the amount of \$379 was awarded to Mr. Patrick Welch to carry out these repairs¹¹. Actually the expense of these initial repairs proved to be much higher - \$958.73¹².

On September 8, 1873 the two former parochial schools opened for the first time as public schools. The regular school sessions were held from nine to twelve o'clock in the morning and from one-thirty to three in the afternoon. Morning prayers were said fifteen minutes before the beginning of

9 Board Minutes, vol. 3, July 16, 1873, p. 196.

10 John McCloskey and Poughkeepsie Board of Education, original lease, (manuscript), in the Archives of the Adriance Library, Poughkeepsie, New York, August 21, 1873.

11 Board Minutes, vol. 3, August 13, 1873, p. 198-199.

12 Board Minutes, vol. 3, February 25, 1874, p. 250.

the morning classes; closing religious exercises were held at the end of the afternoon sessions. In the afternoon the Catholic children returned to school at one o'clock and received a half-hour of religious instruction from the sisters, before the regular afternoon classes began. Since no child was compelled to be at these religious exercises except by will of his parents, non-Catholics were free to send their children to the Catholic public schools, if they so desired¹³.

School No. 11 (the name given by the Board to the former girls' school on North Clover Street) had, during this first year of operation under the Board, a faculty of six teachers and a student body with an enrollment of 488 and an average attendance of 375. School No. 12 (the former boys' school on Mill Street) had five teachers and an enrollment of 360 pupils, the average attendance being 280¹⁴.

In accordance with the terms of the agreement, the Board took over the expenses of running the schools. The following table indicates the expenses incurred in maintaining Schools Nos. 11 and 12 from October 1, 1873 to January 1, 1875:

¹³ Patrick F. McSweeney, "Christian Public Schools", The Catholic World, vol. 44, March 1887, p. 796.

¹⁴ Board Minutes, vol. 3, December 31, 1874, p. 350.

Table I - Board of Education Expenses - October 1, 1873, - January 1, 1875¹⁵.

	School No. 11	School No. 12
Teachers' salaries	\$3135.93	\$2899.43
Janitors' salaries	303.55	307.00
Supplies and coal	483.52	435.40
Furniture and heating apparatus	259.70	383.58
Alterations and repairs	384.59	574.91
General expenses	94.62	98.42
Total	4661.91	4688.74

15 Board Minutes, vol. 3, December 31, 1874, p. 350.

The Sunday following the opening of the two new public schools, the arrangement was bitterly attacked in a sermon delivered by the Reverend A.L. Culver, pastor of the Methodist Church. The immediate object of his attack was the action of Mr. Jewell, principal of the Poughkeepsie High School who, in accordance with a decision of the State Superintendent of Public Instruction, V.M. Rice, had forbidden the reading of the Bible at the opening of the daily sessions of the High School. Reverend Mr. Culver professed to see in this a "Jesuit" plot engineered by Father McSweeney.

Poughkeepsie has been drawn into the vortex. Our Bible is banished from the schools. Jesuit servants are appointed teachers and our Protestant citizens are without redress. One reason for this strange proceeding is that the edifices are not sufficient to accommodate the increase of scholars and that necessitated you to bargain for the parish schools of the Catholic Church. But, gentlemen of the Board of Education, would it not have been better for you to have let that pile of brick and mortar fall rather than to have any affiliation with that Church? Was there ever a compact she ever entered into that she did not in some way violate or prosecute it for her own selfish end¹⁶?

Disturbed by this criticism, the Board of Education discussed the matter at great length at the Board meeting of September 24. The commissioners representing the various schools of the city pointed out that the criticism directed

¹⁶ A.L. Culver, "The Bible in our Public Schools", news article in The Poughkeepsie Daily Eagle, vol. 14, (no number) September 15, 1873, p. 3, col. 2.

against the Board was unfounded in fact; for the Bible was actually being read regularly in all the public schools of the city as heretofore with the exception of the high school where, according to the decision of the State Superintendent, it had been omitted¹⁷. As a result of this discussion at the Board meeting, Edward C. Bolton, the chairman of the High School Committee, issued a letter of explanation through the pages of The Poughkeepsie Daily Eagle. In view of the fact that many people had been mistakenly led to believe that the discontinuance of Bible reading in the high school had been dictated by Father McSweeny, Mr. Bolton desired to present the public with the facts.

The facts of the case are simply these - Dr. McSweeny made a request in passing schools nos. 11 and 12 over to the Board that the Catholic children should be exempted from the usual Protestant form of opening school, viz., with the lay reading of the Bible, which the Board deemed reasonable; and is. On the opening of the High School a number of the Catholic children from those schools presented their claims for admission. I considered it only a matter of good faith on the part of the Committee on that school to dispense with the usual opening services subject to the future action of the Board¹⁸.

17 Poughkeepsie Board of Education, "Regular Meeting of the Board of Education", news article in The Poughkeepsie Daily Eagle, vol. 14, September 25, 1873, p. 3, col. 3.

18 Edward C. Bolton, letter to the editor in The Poughkeepsie Daily Eagle, vol. 14, September 27, 1873, p. 3, col. 3.

The letter reminded those who objected to the exclusion of the Bible from the high school that the Board had no legal right to permit the reading of the Bible in the public schools, since such practice had been explicitly forbidden by a decree of the State Superintendent of Public Instruction on February 5, 1866. Mr. Bolton also pointed out that religious exercises were no longer being held in Schools Nos. 11 and 12 during the regular school hours; hence Protestant parents might, if they wished, send their children to these schools without fear of subjecting them to sectarian services.

Various Opinions

This was the beginning of many discussions in the press, both local and national, on the Poughkeepsie Plan. Educators, Catholic leaders, Protestant divines expressed at various times their opinions of its merits and its defects.

Certain Educators. - A number of prominent educators expressed their favorable opinion of the Poughkeepsie Plan. Charles W. Eliot, the distinguished president of Harvard University, invited by The Christian Union of New York to evaluate the school arrangement at Poughkeepsie, declared:

The Poughkeepsie Plan seems to me valuable as an American instance of just and sensible dealings between public school authorities and the Roman Catholic portion of a population which is heterogeneous as regards religious faith¹⁹.

Dr. John Bascom, President of the University of Wisconsin, expressing the opinion that the public school system in the United States would be strengthened by "a more liberal inclusion rather than a more rigid exclusion of religious instruction" in its curriculum, saw a number of obvious benefits in the Poughkeepsie Plan:

extended conciliation, a preservation in its completeness of public instruction, and - this also seems to me a gain - a gratification of the desire to unite religious and secular training²⁰.

¹⁹ Charles W. Eliot "The Poughkeepsie Plan", article in The Christian Union, of New York, vol. 33, no. 24, June 17, 1886, p. 7, col. 1.

²⁰ John Bascom, "The Poughkeepsie Plan," article in The Christian Union, of New York, vol. 33, no. 24, June 17, 1886, p. 7, col. 1.

He pointed out that even those who were hostile to such a union would have to admit "religious education to be an undeniable right of those who desire it^{20a}".

Professor G. Stanley Hall of John Hopkins University described the Poughkeepsie school plan as "a very happy adjustment of the relations between the Roman Catholic Church and the public schools". He looked upon it as an example of charity and toleration "as commendable and as Christian as it is rare²¹". Indeed so exceptional was the spirit of cooperation between the Catholics and the non-Catholics in Poughkeepsie that Professor Hall expressed doubt that such a plan could be generally adopted throughout the country.

^{20a} John Bascom, "The Poughkeepsie Plan," article in The Christian Union of New York, vol. 33, no. 24, June 17, 1886, p. 7, col. 1.

²¹ G. Stanley Hall, "The Poughkeepsie Plan", article in The Christian Union of New York, vol. 33, no. 24, June 17, 1886, p. 7, col. 1.

Orlando D.M. Baker, president of the Poughkeepsie Board of Education in 1886 attributed this good will and co-operation to the "very judicious action of the Catholic people²²".of Poughkeepsie in not attempting to exercise control over the public schools and in allowing the Protestant Board of Education to handle the entire matter of the school question.

Some Catholic Opinions. - Catholic leaders were divided in their attitudes toward the Poughkeepsie Plan. Some tended to look with suspicion on the so-called compromise plan. The leader of this group was undoubtedly the uncompromising Bishop of Rochester, Bernard J. McQuaid. An enthusiastic defender of the strictly parochial school, Bishop McQuaid felt that the school taxes paid by Catholics should be returned to them for the support of their own schools without any change being made in the parochial character of these schools. Even though several compromise plans were actually in operation in his own diocese, he was not disposed to indorse a plan that would weaken - as he felt the Poughkeepsie Plan would - the Catholic character of the parochial school. Thus in an article written

²² Orlando D.M. Baker, "The Poughkeepsie Plan", article in The Christian Union, vol. 33, no. 24, June 17, 1886, p. 6, col. 3.

for The Forum of New York City in 1889 he expressed his doubts as to the wisdom and value of the school arrangement at Poughkeepsie:

It smacks of a union of State and Church which in a country like ours is not desirable. To some degree it weakens and deadens the Catholicity of our school rooms²³.

There were other Catholics who, while not sharing Bishop McQuaid's suspicions of the Poughkeepsie Plan, felt nonetheless that such a plan failed to do justice to Catholic claims. This attitude was expressed in an article written for The Christian Union by the Reverend Thomas S. Preston, pastor of St. Ann's Church in New York City and Vicar General of the Archdiocese of New York, Father Preston wrote, in part:

It is not what Catholics want; for we have a right to denominational schools, and to our part of the funds raised for primary education. But it is an approach to justice. If the same spirit were shown in other cities, education would be more general and the tax upon the State much less. On principle we object to the separation of religion from education and do not wish that the mouth of the teacher should be shut, even during the six hours of school, upon subjects which concern the highest interests of man - the worship and duty which he owes to God²⁴.

Perhaps the most enthusiastic Catholic support for the Poughkeepsie plan came from the Reverend James Nilan who on

²³ Bernard J. McQuaid, "Religious Teaching in Schools", The Forum of New York, vol. 8, December 1889, p. 385.

²⁴ Thomas S. Preston, "The Poughkeepsie Plan", article in The Christian Union of New York, vol. 33, no. 24, June 17, 1886, p. 8, col. 1.

November 16, 1877 succeeded Father McSweeny as Pastor of St. Peter's Parish. Father Nilan stated unhesitatingly that, far from being a mere approach to justice, the school arrangement at Poughkeepsie "meets all just claims and leaves nothing to be desired"²⁵. In July 1886 he was taken to task for this remark by the editor of The Catholic Union and Times of Buffalo, New York. The Buffalo editor, declaring that the Poughkeepsie Plan must be looked upon at best as an expediency acceptable only where poverty makes a parochial school impossible, maintained that it could not be approved as a good system or as one to be adopted generally by Catholic pastors. Regarding the arrangement as false in principle, he said:

Religious instruction must be nowise permitted to be an accident in the system of school training. It must not be tacked on to either or both ends of the daily routine of teaching, but must pervade it all. The principle involved in the Poughkeepsie or any similar plan, that there should be hours of the day when religion must be excluded, estranged, and boycotted from the scene, is a false and unCatholic principle²⁶.

Father Nilan's reply to this criticism was immediate. In a letter to the editor of The Catholic Union and Times, written on July 3, 1886, he declared the schools operating

²⁵ James Nilan, "The Poughkeepsie Plan", article in The Christian Union of New York, vol. 33, no. 24, June 17, 1886, p. 6, col. 3.

²⁶ The Editor, "Poughkeepsie School Plan", editorial in The Catholic Union and Times of Buffalo, vol. 15, no. 13, July 1, 1886, p. 2, col. 1.

under the compromise plan to be better in every respect than the average parish school. He describes the actual situation in Poughkeepsie:

All the seven hundred children are instructed twice a week by the priest and every day by their teachers. I would place them in competitive examination beside the pupils of any parish school in the country on all questions of religion. Their training in all other respects leaves nothing to be desired. The young men and women of our congregation evince a religious earnestness and fidelity to Catholic practices wholly satisfactory (...) In a word the plan fulfills all just requirements for fairminded people living in an actual world, though doubtless it will continue to be cavilled at by sophists and theorists²⁷.

The most publicized Catholic defense of the Poughkeepsie Plan was that given by Archbishop John Ireland of St. Paul, Minnesota in his address to the annual convention of the National Educational Association in 1890. Archbishop Ireland, while inclining in principle to the view that Catholics should be given their share of the school fund to run their own schools, nevertheless in practice shared some of Father Nilan's enthusiasm for the compromise plan. In his address, given on July 10, 1890, he lavished words of praise upon the public schools of the country as the pride and glory of America. "Blessed is the nation," he said, "whose vales and hillsides they adorne and blest the generations upon whose souls are poured their treasures." His one grievance with the state

²⁷ James Nilan, "Defending the Plan", letter to the editor in The Catholic Union and Times of Buffalo, vol. 15, no. 14, July 8, 1886, p. 3, col. 2.

schools was that they ignored religion. This defect could be remedied in one of two ways:

1^o Either by dividing the school money among denominational schools to pay not for the religious instructions given but for the secular instruction demanded by the State.

2^o By doing what the Catholics and Protestants have done at Poughkeepsie. Either of these approaches to the problem would, in the opinion of the Archbishop, achieve the ideal embodied in the title of his address - "Christian State Schools²⁸".

Some Opinions of Protestant Divines. - By the second half of the nineteenth century most Protestant denominations had abandoned their own schools and become ardent supporters of the non-sectarian public schools. It is to be expected, therefore, that their spokesmen would be, quite generally, opposed to the Poughkeepsie Plan.

The Reverend Howard Crosby, D.D. of New York City, invited by The Christian Union to comment on the Poughkeepsie Plan, expressed his disapproval. Such an arrangement, he declared, meant nothing other than the State teaching sectarian religion, and moreover a religion abhorrent to the majority of

²⁸ John Ireland, quoted in "the Rival Civilizations", news article in The Independent of New York, vol. 42, no. 2179, September 4, 1890, p. 5, col. 1.

the people. He saw no safety for the country except in "a non-religious elementary education in our public schools²⁹".

The Reverend J.R. Kendrick, in an article entitled "Romanizing the Public Schools" which appeared in the September 1889 issue of The Forum, declared that the Poughkeepsie Plan, which amounted to a practical alliance of the State with the Roman Catholic Church, was neither sound nor defensible. It would deprive American children of one of the supreme benefits of the public school system - the opportunity of mingling with children of various creeds and races. The Poughkeepsie Plan, "innocent-looking" at first sight, appeared to him as "a veritable Trojan horse".

By its provisions, or almost necessary implications, Roman Catholics adroitly obtain what they clamor for - state support for sectarian education. This concession, however disguised, or by whatever specious advantages recommended, would in the end prove fatal to our American public school system³⁰.

Steps toward the Dissolution of the Plan

While the advantages and disadvantages of the Poughkeepsie Plan were being widely discussed in the public press, various events were taking place in other places in New York State which would eventually bring about the end of that plan.

²⁹ Howard Crosby, "The Poughkeepsie Plan", article in The Christian Union of New York, vol. 33, no. 24, June 17, 1886, p. 7, col. 1.

³⁰ J.R. Kendrick, "Romanizing the Public Schools", The Forum of New York, vol. 8, September 1889, p. 82-83.

In 1887 Superintendent Draper handed down the first "religious garb decision" in the Suspension Bridge case. On November 25, 1896 Superintendent Skinner rendered a decision declaring illegal the arrangement between St. Bridget's Church and the West Troy school district. This decision caused much concern to the Board of Education of Poughkeepsie. After much discussion at the Board meeting of January 1, 1897, it was decided to make an amendment to the school manual requiring that

all teachers must in compliance with the decision of the State Superintendent refrain from the use in the school rooms of the distinguishing dress or garb of the religious order to which they belong³¹.

This amendment was referred to the Committee on Rules. At the February 3 meeting of the Board, however, the Committee reported in favor of striking out this amendment. The recommendation of the Committee was adopted by an eight to four vote³².

At his same meeting Commissioner Barnard revealed that the lessors of Schools Nos. 11 and 12 wished to terminate the lease on April 30, 1897³³. Father Nilan apparently changed his mind, however, or was persuaded to do so; for the lease was not

³¹ Poughkeepsie Board of Education, Minutes of the Board of Education of the City of Poughkeepsie, (manuscript), vol. 6, January 1, 1897, p. 145.

³² Board Minutes, vol. 6, February 3, 1897, p. 155.

³³ Board Minutes, vol. 6, February 3, 1897, p. 155.

terminated at this time. Instead sometime in the spring of 1897, Father Nilan agreed to discontinue the daily religious instructions that had been given to the Catholic pupils from one o'clock to one-thirty since the inception of the school arrangement in 1873³⁴.

Meanwhile the West Troy decision, which had occasioned so much discussion in Poughkeepsie, had not been carried out. On January 1, 1897 the village of West Troy had become the city of Watervliet - with new officials and a new Board of Education. A second appeal was made to the Department of Public Instruction, and on May 15, 1897 Mr. Skinner rendered another decision, this time to the Board of Education of Watervliet, declaring its arrangement with St. Bridget's Church, illegal.

This second decision in the Watervliet school case prompted further discussion in the Poughkeepsie Board of Education meetings. At the opening of the new school term in September of 1897, Commissioner Adriance suggested that some action should be taken by the Board in reference to the teachers at Schools Nos. 11 and 12 who were wearing a distinguishing religious garb. The matter was referred to the Committee on Examination for investigation³⁵. Nothing was done, however;

³⁴ The Editor, news article in The Poughkeepsie Daily Eagle, vol. 38, (no number) January 22, 1898, p. 6, col. 1.

³⁵ Board Minutes, vol. 6, September 8, 1897, p. 185.

hence at the November 3 meeting of the Board two amendments were suggested for the school manual. The first, suggested by Commissioner Adriance was identical with the amendment that had been adopted on January 1, 1897 and revoked on February 3. The second amendment, proposed by Commissioner Cramer, was the following: "No sectarian religious instruction or exercises shall be allowed in any of the schools during school days." Both amendments were referred to the Committee on Rules³⁶.

On December 1, 1897 an important meeting of the Board was held. At this meeting the Committee on Rules, made up of Helmus W. Barratt, Frederic Barnard and Richard V. LeRay, reported on the proposed amendments. The Committee stated that it had received a written communication from Father Nilan, in which he had agreed to discontinue after the Christmas holidays the religious instruction given in Schools Nos. 11 and 12 each morning before the beginning of the morning sessions. This communication, the Committee thought, eliminated any reason for adopting the Cramer amendment. The Committee, further, expressed the conviction that the Board had the right to forbid the wearing of the religious garb only when coupled with the imparting of religious instruction; hence the Committee recommended that the Adriance amendment also be rejected³⁷.

36 Board Minutes, vol. 6, November 3, 1897, p. 197-198.

37 Board Minutes, vol. 6, December 1, 1897, p. 200-201.

Mr. Barnard, a member of the Rules Committee, pointed out that there was no parallel between the Poughkeepsie arrangement and the Watervliet case, since in Watervliet the Board of Education had been supporting what was practically a parochial school. Commissioner Van Cleef disagreed, declaring that Superintendent Skinner had already stated that if the Poughkeepsie case were brought before him he would decide against it. At this point of the meeting President Albert R. Haskins, calling on Commissioner LeRay to take the chair, told the Board that only a few hours earlier, he had contacted Mr. Skinner by telephone and had asked him point-blank if the Watervliet decision covered the matter of the wearing of the sisters' garb apart from the giving of religious instruction. Mr. Skinner said that it did, and informed President Haskins: "If the Poughkeepsie case is brought before me, I shall decide it, as I decided the Watervliet case." This settled the matter, Mr. Haskins felt, and definitely established that the position of the Board was illegal³⁸.

John C. Sickley, the clerk of the Board of Education, stated at a meeting held on December 22, 1897 that he had been requested by a citizen to furnish a copy of the Minutes in reference to the proposed amendments to the school manual. He was

³⁸ The Editor, "Board of Education", news article in The Poughkeepsie Daily Eagle, vol. 37, December 2, 1897, p. 8, col. 4.

directed by the Board to comply with this request³⁹. The name of the citizen who made the request is not given, but it seems clear that the purpose of the request was to obtain official information that might be incorporated into an appeal to the State Superintendent. For on January 21, 1898 an appeal was sent to Superintendent Skinner, asking him to order the Board to cancel the lease and to discharge the sisters⁴⁰. The appellant was Edward Keyser, an express messenger in the employ of the American Express Company, living at 176 Mill Street close to Schools Nos. 11 and 12. Mr. Keyser was also the secretary of the local lodge of the American Protective Association⁴¹.

The following day, January 22, three articles on the school arrangement appeared in The Poughkeepsie Daily Eagle. A news item explained the origin of the appeal. For a year or more, the article pointed out, certain people in Poughkeepsie had opposed the school plan, maintaining that Article IX, section 4, of the State Constitution applied to Schools Nos. 11 and 12. The opposition had become so strong that in the spring of 1897

39 Board Minutes, vol. 6, December 22, 1897, p. 205.

40 The Editor, editorial in The Poughkeepsie Daily Eagle, vol. 38, January 22, 1898, p. 4, col. 2.

41 R.V. LeRay, Poughkeepsie City Directory, Poughkeepsie, LeRay Publisher, 1898, p. 200.

the religious exercises held at noon in these schools had been discontinued. This conciliatory action, however, failed to satisfy those who were "aggrieved by the object lesson conveyed by the religious garb of the four sisters" teaching in Schools Nos. 11 and 12. An appeal, therefore, was sent to the State Superintendent⁴².

A second item in The Daily Eagle was a statement made by Mr. Keyser to a reporter for The Daily Eagle. Deploing the aggressive attitude of the Roman Catholic Church toward the public school system as one of the greatest dangers threatening the country, Mr. Keyser declared that Catholic sisters are unfit to be teachers of youth:

How on earth can nuns and monks immured from childhood within gloomy walls and subjected to discipline which eradicated every spark of independent thought, perverts the conscience, blinds the intellect and stupifies every faculty with the accumulated superstitions of centuries - how, I say, can such teachers acquire the knowledge and the broad capacity necessary to impart instruction to our future American citizens? Such teachers can only reproduce themselves in their pupils.

The statement concluded with a challenge of hostility:

Let us stand up like men and be counted as such, thereby admonishing the enemies of our public schools that we deny them the right to enter our temples of freedom to steal the crown of liberty that our forefathers won for us: the liberty of educating our children unhindered by ecclesiastical interference⁴³.

⁴² Reporter, news article in The Poughkeepsie Daily Eagle, vol. 38, January 22, 1898, p. 6, col. 1-2.

⁴³ Reporter, "Statement of Mr. Keyser to Eagle Reporter", news article in The Poughkeepsie Daily Eagle, vol. 38, January 22, 1898, p. 6, col. 2.

The editor remarked that this statement was especially interesting "as the first public declaration we have seen of the views of the A.P.A., of which Mr. Keyser is an officer." It would be difficult to find a statement more typical of the A.P.A. attitude.

A third item in this same issue of The Daily Eagle was an editorial discussing the appeal. The editor pointed out that the Poughkeepsie Plan had been the object of much discussion in the school and religious press throughout the country. Extreme Catholics and Protestants had roundly denounced it. The weak points of the Plan, the possibilities of abuse, had been pointed out by many people not conversant with the actual circumstances under which the Plan operated in Poughkeepsie. The people of Poughkeepsie, the editorial declared, had always known that the arrangement had its weak points and that its satisfactory operation depended entirely upon the good faith and tact of the parties who administered it.

When the objectors told us how easily the arrangement could be abused, we have calmly replied that we knew that all the time, but we did not propose to abuse it⁴⁴.

In view of all the controversy the editor suggested that the trouble might be averted by the Board paying a decent rent for

⁴⁴ The Editor, editorial in The Poughkeepsie Daily Eagle, vol. 38, January 22, 1898, p. 4, col. 2.

the buildings and by the sisters laying aside "the troublesome dress" which had occasioned the controversy.

The editor was taken to task for this suggestion in a letter to the editor signed by one who called himself "A Protestant Who Knows." Pointing out that the sisters belonged to "an ancient order with an honorable record" and that the garb they wore was one that had been in existence for hundreds of years, he declared that in wearing this garb, the sisters were simply exercising the right of private judgment "which our Constitution and laws guarantee to every one." He argued further that, since in the twenty-five years of the operation of the Plan, the Catholic owners had been forced to make one concession after another, it was only fitting that the Board should yield on the matter of the wearing of the religious garb.

Since the original agreement was made with the owners of the schools in question, it has been modified from time to time and every modification has been a concession on the part of the Catholic owners to the wishes of the Protestant lessees, until now the right of four women to wear clothing of their choice is all that remains to them for their valuable gift to the city of two fine school buildings without compensation. Would it not be a favor to pay them a proper rent for the buildings and let the teachers wear what they choose⁴⁵?

The Board of Education, however, was in no position to accept such a recommendation, even had it been disposed to

⁴⁵ A Protestant, letter to the editor in The Poughkeepsie Daily Eagle, vol. 38, January 28, 1898, p. 3, col. 3.

do so. For it had on its hands the immediately pressing problem of answering the appeal that had been made to Superintendent Skinner. At a special Board meeting held January 24, 1898 the matter of the appeal was referred to the Committee on Examinations which was directed to confer with the city attorney⁴⁶. The answer to the appeal, prepared by the city attorney, J.L. Williams assisted by J. Spencer Van Cleef of the Board of Education, was read and discussed at the Board meeting of February 2. In its answer the Board denied three principal allegations of the appellants:

1° That any teachers in Schools Nos. 11 and 12 were officially addressed as "Sister".

2° That any parents had objected to sending their children to these schools.

3° That any sectarian doctrine was being taught in the schools or on school days.

The Board pointed out that, whereas the original lease had forbidden religious instruction only during the school hours a recent verbal agreement had so modified the original lease that sectarian instruction was forbidden at any time on school days. It seemed to the Board, therefore, that the allegation of the

46 Board Minutes, vol. 6, January 24, 1898, p. 216.

appellant concerning sectarian teaching in Schools Nos. 11 and 12 was without foundation in fact⁴⁷.

Superintendent Skinner's Decision

It was nearly a year before Superintendent Skinner rendered his decision on the appeal. Before doing so, he decided the Corning school case and ruled on March 31, 1898 that the agreement between the Corning Board of Education and St. Mary's Church of that city was illegal. Finally, on December 23, 1898 the long-awaited Poughkeepsie decision was made. Citing previous "garb decisions" as precedents indicating the settled policy of the State Department of Public Instruction, Superintendent Skinner reasoned that the wearing of the religious garb constituted "visual instruction" in sectarian doctrine and was therefore contrary to the Constitution and the laws of the State. The State, the Superintendent declared, spends thousands of dollars annually for visual education; it cannot therefore ignore the obvious influence on the susceptible mind of a child of the distinctive garb and the distinguishing insignia of a religious order⁴⁸.

The decision went further than any previous decisions in that it not only decided that the garb worn by the sisters

⁴⁷ Reporter, "Board of Education", news article in The Poughkeepsie Daily Eagle, vol. 38, February 3, 1898, p. 5, col. 4-5

⁴⁸ Thomas E. Finegan, Judicial Decisions, p. 560.

was illegal, but also declared that the very life lived by the sisters and the restrictions it imposed on their activities rendered them unfit to be teachers in the public schools.

It is fundamental that teachers employed in the public schools of the State in fitting our children for useful citizens, should keep themselves in close touch with everything that will enhance their usefulness in this direction. To do this requires association with others engaged in like employment and familiarity with the every-day affairs of life with which the pupil in future years must battle for his own existence. They should touch men and women in the multitudinous and intricate affairs of life which perplex and discipline us, and above all, the professional training which comes from association with educational representatives ought never to be barred from any teacher employed in the public schools (...)⁴⁹.

Superintendent Skinner took occasion in his decision to criticize what he called "the deplorable condition of the schools of Poughkeepsie⁵⁰". (A year previous on December 4, 1897 he had told a reporter of The Poughkeepsie Daily Eagle that "the schools of Poughkeepsie stand high among those of the State⁵¹".) It was this criticism of their schools, even more than the garb decision, that aroused the anger of the people of Poughkeepsie. The Daily Eagle suggested that Superintendent Skinner had postponed his decision so long a time,

49 Thomas E. Finegan, Judicial Decisions, p. 560.

50 Thomas E. Finegan, Judicial Decisions, p. 560.

51 Reporter, interview with Superintendent Skinner, in The Poughkeepsie Daily Eagle, vol. 37, December 4, 1897, p. 8, col. 1.

because he had been gathering information on the Poughkeepsie schools from some outside source. The decision, in consequence, instead of being based on the evidence submitted, was "mainly a recital of these outside statements most of which are greatly distorted and several of which are entirely untrue." After discussing the Superintendent's criticism of the Poughkeepsie schools point by point, the editor of The Daily Eagle described the decision as follows:

Its conclusions are wrong, its reasons false and its statements libelous. It is a disgrace to the department from which it came and to the State whose authority it bears⁵².

For several weeks the rumor had circulated throughout Poughkeepsie that Skinner's decision had actually been written, not by the Superintendent himself nor in Albany, but by a disgruntled school commissioner in Poughkeepsie. Nor were the disquieting rumors set completely at rest when on January 4, 1899 Mr. Harris, the Poughkeepsie Superintendent of schools informed a reporter from The Evening Enterprise that the decision had been written by Mr. Ainsworth, Deputy State Superintendent of Public Instruction and dictated to a stenographer in Mr. Harris' office⁵³. The Poughkeepsie Daily Eagle had this

⁵² The Editor, "Investigation of Facts of Appeal", editorial in The Poughkeepsie Daily Eagle, vol. 39, December 31, 1898, p. 4, col. 1-6.

⁵³ Reporter, "Skinner's Opinion, news report in The Evening Enterprise of Poughkeepsie, vol. 16, January 4, 1899, p. 3, col. 1.

comment on the report:

If this is true, it casts light on the Skinner opinion. Not only was it written in flat disregard of law, evidence or fact, but not even by Skinner, nor in his office. What sort of legal document is this? And who was the real author or instigator who furnished the Deputy sent down here on a private smelling expedition with the vast and varied mass of misinformation contained in it? This becomes an interesting query, too, if the "opinion" was written as stated⁵⁴.

Whatever might have been thought about the decision and its origin, the fact remained that the decision had been made. The Board of Education, therefore, had to act quickly to provide school facilities for all the school children of the city. On December 30, 1898 a committee was appointed to confer with Father Nilan to see what arrangements could be made for continuing the schools. In a written communication to the Board, Father Nilan gave thirty days notice of his intention to terminate the lease for Schools Nos. 11 and 12⁵⁵. From this the Board concluded that the schools could open as usual, though without the four sisters, and continue open for thirty days while other arrangements were being made. A committee of five was appointed to procure immediate accommodations for the children now in Schools 11 and 12. All the teachers,

54 The Editor, "Can This Be True?", editorial in The Poughkeepsie Daily Eagle, vol. 39, January 5, 1899, p. 5, col. 4.

55 Board Minutes, vol. 6, January 2, 1899, p. 307.

except those included in the State Superintendent's prohibition, were reappointed for the coming year⁵⁶.

The very next day, however, much to the surprise of the Board, St. Peter's Church took possession of School No. 11, installing the four sisters as teachers and turning out the other teachers. Miss Byrne, principal of School No. 11 informed Superintendent Harris of this surprise move. Mr. Harris hurried to School No. 11. He was met at the door by Father Nilan who informed the Superintendent that he had taken possession of the school and that it was no longer a part of the public school system. Father Nilan explained the reason for his sudden action. In his letter to the Board he had intended to convey the impression that he would continue the two schools for thirty days under the previous arrangement, including therefore the retention of all the teachers. The Board's refusal to reappoint the sisters he considered as a rejection of his offer. Hence he had not deemed it necessary to give the Board any notice of his action in taking over the school⁵⁷.

Some of the members of the Board were annoyed at this sudden action of Father Nilan. The Poughkeepsie Daily Eagle reported that at the January 5 meeting of the Board there was

⁵⁶ Board Minutes, vol. 6, January 2, 1899, p. 307.

⁵⁷ Reporter, "About the Schools", news article in The Poughkeepsie Daily Eagle, vol. 39, January 5, 1899, p. 5, col. 5.

an "undercurrent of feeling that did not come to the surface that the Board had not been treated quite right in such sudden action by the Church⁵⁸". The Evening Enterprise, on the other hand, praised Father Nilan's action, stating that it:

will go a long way toward straightening out the school muddle, as it is expected that the Board will be able to make arrangements with St. Peter's parish to lease school 12 at an annual rental⁵⁹.

This expectation proved correct. For on January 13, 1899 Father Nilan wrote to Dr. Horace Powell, President of the Board, offering three plans for the leasing of School No. 12:

1° The words of the lease made in 1875 are:
"The Board of Education is to have absolute control of said building(s), lands and school furniture for the use and purpose of a public school during the school hours fixed or to be fixed by said Board; and before and after school hours the said building(s), lands and school furniture shall be in the enjoyment and control of said lessor." This would be the most desirable condition and I can assure the Board that there will be no reason to complain of any abuse. It would facilitate for me the whole matter.

2° If the foregoing will not satisfy the Board, the next best that they could do is to lease us the use of the building on non-school days. Here again I assure the Board that there shall be no reason given for any complaint.

3° The last form of condition is that the lessor have use of the building on Saturdays and Sundays⁶⁰.

58 Reporter, "About the Schools", news article in The Poughkeepsie Daily Eagle, vol. 39, January 5, 1899, p. 5, col. 5.

59 The Editor, "Is a Parochial School Now", editorial in The Evening Enterprise, vol. 16, January 4, 1899, p. 3, col. 1.

60 Board Minutes, vol. 6, January 16, 1899, p. 312.

The Board found the third alternative most acceptable and authorized its President, Dr. Powell, to lease School No. 12 for one year from January 1, 1899 to January 1, 1900 at an annual rental of one thousand dollars⁶¹. This arrangement continued till December 1902.

The taking back by St. Peter's Parish of School No. 11 on January 3, 1899 marks the official ending of the much discussed Poughkeepsie Plan. An editorial in The Poughkeepsie Daily Eagle attempted to evaluate the results of its twenty-five years of operation.

We believe a fair and impartial view of it will show that it has produced results exceedingly beneficial to the two or three generations of scholars who have been educated under it; and though it is now abrogated, it has brought Catholics and Protestants into a relation of mutual confidence which in their turn have produced a mutual respect and esteem that have distinguished our city for its liberality and we trust will never be lost.

The editorial suggest the significance of this fact:

That although the termination of the plan has been brought about under evident pressure, there has not been the slightest disturbance nor any evidence of ill-feeling. The Church society resumes one parochial school, and makes a friendly offer of the other to the city on the same terms that any other owner would make for similar property⁶².

61 Board Minutes, vol. 6, January 16, 1899, p. 313.

62 The Editor, editorial in The Poughkeepsie Daily Eagle, vol. 39, January 6, 1899, p. 4, col. 2.

Thus, in 1898 the fourth of the "religious garb" decisions, issuing from the State Department of Public Instruction, brought to an end the most widely publicized of the "compromise plans".

CHAPTER V

THE LIMA SCHOOL CASE

The Lima school decision, which this present chapter purposes to study, was undoubtedly, in its intrinsic importance at least, the most significant of the religious garb decisions rendered in New York State. Its special importance derives from the fact that the decision of the State Superintendent of Public Instruction was upheld by the courts of New York State, including the State's highest court, the Court of Appeals.

The Lima school case involved an arrangement, of almost forty years standing, between School District No. 9 of the town of Lima in Livingston County and St. Rose's Catholic Church of Lima. The events leading up to that arrangement were the following.

In the year 1860 a district schoolhouse was built in Lima, which for over forty years was the only school building owned by the district. A one-story brick building with two rooms and a seating capacity of seventy-six, it was located

on Main Street where the Town Hall now stands¹.

Four years previous, in 1856, a parochial school had been erected by Father M. Thomas McGuire, pastor of St. Rose's Church from 1854 to 1858. The parochial school was a frame-building, standing on the ground now occupied by the present rectory. It was called Brendan Hall, because the stage curtain had painted on it a picture of St. Brendan landing in America².

Originally, and up to 1875, Brendan Hall was staffed by lay teachers. The first teacher was Mrs. Fox. She was succeeded by Molly Welch. The third teacher was Miss Margaret Egan who taught in 1862 and 1863. During the period from 1856 to 1863 the school was supported solely by the voluntary contributions of the people of St. Rose's Parish. By 1863, however, the financial burden had become so great that the

1 New York State Court of Appeals, "Case on Appeal, O'Connor v. Hendrick", in Cases in the Court of Appeals, vol. 2863, p. 67-68, (no publication data given). This volume of Cases in the Court of Appeals contains four different paginations for the case of O'Connor v. Hendrick: the first designating the proceedings of the two lower courts; the other three designating the three Briefs presented to the Court of Appeals. In this work references entitled, "Case on Appeal, O'Connor v. Hendrick" will signify the first pagination; the other three paginations will be referred to by the titles of the respective Briefs.

2 John M. Ball, Souvenir of Centenary of the First Mass, Lima, St. Rose's Church, 1942, p. 8.

school had to be discontinued. It remained closed for two years³.

Origin of the School Arrangement

The closing of the parochial school meant that the district school had to take over the instruction of all the school children of the district. As the district school was not large enough to accommodate all the children, an agreement was worked out, whereby the former parochial school was assumed by the district as a second public school. The plan, it would seem, was originally suggested by James Theodore Gordon, a non-Catholic⁴. According to the provisions of the plan, the district would pay the salaries of two teachers in Brendan Hall and would give to Brendan Hall the same allowance for general school expenses as was allotted to the district school⁵.

3 John M. Ball, Souvenir of Centenary of the First Mass, p. 15-16.

4 Interview on June 23, 1948 with Miss Mary Guinan, treasurer of the village of Lima. Her father, Patrick Guinan, was town clerk in Lima for many years. Her mother, Margaret Egan was the first teacher in Brendan Hall to have her salary paid from public funds.

5 G.W.T., "Lima, the Parochial School", news article in The Catholic Times of Rochester, N.Y., vol. 3, no. 45, November 4, 1880, p. 3, col. 3.

In 1865⁶ Brendan Hall reopened under this new arrangement, with Miss Margaret Egan returning to the school as teacher⁷. In 1875 the Sisters of St. Joseph came to Lima to teach in Brendan Hall⁸. The district agreed to continue the above-mentioned agreement and to accept the sisters as teachers, provided they were duly qualified. The circumstances surrounding the sisters' coming to Lima were explained by Bishop Bernard J. McQuaid of the diocese of Rochester in an interview with a

6 In an interview granted on November 26, 1875 to a reporter of The Courier of Buffalo and quoted in The Union and Advertiser of Rochester, Bishop Bernard J. McQuaid stated that, since the district school in Lima was too small to care for all the children, an arrangement was made whereby the Catholic school building, closed because of inadequate funds, would be reopened and supported by public money. According to the Souvenir of the Centenary of the First Mass, Brendan Hall was closed because of lack of funds in 1863 and then reopened in 1865. The year 1865, therefore, must be the date when public funds were first given.

7 It is not clear whether Miss Egan was the sole teacher in 1865 or whether a second teacher was engaged at this time. It is certain that, when the sisters came to Lima to teach in 1875, there were two teachers in Brendan Hall whose salaries were paid by the school district.

8 The Sisters of St. Joseph Annals of the Sisters of St. Joseph of the Diocese of Rochester, N.Y. (no page given).

reporter from The Courier of Buffalo, N. Y. The Bishop told the reporter:

On the first of January, we said: Will you pay sisters as well as lay teachers? They consented, provided the sisters could pass the necessary examination. I was asked if the Sisters would submit to such a test, and replied: Certainly. We want no teachers who are unable to show abundant familiarity with the ordinary studies required. The Superintendent of Livingston County appointed a day for the examination, which was to take place at Livonia, and two Sisters were sent there. Unfortunately the two Sisters in some way missed the train, and, not wishing to fail in the appointment, hired a carriage and rode the entire distance of twenty-six miles on as cold a day as we had last winter. The examination lasted two hours and proved satisfactory⁹.

In that same year, 1875, the old church (a new church begun in 1870 had been dedicated in 1873¹⁰) was converted into a school building. The November 4, 1880 issue of The Catholic Times of Rochester, New York, contained a news item from Lima which mentioned the building of the new church and the conversion of the former church into a school building. "The school-house," the article states, "is spacious and better fitted for its purpose than any other school building in the town¹¹".

9 Bernard J. McQuaid, interview with reporter of The Courier of Buffalo, quoted in The Union and Advertiser of Rochester, vol. 50, no. 281, November 26, 1875, p. 3, col. 2.

10 John M. Ball, Souvenir of Centenary, p. 8.

11 G.W.T., "Lima, the Parochial School", news article in The Catholic Times of Rochester, N.Y., vol. 3, no. 45, November 4, 1880, p. 3, col. 3.

The writer goes on to mention the cooperative school arrangement at Lima and the wide approval that it received from the people of the town.

In our school matters we are favored beyond any parish in the diocese. The Sisters have their salaries paid by the Trustees of the District and the general school expenses are provided for as in the case of any common school. This equitable arrangement has been carried out for many years in Lima and very few citizens can be found who object to the system¹².

The sisters were not long in acquiring the reputation for conducting an excellent school. The same article from The Catholic Times of Waterloo states:

It is a frequent remark among the Protestant heads of families in Lima that they wish the Sisters could teach the other schools as well as the one where Catholic children attend. Hence we notice children from non-Catholic families under the charge of our teachers¹³.

According to the terms of the agreement, two rooms in Brendan Hall were rented by the district and the teachers in these rooms were paid out of the common school fund. A third room in Brendan Hall was conducted as a parochial school supported by parish money. In this room the first three grades were taught. Of the other two rooms, one was for the fourth, fifth and sixth grades; the other for the seventh and eighth

12 Ibid.

13 Ibid.

grades and the high school¹⁴. These two rooms, since they were supported by public funds, were conducted as a public school. The school bell would ring at 8:55 A.M.; and the Catholic children would assemble for morning prayers, at which exercise the non-Catholic children were not required to be present.

After prayers the regular school exercises were held. At 11:45 A.M. the non-Catholic pupils were allowed to leave and the Catholic children stayed for noon-day prayers. In the afternoon classes were resumed. At 3:30 P.M. classes were dismissed and the Catholic children remained for prayers and religious instruction¹⁵.

In 1894 the Reverend Simon FitzSimons, pastor of St. Rose's Church from 1884 to 1912 erected a new school building at the cost of about twenty-five thousand dollars¹⁶. He put up the new building with the understanding that the financial arrangement with the school district would be continued.

The construction of this new building perhaps suggested to the people of the district that something should be done to improve the district-owned schoolhouse which had been built in 1860. Accordingly on April 26, 1897 a special school meeting

14 In 1889 a ninth grade was added to the grade school curriculum.

15 Court of Appeals, "Brief for Respondent Patrick Hendrick", Cases in the Court of Appeals, p. 22.

16 John M. Ball, Souvenir of Centenary, p. 10.

was called to consider possible plans for enlarging the district school. A committee was appointed to investigate the matter and submit a report to the tax-payers of the district¹⁷.

On May 4, 1897 the committee, made up of James Theodore Gordon, Edwin R. Bronson and Patrick Guinan, submitted its report. The report stated that in the Main Street School there were ninety-two seats and seventy-five students registered; whereas in Brendan Hall there were 110 seats and an average registration of seventy-eight¹⁸. The facts of the report, therefore, did not suggest any immediate need of enlarging the school; and so for the time being any such plans were abandoned. At the school meeting, held August 6, 1897, plans were made for improving the heating and ventilation system of the school¹⁹.

Opposition

There were some people in Lima, however, who refused to be contented simply with improving conditions of the existing school building. They ambitioned not merely the enlargement of the school but the building of a new one. One of the leaders

¹⁷ Town of Lima, Minutes of the Meetings of School District No. 9, Town of Lima, (manuscript), April 26, 1897, p. 46.

¹⁸ School Minutes, May 4, 1897, p. 47.

¹⁹ School Minutes, August 6, 1897, p. 51.

of this group was the Reverend Mr. Alfred K. Bates, pastor of the Lima Presbyterian Church, who had come to Lima about 1895. Reverend Mr. Bates and those who shared his viewpoint felt that Brendan Hall was a sectarian school and, therefore, should not be receiving public funds. They also felt that if the public funds were taken away, Brendan Hall would have to close; and that would force the school district to build a new school to care for the education of all the children of the town²⁰. Accordingly, in the latter part of the year 1901 or in the beginning of 1902 a petition was drawn up to be sent to the State Superintendent. The petition was circulated in the town and the people were asked to sign it. It would appear that not many were found willing to do so. In fact, so severely was Reverend Mr. Bates criticized for his part in promoting the petition, that he eventually tendered his resignation as pastor of the Lima Presbyterian Church; and the resignation was accepted²¹. Most of the people seemed to feel that the school arrangement that had been operating successfully for over thirty years should be continued.

On February 20, 1902 Father FitzSimons wrote the editor of The Lima Recorder expressing his own attitude, and that of

20 Interview with Mary Guinan.

21 "Lima's Trustee Can't Levy Tax", news article in The Rochester Democrat and Chronicle, vol. 71, no. 198, August 19, 1903, p. 9, col. 2.

his people toward the petition then being circulated in Lima.

It would be a mistake to suppose that the members of St. Rose's congregation - or any portion of them - are opposed to improvements in the village school house. I have talked with most of them, and I feel justified in saying that without exception they are willing and ready to support ANY REASONABLE measure, which will leave the present school arrangement undisturbed; that they desire that the village school house be rendered commodious and comfortable, if it is not so now, and that they are prepared at any time to tax themselves freely in order that the pupils in attendance there may have accommodations second to none, in proportion to the numbers²².

The Pastor of St. Rose's Church suggested that those who professed to be interested in a new district school had in actual fact a more sinister end in view. Their real aim, he maintained, was the complete disruption of the school arrangement that had operated successfully for so many years. He refused to believe, however, that the petition was the work of any other than a very small minority.

For my part I am inclined to believe that the whole matter is confined to one or two well meaning but short sighted individuals who are unable to foresee the consequences of their agitation. One thing at least is certain, it will not be the fault of the members of St. Rose's congregation, if the harmony which has so long existed among all classes of our citizens is permanently disturbed, and a condition of affairs precipitated, which cannot fail ultimately to be disastrous to our present educational institutions, of which Lima has long been justly proud²³.

²² Simon FitzSimons, letter to the editor, clipping in the files of the town historian of Lima, taken from The Lima Recorder, (no volume or number given) February 20, 1902, (no page or column given).

²³ Ibid.

The petition, nonetheless, was sent to Superintendent Skinner on April 3, 1902²⁴. It carried four signatures: William A. Ferris, Gerrit S. Preston, Reverend Mr. Horace A. Crane, and Reverend Mr. Alfred K. Bates.

A special meeting of the school district was called by Trustee Henry A. Sylvester to consider the appeal. At the meeting, held on April 8, 1902, William A. Ferris explained his reasons for signing the appeal. The appeal was read by the Trustee. The appeal protested the action of Trustee Sylvester in leasing private property (i.e. Brendan Hall) for school purposes and in paying public money to teachers who belonged to a religious order and who during the school hours wore the distinctive garb of that order. After some discussion, a resolution was passed directing the Trustee to employ counsel to answer the appeal and to inform the Superintendent of Public Instruction "that 999 out of 1,000 favored the present system of conducting the schools in their school district²⁵".

Mr. Ferris and Mr. Preston apparently repented of their part in the appeal, for on April 18 they wrote the Superintendent informing him of their withdrawal from the appeal and suggesting that matters be allowed to remain as they were²⁶.

24 Thomas E. Finegan, Judicial Decisions, p. 573.

25 School Minutes, April 8, 1902, p. 67.

26 Thomas E. Finegan, Judicial Decisions, p. 574.

Decisions of the Superintendent

The decision of the Superintendent was given June 5, 1902. Superintendent Skinner decided that according to the established policy of the State, "the renting of rooms and buildings for school purposes is not authorized except under extraordinary conditions and to provide for emergencies". He therefore, declared that the leasing of Brendan Hall by Mr. Sylvester and his predecessors was entirely "beyond the period of emergency contemplated by the school law²⁷". Hence the action of the Trustee was without legal authority. He further decided, as he had done in previous cases that the wearing of an unusual garb, distinctive of membership in one religious denomination "constitutes a sectarian influence which ought not to be persisted in." He, therefore, ordered Henry Sylvester; "to require teachers employed by him to discontinue in the public school room or rooms the use of the distinguishing dress or garb of any religious order²⁸". Finally he enjoined and restrained Sylvester from hiring or using Brendan Hall for school purposes after June 30, 1902.

Henry Allen Sylvester, however, did not carry out the order of the Superintendent. For at the close of the school

27 Thomas E. Finegan, Judicial Decisions, p. 574.

28 Thomas E. Finegan, Judicial Decisions, p. 575.

29 School Minutes, August 25, 1902, p. 74.

year he retired from the office of Trustee, leaving a somewhat delicate situation for his successor.

On August 5, 1902 a district meeting was called to elect the Trustee for the coming year. James Theodore Gordon was chosen. Four days later, however, he filed notice of his resignation with the clerk of the district. Accordingly on August 25 a special school meeting was held at the town hall to elect a Trustee in his place. Patrick Hendrick received thirty-nine of the fifty-two votes cast and was declared elected²⁹. He was a member of St. Rose's Parish and the only Catholic who held the office of Trustee during the time that the sisters taught and received public funds³⁰.

On September 17, 1902 at a special school meeting held at the Town Hall, a resolution was adopted which constituted a practical defiance of the decision of the State Superintendent. The resolution, drawn up and circulated a few days previous to the meeting, had been signed by about a hundred of the electors of the district. At the meeting the resolution was voted upon and declared carried almost unanimously, there

³⁰ Court of Appeals, "Case on Appeal, O'Connor v. Hendrick", Cases in the Court of Appeals, p. 58.

being only three dissenting votes out of a large meeting. The resolution read as follows:

We the undersigned legally qualified voters in School District No. 9, Town of Lima, hereby request and direct Patrick Hendrick the Trustee in said District to continue during the ensuing year the Main Street School and the South School in said District and to employ teachers for that purpose the same as was done by his predecessor in office during the year last past³¹.

In accordance with this directive, Mr Hendrick leased Brendan Hall for the coming year. Likewise, on September 22, 1902, he entered into a contract with Miss Nora O'Connor (Sister Prudentia). According to the terms of the contract she agreed: "to teach the public school of said district for the term of thirty-six consecutive weeks, commencing September 22, 1902, at a weekly compensation of ten dollars³²". On October 6, the Trustee entered into a similar contract with Miss Elizabeth Dowd (Sister Teresita). This contract provided for a weekly compensation of eight dollars³³. These two contracts were destined to become the subject of much litigation.

Mr. Hendrick carried out these directives of the school meeting with full knowledge of the decision that had been rendered by Superintendent Skinner on June 5, 1902. In fact,

31 School Minutes, September 17, 1902, p. 75.

32 Court of Appeals, "Case on Appeal, O'Connor v. Hendrick", Cases in the Court of Appeals, p. 64.

33 Ibid.

when questioned at the Trial Court about his knowledge of that decision, he replied:

At the time I employed Nora O'Connor and Elizabeth E. Dowd I knew of the Ferris Decision. I didn't have any talk with these two people about that decision or about it being decided by the State Department that I could not employ teachers who wore the garb of a religious society. I say I had no such talk nor had I any such idea. I knew that this decision was to the effect that H. Allen Sylvester was prohibited but I didn't know that Trustee Hendrick was. I did not consult any counsel about it. I made up my own mind that the order applied to Sylvester and not to me³⁴.

On October 6, 1902, the date on which Patrick Hendrick entered into contract with Elizabeth Dowd, two other events important to this case took place. First of all, a second appeal was directed to the Superintendent of Public Instruction. It is known as the Bates vs. Hendrick appeal. The appeal charged that Hendrick in employing the sisters as teachers and in using public funds to pay their salaries was violating the Constitution of the State of New York³⁵.

Another event that took place on October 6, 1902 was the transfer of the sisters and their pupils from Brendan Hall to the Main Street School. At the same time the two teachers in the district school were transferred to Brendan Hall³⁶. This transfer was effected as a means of protecting the rights

34 Ibid., p. 55.

35 Ibid., p. 59.

36 Ibid., p. 27.

of the sisters. Since they possessed state certificates to teach, it was thought that their right to teach would be better safeguarded if they were teaching on district-owned property. This rather unusual situation continued during the school year of 1902-1903.

The decision of Superintendent Skinner on the appeal of Alfred K. Bates was made public on May 28, 1903. The decision ordered Patrick Hendrick:

1° To require Nora O'Connor and Elizabeth Dowd to discontinue wearing, during school hours, the distinctive garb of the religious order to which they belonged.

2° To dismiss them, if they refused to comply with this order.

3° Not to use any part of the free school funds apportioned to the District to pay the salaries of these teachers.

4° To call, on or before June 10, 1903, a special meeting of the inhabitants of the town who were qualified to vote at school meetings for the purpose of considering and authorizing the enlargement of the present schoolhouse or the construction of a new schoolhouse of sufficient capacity to accommodate the children of school age residing in the district.

5° To report to the Superintendent on or before June 15, 1903 as to his actions in carrying out these orders³⁷.

³⁷ Ibid., p. 70-72.

On May 28, then, Hendrick was notified of the decision of the Superintendent. The next day he made the decision known to the sisters; he did not, however, dismiss them, even though they continued wearing the religious garb in the classroom. The sisters continued to teach in the district school until June 19, 1903 - that is, for three weeks after they received notification of the Superintendent's decision.

During the school year payment of salary had been made to the sisters from time to time. The total yearly wage for the two sisters amounted to \$621.20. Up to May 28, they had been paid \$542. That means that at the time of the decision on the Bates appeal, \$25.20 was due to them for back salary. The amount of salary due to them for the three weeks that they taught after notification of the decision was, according to the terms of the contract, \$54. The total amount, then, owed to the sisters at the end of the school year was \$79.20³⁸.

In accordance with the orders of the Superintendent, a special school meeting was held in the Town Hall on June 9, 1903. The decision of the Superintendent was read. A resolution to build a new schoolhouse was offered by Mr. Bates to cost not over ten thousand dollars, nor less than eight thousand dollars. After some discussion the resolution was laid on the table. Patrick Hendrick then offered a resolution that

38 Ibid., p. 96.

a committee be appointed "to inquire and find out what terms and price Brendan Hall might be purchased for and report the same at a subsequent meeting." After discussion this resolution was carried³⁹.

The committee made its report on July 8, 1903. Brendan Hall might be purchased for twenty thousand dollars, possibly for eighteen thousand dollars, which would be the least sum. The committee's report was accepted. A motion was then made that Brendan Hall be purchased, but it was not seconded⁴⁰.

On August 4, 1903 the annual school meeting of the district was held. Patrick Hendrick was reelected Trustee. At this same meeting a motion was made to appropriate the sum of one thousand dollars for the payment of teachers' salaries for the year 1903-1904. An amendment to this resolution was offered, to the effect that none of this money be used to pay the salaries of teachers who were being employed contrary to Superintendent Skinner's orders. The amendment was duly seconded, but Mr. Hendrick, the chairman of the meeting refused to entertain the amendment, declaring it to be out of order⁴¹. When asked to justify his action, Hendrick stated that Mr. Skinner's decision was not recognized as law. This statement

39 School Minutes, June 9, 1903, p. 77.

40 School Minutes, July 8, 1903, p. 79.

41 School Minutes, August 4, 1903, p. 81.

of the Trustee was greeted by prolonged cheers from the people assembled in the Town Hall⁴².

The refusal of the Trustee to carry out the State Superintendent's instructions prompted a third petition to the State Department of Public Instruction. On August 10, Superintendent Skinner received a petition from Charles D. Miner, Warren I. Johnson, and John Deal, asking him to issue a stay of proceedings against the Trustee and the school district⁴³.

The State Superintendent replied on August 17 by issuing a temporary injunction. The injunction, which was to remain in force until the appeal was decided or until further orders were issued by the State Superintendent, was most sweeping in character. It restrained the Trustee,

1° From levying any school tax;

2° From opening or maintaining a school in Brendan Hall;

3° From permitting Nora O'Connor or Elizabeth Dowd or any other person or persons to teach in the public school, if while in the classroom they dress in the garb of any religious order or sisterhood;

42 "Lima's Trustee Can't Levy Tax", news article in The Rochester Democrat and Chronicle, vol. 71, no. 198, August 19, 1903, p. 9, col. 2.

43 School Minutes, September 3, 1903, p. 84.

40 From drawing an order upon the supervisor of the town of Lima for the paying of teachers' salaries⁴⁴.

Since the injunction prevented the Trustee from levying any tax for teachers' salaries, the schools did not open, as scheduled, on September 8, 1903; in fact, it was the middle of October before classes were resumed. Meanwhile,

Hendrick wrote to Albany for instructions. A series of letters were exchanged between the Trustee and the State Superintendent. The first two letters from Mr. Skinner brought, according to an article in The Union and Advertiser, "merely a restatement of the injunction⁴⁵". A third letter, however, which was read at the school meeting held on September 28, 1903 modified to some extent the restrictions of the injunction. Mr. Skinner declared that his order of August 17:

restrained the Trustee from levying the tax which was voted at the annual school district meeting, but does not restrain the Trustee from levying a legal tax for the payment of the wages of a qualified teacher whom he has not been restrained from employing⁴⁶.

44 "Lima School", news article in The Union and Advertiser of Rochester, New York, vol. 78, no. 196, August 19, 1903, p. 9, col. 1.

45 "Complicated Situation", news article in The Union and Advertiser of Rochester, New York, vol. 78, no. 230, September 28, 1903, p. 3, col. 3.

46 "Latest Development", news article in The Union and Advertiser of Rochester, New York, vol. 78, no. 232, p. 2, col. 5.

Mr. Skinner concluded his letter with the warning that, if the Trustee did not proceed immediately to open the public school in the public school building with qualified teachers, the Superintendent himself would take steps to see that this was done.

This modification of the Superintendent's orders failed to satisfy the voters of the district. Hence it was that at this same meeting of September 28, a resolution was passed to appoint a committee of three to appeal to Governor Odell. Reverend Simon FitzSimons, Patrick Guinan, and James Conway were appointed such committee⁴⁷.

The Superintendent's letter ordered Hendrick to open the public school, i.e. the Main Street School. Since this building was obviously too small to accommodate all the children of the district, Hendrick wrote to the Superintendent for further instructions. Mr. Skinner, in a letter written October 3, 1903, suggested a plan followed in some of the overcrowded schools of New York City. According to this plan one group of children went to class from eight o'clock in the morning to one o'clock in the afternoon; another group, taught by different teachers, had classes from one o'clock to five o'clock⁴⁸.

47 School Minutes, September 28, 1903, p. 85.

48 "More Instructions", news article in The Union and Advertiser of Rochester, New York, vol. 78, no. 238, October 7, 1903, p. 2, col. 4.

This suggestion was discussed at a school meeting held in the Lima Town Hall on October 6, 1903. Hendrick asked for a vote on the New York City plan. When no one offered a resolution in favor of it, he declared that without such a resolution he would not presume "to ask the children, the parents and the teachers to accommodate themselves to these unusual hours and unusual sessions⁴⁹".

In a letter published in The Union and Advertiser on October 10, 1903, Mr. Hendrick wrote to the Superintendent informing him of his refusal to open the district school under the unusual conditions laid down by the Superintendent. Pointing out that the school situation in Lima was not comparable to that of the congested districts of New York City, he declared that the same school facilities which had given excellent accommodations for some thirty-odd years still existed in Lima. He declared, moreover, that the Consolidated School Law did not authorize the trustee to resort to unusual hours and sessions when the public school proved inadequate for the accommodation of all the pupils; rather it expressly directed him under such circumstances to establish temporary or branch schools. Since the Superintendent had forbidden him to do what the law directed, the responsibility for the

49 Loco citato.

closed school in Lima rested with the Superintendent. Hendrick concluded:

(...) I shall wait patiently until the obstacles which you have placed in my path to prevent me from executing my part in the educational laws of New York State are removed by you, or until you are pleased to forward me such instructions as I can follow consistently with the provisions of the Consolidated School Law and the legal contracts now on hand⁵⁰.

Hendrick's refusal to carry out the directives of the State Department prompted Superintendent Skinner to carry out the threat he had made to take steps himself to see to it that the district school was opened. On October 13, accordingly, a Mr. Halliday arrived in Lima as a representative of the State Department with orders from Skinner to open the school. Mr. Halliday went to the Trustee's home and presented papers signed by the authorities at Albany. He demanded that Hendrick turn over to him the keys of the school. The papers he presented apparently did not have attached to them the seal of the State Department; and on this pretext Hendrick refused to hand over the keys of the school. Mr. Halliday, thereupon, informed the Trustee that, keys or no keys, he intended to follow out the orders of the Superintendent and open the school. He proceeded to the schoolhouse. He was followed shortly afterwards by Mr. Hendrick. When Mr. Hendrick saw that the

⁵⁰ Patrick Hendrick, letter in The Union and Advertiser of Rochester, New York, vol. 78, no. 241, October 10, 1903, p. 2, col. 2.

representative from Albany had forced the lock and entered the schoolhouse, he promptly had him placed under arrest⁵¹.

Mr. Halliday apparently was not retained in custody very long. Sometime between October 13 and October 19, he succeeded in opening the district school, placing Mr. Thomas A. Killip and Miss Irma Foster in charge as teachers⁵². On October 19, the problem of conducting double sessions in the district school to accommodate all the pupils of the district, was eliminated when Brendan Hall was reopened as a parochial school of St. Rose's Parish⁵³.

On November 4, 1903, Superintendent Skinner rendered his decision on the appeal of Miner, Johnson, and Deal. He decided that the qualified voters at the annual meeting had the legal right to appropriate the one thousand dollars for teachers' wages, but that this action did not authorize the Trustee of the district to employ as teachers in the public school any person or persons not authorized by the school law or the decision of the State Superintendent of Public

51 "Broke into School and was Arrested", news article in The Union and Advertiser of Rochester, New York, vol. 78, no. 243, October 13, 1903, p. 9, col. 2.

52 "Skinner's Order Bars Lima Nuns", news article in The Rochester Democrat and Chronicle, vol. 71, no. 264, November 4, 1903, p. 3, col. 2.

53 "Another School in Lima", news article in The Union and Advertiser, vol. 78, no. 249, October 20, 1903, p. 3, col. 2.

Instruction. Hence he issued an order restraining Patrick Hendrick from hiring any teachers who would wear the garb of the religious order or sisterhood to which they belonged while teaching in the school of the district⁵⁴.

The Lima Case in Court

While the problem of getting the schools in Lima opened was being discussed, other developments were taking place in the Lima school case. The Reverend Simon FitzSimons, pastor of St. Rose's Parish, was strongly convinced that the religious garb decisions of the Superintendents of Public Instruction should not be allowed to go unchallenged. In August 1902, after the Ferris decision, Father FitzSimons had published in The Catholic World a lengthy article in which he sought to prove that these garb decisions were contrary both to the Constitution of New York State⁵⁵. In 1903, after the Bates decision, he determined to make this a test case in the courts of the State of New York. Accordingly, Mr. Timothy J. Nighan was engaged as attorney for Sister M. Prudentia O'Connor.

54 "Skinner's Order Bars Lima Nuns", news article in The Rochester Democrat and Chronicle, vol. 71, no. 264, November 4, 1903, p. 3, col. 2.

55 Simon FitzSimons, "Are 'Religious Garb' Decisions Constitutional?" The Catholic World, vol. 75, August 1902, p. 567-580.

To bring the case into court it was necessary for the sisters to bring suit against the school Trustee for their unpaid salary. Thus it was that on September 10, 1903 a summons was served on Patrick Hendrick ordering him to appear in court and answer the charges against him⁵⁶. On October 5, 1903 a special school meeting of the district was called to consider this summons⁵⁷. At a later meeting, held on October 26, it was moved and carried that the Trustee employ Fletcher C. Peck or "some other counsel equally as good" to defend the district⁵⁸.

Some of the non-Catholic taxpayers of the town felt that Hendrick, since he was obviously in sympathy with the sisters, would not defend the case adequately. They demanded, therefore, to be impleaded with him as associate defendants. The court decided that they were entitled to appear, but only by Fletcher C. Peck, Hendrick's attorney. From this decision they appealed to the Appellate Division; and on March 3, 1904 they were allowed to appear by their own attorney, Albert H. Stearns⁵⁹.

⁵⁶ Court of Appeals, "Case on Appeal, O'Connor v. Hendrick", Cases in the Court of Appeals, p. 6.

⁵⁷ School Minutes, October 5, 1903, p. 86.

⁵⁸ School Minutes, October 26, 1903, p. 87.

⁵⁹ Court of Appeals, "Case on Appeal, O'Connor v. Hendrick", Cases in the Court of Appeals, p. 21-23.

The case was brought to the trial term of the Supreme Court held in the village of Geneseo, Livingston County in May, 1904. The Honorable James A. Robson was the presiding Justice. Nora O'Connor (Sister M. Prudentia), represented by Timothy J. Nighan, was the plaintiff. Patrick Hendrick, represented by Fletcher C. Peck, was the defendant. Albert H. Stearns appeared for Mr. Miner and the others who desired to be impleaded with Mr. Hendrick. Judge Walter K. Knapp was present in the interest of State Superintendent Skinner. Explaining his interests on the case, Justice Knapp stated:

The Department of Public Instruction is very anxious that the principle at stake here be fully and fairly tried out. It is not a mere question of a teacher's salary claim (...) This action is to test whether money of the State shall be used for sectarian schools⁶⁰.

Suit was brought by Nora O'Connor against Patrick Hendrick for the sum of \$79.20 due her and Elizabeth Dowd (Sister Teresita) in unpaid salary. The complaint made by the plaintiff was this: Mr. Hendrick had made a contract with the sisters. They had fulfilled their part of the contract by teaching school the stipulated number of weeks. Hendrick, therefore, should be obliged to keep his part of the contract

⁶⁰ "Nuns' right in Public Schools", news article in The Rochester Democrat and Chronicle, vol. 72, no. 5, January 6, 1904, p. 9, col. 2.

by paying them the remainder of the salary for which they had agreed to work⁶¹.

The case was tried on October 6, 1904 without jury. The judgment of the Court was given on April 3, 1905. The Court held:

1° That the Superintendent of Public Instruction had ample power to determine the questions decided by him in the Bates appeal and to make the orders therein set forth. His decision, furthermore, is final and conclusive.

2° That the plaintiff and Elizabeth Dowd were not entitled to recover for the services rendered by them as teachers for the three weeks after they received notification of the Superintendent's decision.

3° That the plaintiff and Elizabeth Dowd were entitled to judgment against Trustee Hendrick for the services rendered by them prior to such notification⁶².

The judgment of the Trial Court constituted a partial victory for the sisters' cause and that, in two ways. First, it allowed them to recover \$25.20, the amount of salary due them for services rendered before notification of the Superintendent's decision. Secondly, by implication the judgment upheld the validity of their contracts, in that it allowed them

⁶¹ Court of Appeals, "Case on Appeal, O'Connor v. Hendrick", Cases in the Court of Appeals, p. 7.

⁶² Ibid., p. 34.

to recover for such services. On the other hand, the judgment of the Trial Court went decidedly against the sisters on the more important issue involved, i.e. their right to teach in the schools of the State while wearing the religious garb of their order. For the Court decided that they were obliged to obey the Superintendent's regulation in this regard.

On April 4, 1905 Timothy J. Nighan, attorney for the plaintiff, appealed the case to the Appellate Division of the Supreme Court, the Fourth Department. The appeal was heard in the September term of the Appellate Division at the city of Rochester, New York⁶³. The decision, given November 29, 1905, upheld the judgment of the Trial Court.

The prevailing opinion of the Court, written by Justice Pardon C. Williams, agreed with the judgment of the Trial Court that the regulations made by the Superintendent were entirely within the province of his authority, and that the sisters, by the implications of their contracts, were bound to obey these regulations⁶⁴.

The opinion went much further, however, and nullified those points of the Trial Court judgment which had been favorable to the sisters. The following were some of the important

63 Ibid., p. 7.

64 Ibid., p. 97.

points made by Justice Williams in writing the prevailing opinion of the Court:

1° Religion and religious teaching must be excluded from the common schools. Since the public schools are established for people of all denominations and since the children must be sent to school, it is quite apparent that

the policy of excluding religious teaching from the common schools of the state is not only embodied in the Constitution and the laws of the state, but is the only safe and reasonable policy to be adopted⁶⁵.

2° By reason of the object lessons that it teaches and the impression it makes on the susceptible minds of children, the wearing of a distinguishing religious garb constitutes a sectarian influence and is a means of teaching denominational tenets. As such, it is contrary to the Constitution of the State of New York⁶⁶.

3° The sisters of religious communities should never be permitted to teach in our public schools. From the very nature of their vows and the sheltered life that they lead, they should not be permitted to have the care and instruction of young persons without the consent of their parents⁶⁷.

4° The contracts made by Patrick Hendrick with the sisters were invalid and illegal, because the Superintendent's

65 Ibid., p. 99.

66 Ibid., p. 102.

67 Ibid., p. 103.

decision on the Ferris appeal had been given before they entered into contract. The regulations of this decision were, therefore, binding on the parties involved. The disregard of these regulations rendered the contracts invalid and illegal. Hence the plaintiff was not entitled to recover even the \$25.20 awarded by the Trial Court⁶⁸.

This prevailing opinion was concurred in by presiding Justice McLennan and by associate Justices Spring and Hiscock. A dissenting opinion was written by Justice Edwin A. Nash. He agreed with his colleagues that the wearing of the religious garb violated the Constitution. He denied, however, that the Superintendent could absolve the school district from the obligation it had to fulfill the contracts it had made. He held that the Superintendent might have handled the matter more effectively and within the limits of his authority by revoking the teaching certificate of the plaintiff or by removing the Trustee for "his neglect or refusal to perform the duty enjoined upon him⁶⁹".

The attorneys for the plaintiff announced at once that the case would be taken to a higher court. Accordingly, on January 23, 1906 Timothy J. Nighan filed an appeal to the Court

68 Ibid., p. 104.

69 Ibid., p. 106.

of Appeals against the judgment of the Appellate Division⁷⁰. The case was argued in the Court of Appeals March 20, 1906.

Three briefs were presented to the Court: one for the Appellant, Nora O'Connor; one for the respondent, Patrick Hendrick; and the third for Miner and the others who had requested to be impleaded with Hendrick in the case. The arguments presented in the three briefs may be conveniently discussed on the basis of the different answers given to the following basic questions:

1° Were the decisions of the State Superintendent of Public Instruction binding on the sisters?

2° Were the sisters deprived by the Superintendent's decision of rights guaranteed them by the Constitution?

3° Does the wearing of a distinctive religious garb in the school room constitute a sectarian influence that would come under the prohibition of the New York State Constitution?

Each of these questions, as they were answered in the various briefs, will be discussed.

1° The Binding Force of the Superintendent's Decision. - The Appellant's Brief pointed out that the Bates' appeal had been made by a taxpayer of the Lima School District against the action of the Trustee of that district. The plaintiff, whose appeal for recovery of salary was now before the Court,

⁷⁰ Ibid., p. 108.

had been no party to this proceeding. She had received no notice that it was pending nor that her rights were involved. It is contrary to all legal precedent that a judgment should be binding on a third party who had no part in the proceeding and no opportunity to present a defense.

The claim that this order of the Superintendent has the force of an adjudication in bar against persons who were not parties to the proceeding, in which it was issued, and had no opportunity to be heard in defense of their rights, deserves attentive consideration, because of its attractive novelty⁷¹.

Both briefs of the respondents, on the other hand, maintained that the decision of the State Superintendent was legally binding on the teachers in question. When Nora O'Connor and Elizabeth Dowd entered into contract to teach, they implicitly agreed to to obey the orders and regulations which had been made by the Superintendent of Public Instruction or which he might thereafter make concerning the management and discipline of the public schools. For many years the Superintendents had uniformly held that no teacher should be permitted to wear a distinguishing garb denoting membership in a religious order or sisterhood while teaching in public schools. Hence the contracts of the sisters were

⁷¹ Court of Appeals, "Appellant's Brief", Cases in the Court of Appeals, p. 11.

legal and enforceable only when they taught in accordance with the orders and regulations laid down by the Superintendent⁷².

2° Privation of Rights. - The "garb" decisions of the State Superintendents of Public Instruction were, so the "Appellant's Brief" maintained, in violation of the Fourteenth Amendment to the Constitution of the United States. This amendment provides:

No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law⁷³.

The Supreme Court of the United States and the courts of the various States have continually and consistently declared that the guarantee of liberty includes "the right to work and earn wages, to engage in business⁷⁴".

Under this constitutional guarantee, Sister M. Prudentia O'Connor and Sister M. Teresita Dowd had the right to teach school and earn a living in that avocation. By years of study and special training they had acquired an acknowledged skill in that avocation. They had, moreover, taken examinations and received certificates from the State Department of Public

⁷² Court of Appeals, "Brief for Respondent Hendrick", p. 9; "Brief for Respondent Miner", p. 5.

⁷³ Constitution of the United States, Amendment XIV.

⁷⁴ Court of Appeals, "Appellant's Brief", p. 32.

Instruction. These certificates established that they were duly qualified and entitled to teach in any public school of the State⁷⁵.

In addition to the right that is understood in the word "liberty", the sisters had acquired a property right as public school teachers. For the contracts made with Patrick Hendrick were the property of these teachers. These contracts continued to be their property, until the last dollar to be earned under its provisions was obtained⁷⁶.

When the decision of the Superintendent was made known to the sisters, their contracts had three weeks yet to run. The decision, therefore, deprived them not only of their liberty to earn a living in their chosen avocation, but also of a property right which they clearly possessed⁷⁷.

To forestall a possible objection, the Appellant's Brief pointed out that it did not claim that the right of liberty and property could not be lost by a citizen or taken away from him. For a citizen may so attempt to use his liberty and property as to put himself outside the protection guaranteed by the law. Thus, a man who owns a gun or a dagger may so misuse his property that the law may properly deprive him of it. So too, it is possible that these teachers may have so

⁷⁵ Court of Appeals, "Appellant's Brief", p. 32.

⁷⁶ Ibid., p. 33.

⁷⁷ Ibid., p. 33.

conducted themselves that they lost the protection of the Constitution as to liberty and property. But even if that were true, the Constitution itself provides the only method by which they can be deprived of either of these rights; and that is by "due process of law"⁷⁸.

What is meant by "due process of law"? It is defined in a previous case in the Court of Appeals (People v. Wetherbee) as follows:

Due process of law requires that a party shall be properly brought into court and shall have the opportunity when there to prove any fact which, according to the Constitution and the usages of the common law, would be a protection to him and his property⁷⁹.

The Superintendent of Public Instruction, therefore, could deprive these sisters of their constitutional rights only by due process of law. Was this due process of law followed? These are the facts. The two teachers, as citizens of the United States possess the right of liberty: that is, the right to work at any legal employment, the right to wear such clothing as taste, purse, or conscience suggested. They also held property: namely, a legal license to teach in the public school and a contract to teach for a specified term at a stipulated salary in the public school in Lima.

⁷⁸ Ibid., p. 33.

⁷⁹ Ibid., p. 33.

Of both these rights they were deprived by the order of the Superintendent. They were never parties to the proceeding in which the order was issued. They were never notified that such proceedings concerning their rights were pending. They had no opportunity of being heard in defense of their rights. Thus, those formalities established by law to protect citizens against the arbitrary privation of their personal rights were not observed; and, therefore, the decision of the Superintendent was clearly in violation of the "due process" clause of the Fourteenth Amendment⁸⁰.

The respondents' briefs denied that the sisters had been deprived of rights guaranteed by the Constitution. The possession of a teacher's certificate does not of itself give a person, to whom it is issued, the absolute right to teach in the public schools of the State⁸¹. The certificate simply indicates that the holder has passed certain examinations and has certain qualifications; it does not necessarily indicate that the person has all the qualifications required of a public school teacher. In fact, the law specifically limits the qualifications covered by a teacher's certificate. It states that

⁸⁰ Ibid., p. 34-36.

⁸¹ Court of Appeals, "Brief for Respondent Miner", p. 33.

the certificate is "conclusive evidence that the person to whom it is granted is qualified by moral character, learning and ability to teach in the common schools in the State⁸²".

The respondents did not dispute the fact that the teachers in question had the moral character, learning and ability to teach. What they did maintain was that the certificates held by these teachers were issued many years after the rule had been laid down by the Department of Public Instruction, forbidding teachers to wear a sectarian garb in the schools. Hence the holder of a teacher's certificate was bound to observe this rule of the Superintendent under penalty of forfeiting the right to teach.

To hold that the possession of such a certificate gives an absolute right to teach would be to hold that the Superintendent of Public Instruction could make no ruling or regulation binding upon a teacher which is not specifically mentioned on the face of the certificate; and that one having a contagious disease, defective hearing or sight, would have an absolute right to teach and no rule or regulation could be made barring them. Yet the Consolidated School Law (Title XIV) gives the Superintendent of Public Instruction the right to make regulations related to "the government, discipline and management of the public schools." Hence the sisters, when they entered into

82 Ibid., p. 34.

contract, engaged to teach in accordance with the laws of the State. Having disobeyed the regulations of the Superintendent, they violated the implied terms of their contracts and thus forfeited their right to teach in the public schools of the State⁸³.

30 Sectarian Influence of the Religious Garb. - The Hendrick Brief contented itself with declaring that the Superintendent had made a regulation and the sisters were bound to obey this regulation. It did not discuss the more basic issue involved in the case, namely, whether or not the wearing of a distinctive religious garb constitutes a sectarian influence in violation of Article IX, section 4, of the New York State Constitution.

The Miner Brief devoted several pages to a discussion of this issue. It maintained that the school conducted by the sisters was wholly or in part under the control of the Roman Catholic Church. As members of a religious community of the Roman Catholic Church, they were sent to teach in the school by Mother Agnes the Superior of their community and could teach only by her permission. Any wages they earned went directly to the community of the Sisters of St. Joseph. That the Roman Catholic Church, through the community of the Sisters of St. Joseph and its Mother Superior, controlled the

83 Ibid., p. 35.

school, in whole or in part, is conclusively demonstrated by the fact that when the teachers were notified of the Bates' decision, requiring them to discontinue wearing the garb, they chose to obey their ecclesiastical superiors rather than the Superintendent of Public Instruction. It is evident, then, that these teachers, while teaching, were under the direct control of, and owed superior obedience in all matters to, the Mother Superior of the Sisters of St. Joseph and the pastor of St. Rose's Church. The school was, therefore, under the control, in whole or in part, of the Roman Catholic Church⁸⁴.

The Lima school arrangement violated the Constitution of New York State, not only because the school was wholly or in part under the control of the Roman Catholic Church, but also because the wearing of the religious garb constituted the teaching of denominational doctrine.

The distinctive garb of the Sisters of St. Joseph was worn by these sisters to designate that they were not citizens like other people, but were set apart for, and consecrated to, the religious work of the Roman Catholic Church. The garb indicated that they owed obedience in all things, temporal and spiritual, to their ecclesiastical superior. It signified death to the world, their parents, their friends. The crucifix, which they wore, with the image of Christ dying upon it, was

84 Ibid., p. 24-27.

the symbol of salvation. The rosary, which formed part of their habitual dress, was a prayer peculiar to the Roman Catholic Church. Thus, in various ways, the garb worn by the sisters was an evident object lesson inculcating religious doctrines peculiar to the Roman Catholic Church⁸⁵.

Various practices, moreover, that obtained in the school where the sisters taught, indicate that the school was conducted in such a way as to impress upon the pupils the doctrines and tenets of the Roman Catholic Church. The teachers were addressed by the endearing name of "Sister", instead of "Miss" or "Teacher". Religious exercises were held three times a day, at which prayers were said according to the form of worship of the Roman Catholic Church. These practices, coupled with the wearing of the religious garb, give ample evidence that, to all intents and purposes, a parochial school was being conducted in Lima at public expense⁸⁶.

85 Ibid., p. 28.

86 Ibid., p. 29-32.

Only two reasons could be advanced, the Miner Brief maintained, why these sisters would leave the retirement of their convent to become public school teachers.

Either they were sent there because of the religious or sectarian influence they may exert, and to teach the denominational tenets of the Roman Catholic Church, which is in direct violation of Article IX, section 4 of the State Constitution; or they were sent there to procure funds to assist in supporting their religious order and the Roman Catholic Church, which is of itself a violation of law in using moneys raised by public taxation for religious and sectarian purposes⁸⁷.

The Appellant's Brief denied both the allegations made by the respondents to prove that the school arrangement in Lima violated Article IX, section 4 of the New York State Constitution. The school in question, it declared, was not a parochial school conducted by the Catholic Church or by the Sisters of St. Joseph. It was rather a district school under the immediate direction of the school trustee, a public official elected by the taxpayers of the district.

There is no question here of a parochial or religious school receiving moneys. The services for which payment is sought here were rendered by two regularly licensed school teachers in teaching a public school in a public school building owned by a public school district⁸⁸.

Nor would the Appellant's Brief allow the charge that denominational doctrines or tenets were being taught in the

⁸⁷ Ibid., p. 32.

⁸⁸ Court of Appeals, "Appellant's Brief", p. 3-4.

school. The decisions of the Superintendent, the Brief pointed out, made no charge that denominational tenets were taught during school hours by word of mouth; rather he claimed that they were taught simply by the wearing of a religious garb⁸⁹.

What does the religious garb actually teach? First and foremost it teaches that the wearer is a Catholic. It is a silent announcement of Church affiliation. This cannot come under the prohibition of the Constitution, for membership in a particular creed is not a sectarian doctrine. It is simply a fact about a teacher's life that she has a Constitutional right to make known. For Article I, section 3 of the Constitution of New York State guarantees that: "The free exercise and enjoyment of religious worship without discrimination or preference shall be forever allowed in this State to all mankind⁹⁰". The sisters, therefore, have a constitutional right to be Catholic and to profess that fact before all the world. They may announce this fact by word or by action and the Constitution guarantees their right to do so.

To suppress this garment because its presence constitutes an announcement of the religious faith of the wearer would be to suppress verbal announcement of the same fact⁹¹.

It is difficult, then, to see how the wearing of a garb, as a mere announcement of religious affiliation, can be called

89 Ibid. p. 44.

90 New York State Constitution, Article I, section 3.

91 Court of Appeals, "Appellant's Brief", p. 49.

sectarian teaching.

If, however, the wearing of the religious garb teaches more than the announcement of membership in a particular creed, it is strange that the decision of the Superintendent did not state clearly what precise doctrines were taught. He contented himself with saying that the wearing of the garb "constitutes a sectarian influence and the teaching of a denominational tenet or doctrine which ought not to be persisted in."

Would any of us with this garb exhibited in silence before us for a lifetime know at the end any more about the doctrines, tenets, ritual, aims, advantages or shortcomings of the Catholic Church simply because we had seen the garb continually⁹²?

The Appellant's Brief discussed one final point on this question. Does the wearing of the religious garb constitute, if not the teaching of denominational tenets, at least a sectarian influence which would come under the prohibition of the Constitution?

In considering this point, it is necessary to distinguish between sectarian propaganda and religious influence. Sectarian propaganda is the effort to convince others of the validity of one's own religion. Religious influence, on the other hand, is the effect produced on others by a life lived in accord with the principles of one's religion. It is clear that sectarian propaganda in the public schools is forbidden

92 Ibid., p. 53.

by the Constitution. But it is difficult to see how a constitutional provision could possibly forbid religious influence. For every person of religious faith exerts some influence in a religious way upon others, for the simple reason that every person's life exerts an influence on those about him.

If a Church member and his life be good, his virtues may be ascribed to his religious faith, and this makes that faith attractive. If his life be bad, that result may be ascribed to like cause and may tend to make his religious views non-attractive. In each case it is the life that exerts the influence, not what he believes nor the garb he wears⁹³.

By the very nature of religious influence, it cannot be forbidden by law. "The law does not require that we so shape our conduct that nobody may be influenced by our lives and example⁹⁴".

Decision of the Court of Appeals

The various arguments contained in the three briefs were presented to the Court of Appeals on March 20, 1906. The Court rendered its decision on April 17, 1906. The Court established three points, on the basis of which the judgments of the lower courts were upheld. The following are these points:

1^o The Superintendent of Public Instruction has the right to establish regulations as to the management of the public schools. The validity of such regulations will depend on

93 Ibid., p. 56.

94 Ibid., p. 56.

whether or not they are reasonable and not inconsistent with the laws and policy of the State⁹⁵.

20 A regulation prohibiting teachers in the public schools from wearing a distinctively religious garb while engaged in the work of teaching, is a reasonable and valid regulation. This is true, not because the wearers of such apparel should be excluded from teaching in the public schools on account of their religious convictions or membership in religious orders, but because the influence of such apparel is distinctly sectarian, even if the wearing of it does not amount to the teaching of denominational doctrine. The regulation is, therefore, in accord with the public policy of the State as declared in the Constitution (Article IX, section 4), forbidding the use of the property or credit of the State in aid of sectarian influences⁹⁶.

30 One of the implied obligations of a contract made by a teacher to teach in the public schools is to obey all the reasonable regulations of the Superintendent. Refusal by teachers in a public school to comply with such regulations after notification thereof forfeits their right to further compensation⁹⁷.

95 Edwin A. Bedell, Reporter, Reports of Cases Decided in the Court of Appeals from February 6, to April 24, 1906, Albany, J. B. Lyon, 1906, p. 427.

96 Ibid., p. 429.

97 Ibid., p. 430.

The opinion of the Court, written by Justice Edward T. Bartlett, concluded by disagreeing with the extreme views expressed by Justice Pardon Williams of the Appellate Division who had argued that sisters should never be permitted to teach in the public schools.

It follows that the judgment appealed from should be affirmed with costs. In reaching this result, however, I do not wish to be understood as acquiescing in that part of the opinion in which it is asserted that "these sisters should never be permitted to teach in our public schools." There is no reason either in morals or in law why they or any other qualified persons should not be allowed thus to teach, whatever may be their religious convictions, provided that they do not by their acts as teachers promote any denominational doctrine or tenet⁹⁸.

It should be noted that the decision of the Court of Appeals agreed with the judgment of the Trial Court, in that (unlike the Appellate Division) it allowed recovery of salary for the three weeks that the sisters had taught before receiving notification of the Superintendent's regulation. The Trial Court, however, had contented itself with affirming that the Superintendent had made a regulation which, therefore, must be obeyed. The Court of Appeals went further and stated that the regulation of the Superintendent was reasonable and in accord with the policy of the State, because the wearing of a distinctive religious garb constitutes, if not the teaching of denominational tenet (as the Appellate Division had maintained),

98 Ibid., p. 430.

at least a sectarian influence, which it was the right and duty of the Superintendent to forbid.

The year 1906 thus removed all legal foundation for the existence of the "compromise plan" in New York State. The Constitution of New York, as interpreted by the highest court of the State, included the "compromise plan" under the prohibition of Article IX, section 4.

In this same year three other school cases involving the "compromise plan" and the "religious garb" issue were brought to the attention of the Commissioner of Education,

Andrew S. Draper, and were prohibited by him. The first of these, the Ogdensburg School case, will be studied in the next chapter.

PART THREE

THE RELIGIOUS GARB ISSUE AFTER THE
LIMA SCHOOL DECISION OF 1906

CHAPTER VI

THE OGDENSBURG SCHOOL CASE

The city of Ogdensburg, New York, has a colorful history that goes back to French colonial days. In 1749 Father Francois Picquet founded on the site of present city of Ogdensburg, Fort la Presentation as a mission for the Iroquois Indians and as a fort of defense for the French against the English in case of war¹. In 1763 Fort la Presentation fell to the English and was renamed Oswegatchie after the Indian name for one of the rivers on which it is located². As a result of the American Revolution it passed into American hands, and in 1792 was purchased by Samuel Ogden of New York City, from whom it received its present name of Ogdensburg³. In 1817 Ogdensburg became an incorporated village; in 1866 it was incorporated as a city.

After the departure of Father Picquet in 1763 and up to 1820 there were few Catholics in Ogdensburg. The Irish immigrations after 1820 brought a number of Catholic settlers to northern New York. The Right Reverend Bishop John Dubois of New York City, whose diocese at this time included northern

1 P.S. Garand, The History of the City of Ogdensburg, Ogdensburg, Rev. Manuel J. Belleville, 1927, p. 18-28.

2 P.S. Garand, op. cit., p. 159.

3 P.S. Garand, op. cit., p. 165-167.

New York State, visited in 1827 the region around Ogdensburg and saw the need of a resident priest, if the faith of the Catholic settlers was to be preserved. Accordingly in that same year he sent the Reverend James Salmon to take charge of the villages of Waddington and Ogdensburg and the surrounding country. Residing near Waddington, Father Salmon said Mass in Ogdensburg in private homes. He began the construction of a small stone church for the twenty families he found in Ogdensburg. The Church was completed by his successor, Reverend Michael Foley. In 1841 the Reverend James Mackey became pastor of St. Mary's Church in Ogdensburg and remained as pastor for forty-two years. Six years after he became pastor, the diocese of Albany was established and Ogdensburg passed under its jurisdiction. In 1852 Father Mackey began the construction of a new St. Mary's Church, and in 1855 it was dedicated by the Right Reverend John McCloskey, Bishop of Albany. In 1872, when the Catholic diocese of Ogdensburg was erected by Pope Pius IX, St. Mary's Church became the Cathedral.

In 1864 Father Mackey began to build out of the stone of the old St. Mary's Church a square-shaped schoolhouse. The school was first taught by Mr. James Murray, the sole teacher. In September 1866 two Grey Nuns of the Cross came from Ottawa and were placed in charge of the parish school. In 1877 a new commodious school building was constructed on Morris Street.

After a long fruitful ministry Father Mackey died on December 4, 1883. Bishop Edgar Philip Wadhams, the first Bishop of Ogdensburg, appointed as Rector of St. Mary's Cathedral the Reverend Joseph H. Conroy who was to become in 1921 the third Bishop of the diocese⁴.

The School Arrangement

Some time in 1893, it would seem, Father Conroy and the trustees of St. Mary's Church petitioned the Board of Education of Ogdensburg to incorporate St. Mary's School into the public school system of the city. For at the meeting of the Board of Education, held on October 12, 1893, Mr. Louis Hasbrouck, the President of the Board, read the terms of an agreement that was to be entered into the next day between the trustees of St. Mary's and the Board of Education of the city of Ogdensburg.

In virtue of this agreement the Board of Education leased St. Mary's schoolhouse situated on Morris Street, together with all the school furniture therein, at a rental of one dollar per year. The terms of the agreement were the following:

1^o As of September 1, 1893 the Board adopted the schools (primary, intermediate and academic) taught in the parochial school building, as public schools.

4 P.S. Garand, op. cit., p. 256-266.

2° The Board was to have absolute and unrestricted control of the building and the school furniture during the school hours. At other times the owner of the building was to have control.

3° The Board was to have the right of appointment, control and dismissal of teachers, and also the control of examinations, text books and the pupils of the school.

4° The school was to be open at all times during the school hours for inspection by members of the Board and its Superintendent the same as the other public schools of the city.

5° In return for these concessions the Board agreed to pay to St. Mary's the additional amount of State funds that the Board would receive by including the teachers of St. Mary's School on their list of public school teachers.

6° The Board was to have no further expense toward the maintenance of the schools and the building. The cost of repairs, insurance, heating and lighting was to be borne by St. Mary's Parish.

7° It was further provided that either party might terminate the lease and the agreement at the expiration of any scholastic year or by giving the other party thirty days' notice of the intention to terminate⁵.

⁵ Ogdensburg Board of Education, Minutes of the Board Meetings, vol. 3, October 12, 1893, p. 528-530.

After President Hasbrouck had read "the articles of agreement" he and H.L. Jones, the clerk of the Board, were authorized by unanimous vote to sign the agreement in behalf of the Board of Education. This was done on the following day, October 13, 1893⁶.

Mr. Barney Whitney, Superintendent of the public schools of Ogdensburg (there were at this time nine public schools in Ogdensburg, in addition to the Ogdensburg Free Academy and St. Mary's School) visited the new public school soon after the signing of the lease. At the October 26 meeting of the Board, he gave a verbal report of his visit. At this same meeting Mr. Hasbrouck offered a motion:

that the teachers employed in St. Mary's Academy and the schools connected therewith, be, and are hereby, appointed by this Board to teach in said schools for one year from September 1, 1893 at the compensation of one dollar each for said period⁷.

For the Board to be able to obtain an allotment of State money for the teachers at St. Mary's, it was necessary that these teachers be in the employ of the Board. This apparently is the reason why the Board entered into contract with the sisters and agreed to pay them the nominal salary of one dollar per year.

⁶ Later meetings of the Board of Education (e.g. June 13, 1901) refer to the agreement of October 13, 1893.

⁷ Board Minutes, vol. 3, October 26, 1893, p. 530.

Mr. Hasbrouck's motion was carried by a unanimous vote of the Board.

It is interesting at this point to note how the Ogdensburg School Case differs from the other school cases that have been described above. In all the other cases, in addition to the salaries of the teachers, the Boards of Education assumed in varying degrees various other expenses of the school. In the Ogdensburg case the only obligation assumed by the Board was to pay to St. Mary's the additional allotment of State school money that would be received by reason of the increased number of teachers in the employ of the Board. Hence, besides the one dollar a year for each teacher (and there is no indication in either the Board Minutes or its financial reports that this was ever paid), the arrangement with the parochial school entailed no expense for the Board of Education. For according to the agreement the cost of repairs, insurance, heating, and lighting remained the responsibility of the authorities of St. Mary's Parish.

This difference may account for the fact that after October 1893, aside from the annual payment made to St. Mary's from the State school money, there are but scanty references to the rented school in the Minutes of the Board of Education. It may also be true that the Board of Education maintained a discreet silence on the agreement to avoid any opposition or

controversy on the matter. Whether or not such a "conspiracy of silence" existed is difficult to prove, but it is significant that a number of people living in Ogdensburg today whose memory goes back to the period between 1893 and 1906 have no recollection that such an arrangement ever existed⁸.

Less than two months after St. Mary's School was incorporated into the public school system, the pastor of the Presbyterian Church, Reverend Dr. L. Merrill Miller, preached a sermon on Thanksgiving Day, in which he warned against the efforts of parochial schools to obtain public funds. He said in part:

The facilities for education here are wonderful and adapted to the needs of all classes. We should guard therefore with most zealous care against any infringement upon our common school system. If any denomination of Christians want a parochial school, let it be established and supported exclusively by that denomination. Let not one dollar of public funds go to maintain a church-school, whether it be Presbyterian or Roman Catholic, or that of any other denomination.⁹

⁸ e.g. Miss Nellie Savage, Miss Margaret McCarthy, Miss Merry, Mr. Henry Belgrad.

⁹ The Editor, "Thanksgiving Day", news article in The Daily Journal of Ogdensburg, (no volume), December 1, 1893, p. 4, col. 4.

Dr. Miller goes on to decry the efforts already initiated in the New York State Legislature to put through a bill that would allow the use of public school money for sectarian schools:

The State and the Church are separated in this country. Let them remain so. But in the face of this, it is proposed to pass a bill in the coming legislature that will grant a share of public school funds, in a way that means, covertly indeed, the support of sectarian schools. We ought to set our face like a flint against all such legislation and use all legitimate means to prevent it. Let no funds - whether of State or national government - be perverted to sustain ecclesiastical institutions. Let their friends take care of them¹⁰.

Dr. Miller's remarks were aimed directly at the efforts being made in the New York State Assembly to obtain passage of the Spellissy bill which, under certain circumstances would allow public funds for denominational schools¹¹. Whether or not his sermon was also a veiled warning to the Ogdensburg Board of Education is difficult to say. In any event his words were indicative of an attitude of mind which may very well have suggested to the Board of Education the prudence of avoiding as far as possible any publicity about the arrangement that had been made with the Catholic School.

No explicit reference is made in any of the extant local papers to the agreement between the Board and St. Mary's School.

¹⁰ The Editor, "Thanksgiving Day", news article in The Daily Journal of Ogdensburg, (no volume), December 1, 1893, p. 4, col. 4.

¹¹ Vide supra, "Watervliet School Case", p. 26-28.

In fact, an article in The St. Lawrence Republican, a county paper published in Ogdensburg, would seem to suggest, though not conclusively, that the editor of this paper may not even have known of the arrangement. On June 20, 1894 The St. Lawrence Republican commented on an article that had recently appeared in a Malone paper. The Malone Palladium had carried an article discussing the financial report of the city of Ogdensburg for 1893-1894. After reviewing the various items of the report The Palladium remarks: "Curiously enough it appears that there are eleven teachers who actually work for nothing. Why this is so is not explained."

The editor of The St. Lawrence Republican hastened to give the reason:

The explanation concerning the eleven who are reported as serving without pay is that they are teachers in the parochial schools and they are not paid from the public school moneys¹².

This explanation is a strange one, since in virtue of the agreement of October 13, 1893 public funds (State funds it is true) were to be paid for the services of the teachers in St. Mary's School. This statement of the Ogdensburg editor may mean one of three things. Either the first allotment of funds for the sisters' services had not yet been received; or the editor may simply have meant that the money paid to the

¹² The Editor, "Educational Figures", editorial in The St. Lawrence Republican of Ogdensburg, vol. 64, no. 35, June 20, 1894, p. 5, col. 3.

parochial school involved no expense to the Board, as it was being paid from the increased school funds allotted to Ogdensburg because of the additional teachers now employed by that Board; or the editor may have had no knowledge of the school arrangement.

Whether or not the existence of the school arrangement was widely known in Ogdensburg, the annual amounts paid to St. Mary's were listed in the Minutes of the Board of Education and were officially published in the annual reports of the Mayor of the city. The table on the next page indicates the amounts paid by the Board of Education from 1896 to 1906.

Table II - Public Money Paid to St. Mary's School¹³.

Year	Amount
1896	\$1,100.00
1897	1,100.00
1898	1,274.56
1899	1,000.00
1900	1,000.00
1901	1,000.00
1902	1,000.00
1903	1,000.00
1904	1,000.00
1905	1,200.00
1906	1,200.00

¹³ Annual Reports of the Mayors of the city of Ogdensburg in the archives of the Ogdensburg Public Library.

From 1896 to 1906, therefore, the total amount paid to St. Mary's School was \$11,874.56. Both the Board Minutes and the annual reports of the mayors fail to indicate whether or not similar amounts were paid in 1894 to 1895.

The Board of Education was careful to keep a record of the attendance at St. Mary's School. On October 13, 1904 Horace H. Southwick, the Superintendent of the Ogdensburg public schools, submitted to the Board of Education a report on the attendance in the various schools of the city for the first month of the school year. The list of schools includes St. Mary's Academy with a registration of eighty-two pupils and an average attendance of 98.75 per cent and St. Mary's Grade School with a registration of 335 pupils and an average attendance of 97.49 per cent. Mr. Southwick remarked:

The best record was made by St. Mary's Academy, the attendance being 97.49 per cent in the grades and 98.75 per cent in the academic department. The best attendance in any one room in St. Mary's was the second grade (Sister Domitilla, teacher) where the registration is thirty-eight pupils. Their report shows no tardiness and only eight half-day absences - all of which were caused by sickness. This gives them a percentage of 99.38, which is all the more remarkable when the age of the children is considered¹⁴.

On February 14, 1901 the Ogdensburg Board of Education discussed the question of free text books for the public

14 Board Minutes, vol. 4, October 13, 1904, p. 380-381.

schools of the city and appointed a committee "to investigate the practicability and the economy of the free text book system¹⁵". In 1903 the plan for providing free text books was submitted to the voters of the city; and on May 13, 1903 the voters approved of the Board's proposal to supply free text books and ordinary school supplies¹⁶. At the Board meeting of June 25, 1903, an estimate was drawn up of the initial cost involved in setting up a free text book system in the public schools. St. Mary's was included among these schools. The Minutes of the Board read as follows:

The first cost of establishing the system by continuing the old text books in use throughout all the grade schools, including St. Mary's, is \$1529. The cost of new arithmetic books and grammars is \$325.05, making a total, if changes are made, of \$1854.16¹⁷.

End of the School Arrangement

On November 29, 1905 the Appellate Division of the Supreme Court of New York State, Fourth Department, rendered its decision in the Lima School Case, affirming the order of the Trial Court which had upheld the decisions of the State Superintendents of Public Instruction prohibiting teachers from wearing a religious garb while teaching in the public

15 Board Minutes, vol. 4, February 14, 1901, p. 210.

16 Board Minutes, vol. 4, May 18, 1903, p. 315.

17 Board Minutes, vol. 4, June 25, 1903, p. 325.

school¹⁸. The Ogdensburg Board of Education, it would appear, was interested in this case and sent a committee to Albany to consult with the Commissioner of Education. This would appear to be the implication of the following resolution passed by the Board on December 14, 1905:

It was moved by Commissioner Chapman and seconded by Commissioner Kelly that the President, the Superintendent, and the chairman of the Teachers' Committee be appointed a committee to go to Albany to confer with the State Department of Education in reference to the employment of teachers¹⁹.

In the Minutes of the Ogdensburg Board of Education no further mention is made of the committee thus appointed on December 14. It would seem quite reasonable that Commissioner Draper must have informed them that the school arrangement could not continue. At any rate, it is a fact that the year 1906 marks the last year in which a payment of funds to St. Mary's is recorded in the Board Minutes and in the Mayor's reports.

In the light of this fact it is interesting to contrast the address given by Monsignor Conroy, rector of St. Mary's Cathedral, at the commencement of St. Mary's Academy in 1906 with a similar address that he gave at the commencement of 1907. Reporting the St. Mary's commencement of June 25, 1906,

¹⁸ See "Lima School Case", above.

¹⁹ Board Minutes, vol. 4, December 14, 1905, p. 439.

The Ogdensburg Journal stated:

Msgr. Conroy complimented the Board of Education for its assistance, the parents for their interest in sending the children to the school, the teachers for their self-sacrifice and devotion, and the class itself for its excellent work²⁰.

A year later The Ogdensburg Journal reports Msgr. Conroy's remarks at the commencement of 1907:

He complimented the teachers for their painstaking work, the parents for their cooperation and unswerving support, and Superintendent Southwick for the kindly interest he had taken in the Academy²¹.

Whether or not two newspaper reports written a year apart should be analyzed so minutely is perhaps open to question; but it does seem significant that, while the public school authorities were able to give assistance to St. Mary's in 1906, they were able in 1907, to offer only their kindly interest.

Even though after 1906 St. Mary's School could no longer receive public money from the Ogdensburg Board of Education, it was, nevertheless, still listed among the public schools of the city. For in 1910 the list of registration and attendance for the Ogdensburg public schools for the month of May included St. Mary's Academy and St. Mary's Grade School.

²⁰ The Editor, "The June Graduates", news article in The Ogdensburg Journal, (no volume or number), June 26, 1906, p. 4, col. 4. *Italics are the writer's.*

²¹ The Editor, "St. Mary's 16th Commencement", news article in The Ogdensburg Journal, (no volume or number), June 28, 1907, p. 4, col. 6. *Italics are the writer's.*

The reason for this inclusion was undoubtedly the fact that St. Mary's was still sharing in the free text book system of the Ogdensburg public schools. St. Mary's continued to receive free text books until 1922 when a New York State Court decided that St. Mary's, as a parochial school, had no right to share in this public service²².

²² Austin Griffin, reporter, Reports of Cases in the Appellate Division of the Supreme Court of New York State, "Case of Smith v. Donahue", Albany, J.B. Lyan, 1923, p. 656-665.

CHAPTER VII

THE PLATTSBURG SCHOOL CASE

As has been pointed out in the previous chapter, on December 14, 1905 a committee was appointed by the Ogdensburg Board of Education to confer with the State Department of Education "in reference to the employment of teachers". A month later, on January 15, 1906 a similar committee was appointed by the Plattsburg Board of Education to undertake a like mission. The committee from Plattsburg went to Albany to consult with Commissioner Draper on the legality of the long-standing school arrangement that had been made between the Plattsburg Board of Education and St. Peter's Parish.

St. Peter's Parish in Plattsburg took its origin from the zeal of the Reverend Father Rooney, O.M.I., pastor of St. John The Baptist Church in the same city. In the year 1853, Father Rooney preached a mission to the French population of Plattsburg. The mission brought home to him the fact that these people, living in poverty, ignorant of English, were drifting from the faith in alarming numbers. There was definite need, he felt, of a new parish to answer to their spiritual needs. The Provincial of the Oblates, the Very Reverend Father Santoni, agreed with him; and on August 23, 1853, Father Bernard, O.M.I., was sent to Plattsburg as the

first pastor of St. Peter's Parish. He was followed soon afterwards by Fathers Leonard and Sallaz as assistants. A census taken up in 1854 showed that there were about six hundred families in the parish¹.

In August 1860 the Reverend Andre-Marie Garrin, O.M.I., pastor of St. Peter's, invited the Grey Nuns of the Cross from Ottawa to come to Plattsburg to begin a parish school. On October 15 eight Grey Nuns, with Sister Lavoie as their superior, arrived in Plattsburg. Within a month, on November 12, 1860 they opened a parochial school, located on Cornelia Street, with an enrollment of one hundred girls². Three years later, in 1863, boys were also received as pupils in the school³.

As the parish was very poor, the support of the school proved a heavy burden. The Oblate Fathers were unable to pay the sisters even the small salary that had been agreed upon when the sisters had arrived. Sister St. Augustine describes

1 Reporter, "St. Peter's Parish", article in The Catholic Sun of Albany, June 18, 1931, section 3, p. 21, col. 6.

2 At the same time D'Youville Academy was opened by the sisters as a private school with fourteen day pupils paying tuition.

3 Soeurs Grises de la Croix, Chroniques de la maison de Plattsburg, vol. 1, p. 1, 13, 96.

the poverty of those early days:

Almost every winter (...) we found ourselves without fire wood. On such occasions I went to my class and requested the first boy who came in to announce to the others we would have no school because we had no wood. Immediately there was a rush home and soon the principal ones were back carrying wood on sleds. A fire was made and school began and ended as usual - only the boys taking precaution that there was wood for the next day⁴.

The School Arrangement

It was obvious that such a situation could not be allowed to continue very long. Hence it was that the Reverend Claude F.M. Sallaz, O.M.I., who became Pastor of St. Peter's on August 23, 1863, determined to seek help for his impoverished school. On Sunday, March 4, 1866, he read the following announcement to his people:

We have made application to Albany for some financial aid for our school. The local citizens are well-disposed, judging by their signatures. Let us hope that Albany is also well-disposed⁵.

Apparently Albany was well disposed. In the fall of 1867, Mr. Robinson, comptroller of the State of New York, came to Plattsburg, and friends of his who were also friends of St. Peter's School brought him to visit the parochial school.

4 Sister St. Augustine, original letter contained in Chroniques de la maison de Plattsburg, undated, p. 2.

5 Sunday announcement, in the Announcement Book of 1866, March 4, 1866, archives of St. Peter's Parish, Plattsburg, New York.

Of this visit Sister St. Augustine writes: "He found our work of a kind that merited State aid and he got it for us⁶".

Before the sisters could receive any State aid for their school, it was necessary that they possess State teachers' certificates. Accordingly, on February 10, 1869, the Reverend Levi Smith, a Protestant minister, who was at that time in the employ of the State Superintendent of Public Instruction, was brought to the parish school by Father Sallaz. Mr. Smith saw the sisters in their classrooms, inquired into their methods and ascertained the number of pupils in the school. A very kind man, he showed himself deeply appreciative of the work that the sisters were doing in caring for so many children who would otherwise be neglected.

He said that his heart ached when he drove through the back streets and found such crowds of children in filth and rags, cursing, fighting, and perhaps doing still worse. Now that was changed and he blessed us for it⁷.

Mr. Smith examined the sisters and gave each of them a first class teachers' certificate. He also empowered the Superior to examine any teachers to be employed later. She was simply to send their names to him and he would send them the necessary certificates.

6 Sister St. Augustine, original letter, p. 3.

7 Sister St. Augustine, op. cit., p. 4.

Five days previous to this visit of the Reverend Mr. Levi Smith, Father Sallaz had already taken steps to guarantee the permanency of the State aid that the parish school would receive. On February 5 he appeared before the local school board and asked that the parish school be incorporated into the Free Union School District⁸. A committee, composed of Commissioners Smith M. Weed, George S. Clark and G.M. Beckwith, was appointed to inquire into the legality of such an action⁹.

The committee, it would seem, found no legal objection to the proposed action of the Board; for, on February 13, a second committee was named to consult with the authorities of the "French School" to see what arrangements could be made. The committee, consisting of Commissioners G.M. Beckwith, Moss K. Platt and Bernard McKeever¹⁰, gave its report on February 20, 1869. After a reading of the report, a resolution was adopted, incorporating the "French School" into the local public school system. According to the resolution the supervision, control and expense of the school devolved upon the Board beginning on February 20, 1869.

⁸ The Plattsburg Free Union School District had been organized in 1867. See Peter S. Palmer, Historical Sketches of Plattsburg, N.Y. - From its First Settlement to January 1, 1893, (no publisher) Plattsburg, 1893, p. 96.

⁹ Free Union School District No. 1 of the Town of Plattsburg, N.Y. Minutes of the Board of Education, vol. 1, February 5, 1869, p. 60.

¹⁰ Mr. McKeever was the only Catholic on the Board.

A resolution passed at the Board meeting of June 14, 1869 authorized the payment of \$540 to the six sisters for salary from February 20 to the end of the year. A second resolution at the same meeting provided that, if the State school allotment for that year were increased beyond \$540 because of the six additional teachers now in the employ of the Board, these teachers might also be paid for their services from January 1 to February 20¹¹.

In September 1869 the former parish school, now under the Board of Education, opened with an enrollment of four hundred children. On September 12, Mr. L.R. Havens, principal of the city public schools, visited the West Primary School (as it was now called¹²) and changed the textbooks to conform with those in use in the other public schools.

At the meeting of the Board of Education, held on May 24, 1870 the question of continuing the West Primary School was discussed. It was voted unanimously: that the arrangement previously made with the West Primary School should be continued from the date of expiration to the end of the next academic year. The teachers were to be employed, the school

11 Board Minutes, vol. 1, June 14, 1869, p. 69.

12 On November 3, 1877 the Board of Education passed a resolution that the various primary schools of the city should be henceforth named after the street where they were located. From that time the West Primary came to be known as the Cornelia St. School. Board Minutes, vol. 1, November 3, 1877, p. 125.

conducted, and the money paid upon substantially the same terms and conditions as before. Each succeeding year a similar resolution was passed¹³.

An original letter, written on October 8, 1870 by W.W. Hartwell, President of the Board of Education to Madame Kelly, principal of the West Primary School, has been preserved in the Chronicles of the Plattsburg House of the Grey Nuns. It is of interest in that it indicates the cordial relationship existing between the Board of Education and the rented school, the authority exercised by the Board over that school, and at the same time the Board's concern for the school's needs. The letter would seem to indicate that, while seven sisters were teaching in the school, the Board was paying the salaries of only six.

¹³ Board Minutes, vol. 1, May 24, 1870, p. 76.

The letter reads as follows:

Madame Kelly, Principal, West Primary

Your note of this morning received. In your list of teachers you name seven. It is six or should be. You were too liberal, you left out your own name, till the last of them added it. Please say which name I shall drop.

Of course we must furnish brooms. Please give me as short a list as possible of your wants in the way of brooms. They shall be furnished at once.

It will be necessary for all your teachers to have certificates. If you will give Mr. Hillbridge the names of those who have never had one, he will apply to Mr. Ira D. Knowles, School Commissioner, who will send them on his recommend.

In haste, very truly yours,
W.W. Hartwell¹⁴

The number of sisters in the employ of the Board of Education was increased to seven in 1880, to eight in 1891 and finally to nine in 1901. During the time that the arrangement was in force the total salaries paid to the sisters increased from \$1200 per year in 1869 for six teachers, to \$2325 per year in 1902 for nine teachers¹⁵.

The annual rent paid to St. Peter's Parish for the use of the schoolhouse was in the early years of the arrangement \$150. In 1883 St. Peter's built a new schoolhouse to replace the building that had been used for school purposes

¹⁴ Original letter in Chroniques de la maison de Plattsburg, vol. 1.

¹⁵ Plattsburg Board of Education, Budget Records, vol. 2, p. 77.

since 1860. In July of 1883 the Board of Education leased this new building as it had the former one. The following year the rental was raised to three hundred dollars per year. This in turn was increased to four hundred dollars per year in 1903¹⁶.

According to the terms of the agreement no religious instructions were to be given during the school hours. It would seem, however, that this prohibition was neither strictly observed nor strictly enforced. Sister Joseph Eugene, who taught at the Cornelia Street School from 1902 to 1906, testifies that religious instructions were given quite regularly during the school hours. If the Board knew of this practice (and it is difficult to believe that it did not) the sisters were apparently never disturbed about it.

The school arrangement seems to have been accepted as quite satisfactory not only by the Board of Education but also by the people of Plattsburg. At any rate, in the thirty-seven years of its operation there is no evidence of complaint from a single resident of Plattsburg. Indeed the complaint, which led eventually to the termination of the arrangement, came not from a resident of Plattsburg but from a lawyer in New York City.

16 Budget Records, vol. 1, p. 36, 120, vol. 2. p. 95.

The End of the Arrangement

Sometime in December of 1905 Andrew S. Draper, who had again been placed in charge of the Common School System of New York State, this time with the title "Commissioner of Education", received a letter from DeWitt C. Morrell, Esq., Counsellor-at-law in New York City. In his letter Mr. Morrell referred to the determination of the Appellate Division of the Supreme Court, Fourth Department, rendered on November 29, 1905 in the Lima School Case - the determination affirming the order of the Trial Court which had upheld the decisions of several State Superintendents of Public Instruction prohibiting teachers from wearing the religious garb while teaching in the public school. Mr. Morrell alleged that these decisions and determinations were being violated in the city of Plattsburg.

On December 30, 1905 Mr. Draper communicated with the Superintendent of schools in Plattsburg asking for a report.

He wrote:

I shall be obliged to you if you will advise me at an early day as to whether the allegation of Mr. Morrell, so far as it concerned the city of Plattsburg, is true; and if true in any particular, you will inform me to what schools it applies, and the number of teachers reported by you in your annual report for these schools. If true you will take steps at once to have the practice discontinued and advise me as soon as it has been discontinued¹⁷.

¹⁷ Letter of Commissioner Draper, quoted in The Plattsburg Republican, vol. 97, no. 1, January 6, 1906, p. 1, col. 2.

This letter of Commissioner Draper caused a great deal of excitement and consternation in the city of Plattsburg. The Evening News of Plattsburg found it difficult to understand why an outsider should be allowed to interfere with the school arrangement when not a single resident of Plattsburg had ever brought complaint against it. Discontinuance of the arrangement would bring disorganization into the entire school system, as the other primary schools could not possibly take care of 350 additional pupils and the purchase of a new school site would mean the expenditure of about ten thousand dollars by the Board of Education¹⁸.

The sisters received their first information on what was going on through a telephone call from the law office of Mr. J.B. Riley. The Chronicles of the House of Plattsburg

¹⁸ Newspaper clipping from The Evening News of Plattsburg, January 2, 1906, contained in the Chroniques de la maison de Plattsburg, vol. 2, p. 121-122.

have the following entry for January 2, 1906:

Needless to say this unexpected and unfortunate event has caused a sensation among the people; our good citizens, accustomed to seeing our school directed by the Sisters for thirty-seven years with the most satisfactory results, cannot understand how a stranger can interfere in local affairs and cause trouble and disunity. We cannot foresee what will be the outcome of this affair; this much is certain, we shall not for any consideration change our religious garb for secular dress, even if only during school hours¹⁹.

The Board of Education, too, was deeply disturbed by Mr. Draper's letter and took immediate steps to see what could be done about the situation. At the meeting of the Board held on January 15 a committee, consisting of E.C. Baker, H.L. Barnard, R.E. Healey and Smith M. Weed, was appointed:

to ascertain the facts in relation to the teachers now employed in the Cornelia Street School and to call upon the Honorable Draper, Commissioner of Education, and see what arrangements can be made for continuing the school²⁰.

19 Translation of the writer. The original text reads as follows: Inutile de dire que cet événement inattendu et malencontreux fait sensation dans le public, nos bons citoyens habitués à voir cette école dirigée par nos Soeurs depuis trente-sept ans, avec les résultats les plus satisfaisants ne voient pas l'opportunité qu'il y a pour un étranger de venir s'ingérer dans les affaires locales pour y porter le trouble et la désunion. Nous ne pouvons prévoir quelle sera l'issue de cette affaire, ce qu'il y a de certain, c'est que, pour aucune considération, nous ne changerons notre costume religieux pour un habit séculier, ne fût-ce que pour les heures de classe. - Chroniques de la maison de Plattsburg, vol. 2, p. 121-122.

20 Board Minutes, vol. 1, January 15, 1906, p. 459.

Before visiting Mr. Draper at Albany, the committee drew up a letter to send him that would explain the school arrangement at Plattsburg. The letter was discussed at the Board meeting of January 19 and signed by each member of the Board. The letter summarized the history of the schools in Plattsburg from the time of the organization of the Plattsburg Free Union School District in 1867. The circumstances leading to the incorporation of the parochial school into the public school system, the competence of the teachers in the Cornelia Street School and their possession of proper teaching certificates, the absolute control and supervision exercised by the Board over this school, were explained. During the thirty-seven years of the operation of the school arrangement, the letter asserted, not a single complaint either from taxpayers or pupils or patrons of the school, either printed, written or oral, has ever been made regarding the services rendered by the teachers or the manner in which instructions were given. The letter concludes:

We are confident that any action by the Department tending to sever the pleasant relation so long existing among our citizens of mixed nationalities and religious affinities will result in great injury to all who are interested in the cause of education and will gratify the vindictiveness of some outside meddler²¹.

²¹ Board Minutes, vol. 1, January 19, 1906, p. 461-463.

The committee went to Albany on February 25 and saw Commissioner Draper on the following day. He received them cordially and listened to their defense of the Plattsburg school arrangement. Mr. Smith Weed and Judge Robert E. Healey discussed the legal points at issue in the Lima case and attempted to show that the conditions which prevailed at Lima were in no way analogous to the conditions in Plattsburg. Mr. Weed suggested that if there had been any infraction of the law in Plattsburg, it was simply a matter of taste in dress, and "as it was conceded to be beyond the power of the ordinary man to influence the eccentricities of the female mind in that respect", he saw no reason to go to law about it. He then took sharp issue with the opinion of Commissioner Draper that the wearing of the religious garb constituted a violation of the law.

Mr. H.L. Barnard, in his remarks, spoke of the valuable services which the teachers in the Cornelia Street School had rendered to the Plattsburg community. He depicted the difficulties these teachers had been forced to overcome in dealing with a people ignorant of the English language, customs and laws. He closed with a vivid picture of the moral and intellectual improvement of the French population of Plattsburg, which he attributed largely to the influence of the teachers in the Cornelia Street School.

After listening to their defense, Commissioner Draper presented his own views on the matter. He pointed out that, as Superintendent of Public Instruction, he had been a pioneer in promulgating the principle that the wearing of the religious garb while teaching in the public school was a violation of the law²². Since then his views had been sustained by his successors and had just recently been confirmed by the Appellate Court. Since, however, the determination of the Appellate Court in the Lima Case had been appealed to the Court of Appeals, he informed them that he would take no final steps in the Plattsburg case till the decision of this highest court of the State was reached. Meanwhile he would temporarily withhold the apportionment of public money for the Cornelia Street School. If the Court of Appeals sustained the decisions of the lower courts, the withholding of those funds would become permanent. If, on the other hand, the decisions of the lower courts were reversed, the money withheld would be paid to the Plattsburg Board of Education. He further promised that, in the event that the decisions of the lower courts were sustained, he would be pleased to give them the opportunity of a hearing on the merits of their own case to see if the Lima prohibition applied²³.

22 Vide supra: "Suspension Bridge School Case".

23 Board Minutes, vol. 1, March 6, 1906, p. 464-468.

Since, pending the decision of the Court of Appeals, Mr. Draper had not ordered the discontinuance of the school arrangement at Plattsburg, the Board of Education resolved on March 6, 1906 to continue the management of the Cornelia Street School to the end of the school year, unless otherwise ordered by the Department of Education in Albany.

On April 17, 1906 the Court of Appeals sustained the decisions of the lower courts in the Lima School Case²⁴. Remembering that Mr. Draper had promised that, in the event of such a decision, he would give the Plattsburg Board of Education a hearing on the merits of its own case, the Board on May 12, 1906 reappointed the committee that had visited Mr. Draper in February and empowered it to meet with the Commissioner of Education in Albany to see if any possible arrangement might be made for continuing the Cornelia Street School²⁵.

Accordingly, on June 2, 1906 the committee met with Commissioner Draper. After a general discussion of the issues involved the committee proposed four specific questions to him. The following are the questions asked by the committee together

24 See "Lima School Case", above.

25 Board Minutes, vol. 1, May 12, 1906, p. 469.

with the answers given by Mr. Draper:

Question: Do you hold that the decision of the Court of Appeals disqualifies any teacher from the right to teach in a public school, who simply wears the dress of a religious order?

Answer: I do.

Question: If so, would we have the right to continue our Department in question as now conducted by your withholding from us the teachers' quota of public money?

Answer: No.

Question: If not and the people interested decide to continue the school with the present faculty wholly as a parochial school, would our Board of Education have the right to report their attendance for that amount of public money?

Answer: No.

Question: Would the truant officer have the same power to enforce attendance at that school as at the public schools?

Answer: Yes²⁶.

The committee returned to Plattsburg, and at the Board meeting of June 8, 1906 reported its inability to make any arrangements for the continuance of the Cornelia Street School. Whereupon, with no other course of action open, the Board regretfully terminated the school arrangement that had been in operation for thirty-seven years. The following motion, terminating the plan and at the same time expressing the grateful appreciation of the Board for the services rendered by the

26 Board Minutes, vol. 1, June 8, 1906, p. 470-471.

sisters, was adopted:

Resolved: That while we submit with all due respect to the laws of the State and the rulings of the Department, still we deeply regret the necessity of dissolving the union which has for over thirty-six years existed with the most perfect harmony between the Cornelia Street School and the other departments of our educational system.

That we wish to record our appreciation of the devoted, unremunerative, successful services of the faithful teachers so employed.

That in a spirit of sincere thankfulness we wish to acknowledge our indebtedness to their sacrificing faithfulness in leading multitudes of our children from homes of comparative discomfort and illiteracy to become an adornment to our society²⁷.

In July of 1906 the Pastor of St. Peter's Parish, the Reverend Father Pelletier, announced that the Cornelia Street School would be opened as a parochial school in September. He also announced plans for the construction of a new school building. The editor of The Plattsburg Press in the issue of July 17 suggested that, in view of the saving that this would mean to the taxpayers of the city, the people might well afford to be generous when help was solicited for the new building²⁸.

²⁷ Board Minutes, vol. 1, June 8, 1906, p. 471.

²⁸ "St. Peter's College", news article in The Plattsburg Press, July 17, 1906, clipping in Annales des Peres Oblats, archives of St. Peter's Church, Plattsburg, New York.

CHAPTER VIII

THE ALLEGANY SCHOOL CASE

The third "compromise plan" brought to the attention of Commissioner Draper after the Lima decision was the Allegany school case. The village of Allegany, located in Cattaraugus County in the southwestern part of New York State, came into existence on April 18, 1831. Called at first the village of Burton, the little village changed its name to Allegany on March 28, 1851¹.

The building of the Erie Railroad in the 1850's, which contributed much to the opening of western New York, brought a large number of construction workers, many of them Irish Catholic immigrants, to Allegany. The spiritual needs of the Catholics of Allegany had been cared for by the priest from Ellicottville who said Mass for them about once a month in a private home. With the increase of Catholic population the people desired to have a church of their own. Hence it was that a collection was taken up in the village. The collection netted seventy dollars. The remainder of the total cost of construction, about eighty dollars, was defrayed by Mr. and Mrs. Nicholas Devereaux. Mr. Devereaux was a wealthy business

¹ William Davis, ed., Historical Gazeteer and Biographical Memorial of Cattaraugus County, New York, Syracuse, Lyman Horton and Co. 1893, p. 441.

man from Utica who owned some one and a half million acres of land in Allegany and Cataraugus counties. He was also an apostolic Catholic interested in the spiritual welfare of the Irish immigrants. (He himself had come originally from Ireland.)

On July 2, 1854 Father Joseph McKenna, pastor at Ellicottville, laid the cornerstone of the new Church and dedicated it to Mr. Devereaux' patron saint, St. Nicholas of Bari. The Church was completed in 1856².

Meanwhile, on June 19, 1855, at the invitation of Bishop John Timon of Buffalo, a group of Franciscan Friars from Italy came to western New York. Their first Superior was Father Pamphilus da Magliano, who was destined to become the founder and first president of St. Bonaventure College. They began their apostolic labors at Ellicottville. Mr. Devereaux offered them a large tract of land near Allegany; and in August of 1856 they began the construction of a monastery and college. Soon afterwards the Friars moved their missionary quarters to Allegany to enable them to supervise the construction of the building. Upon their arrival in

² Irenaeus Herscher, History of St. Bonaventure Parish, Allegany, New York, unpublished manuscript in the archives of St. Bonaventure Library, Allegany, N.Y., p. 3-4.

Allegany they took over the administration of the parish church of St. Nicholas.

By August 27, 1858 the first unit of the new monastery and college was completed; and on the feast of St. Francis, October 4, 1858 it was dedicated to St. Bonaventure. Soon after the dedication the monastery chapel was opened to the public; and thereafter divine services were no longer conducted in St. Nicholas' Church³.

In 1859 the Sisters of St. Francis of Allegany were founded by Father Pamphilus. In April of that year two young women, Mary Jane Todd and Ellen O'Flynn, were vested by Father Pamphilus with the brown habit of the Third Order of St. Francis. Mary Jane Todd was known in religion as Sister Mary Joseph, her companion as Sister Mary Bridget. In December, 1859 the two sisters were joined by Mary Ann O'Neil, a girl of fifteen from St. Joseph's Parish in New York City. On December 8, 1859 she was invested with the habit and in 1860 made her religious profession, receiving the name Sister Mary Teresa. In 1863 she made her final vows⁴.

³ Irenaeus Herscher, "The History of St. Bonaventure University", Franciscan Studies, vol. 11, no. 3, September, 1951, p. 367-375.

⁴ Adalbert Callahan, Medieval Francis in Modern America, New York, Macmillan, 1936, p. 109-110.

The School Arrangement

In that same year, 1863, the village of Allegany built a new schoolhouse on the east side of Day Street. The following year the village decided to open a Branch school to care for the children in the eastern part of the village⁵. It was in this school that the newly formed community of sisters carried out their first teaching assignment⁶. As the section of the village which the Branch School was meant to serve was predominantly Catholic, the village offered to lease St. Nicholas' Church for school purposes and to employ the sisters as teachers. The lease was entered into with Bishop Timon of Buffalo. According to the lease the use of the building was given to the Board of Education free of rent⁷.

The sisters, as teachers in the public school, had to qualify as teachers before the State examiners. The teachers took their examinations and received their licenses to teach.

5 R.W. Huebsch, History of the Allegany High School, unpublished manuscript in the files of the Allegany High School, no date, p. 1-2.

6 Sister Marie Patrice Gallagher, O.S.F., The History of Catholic Elementary Education in the Diocese of Buffalo, 1847-1944, Washington, D.C., The Catholic University of America Press, 1945, p. 24.

7 R.W. Huebsch, op.cit., p. 1-2.

The Reverend Adalbert Callahan in Medieval Francis in Modern America remarks on these examinations as follows:

Sister Teresa was not yet twenty years old when she stood before the State examiners and answered satisfactorily every question put to her. The district superintendent had remarked beforehand that there would be no religious women teaching in the schools under his jurisdiction. But so well did Sister Teresa acquit herself that she received her teacher's license, despite the superintendent's threat⁸.

Under this arrangement with the village authorities, the sisters continued to teach in the former St. Nicholas' Church until 1885.

On June 18, 1884, the Allegany Union Free School District No. 3 was organized⁹. At the annual school meeting, held August 26, 1884, it was resolved to build a new schoolhouse on the west side of Day Street at a cost not to exceed seven thousand dollars. A resolution was also passed to build a new Branch schoolhouse at a cost of \$1,500. At this same meeting the village appropriated \$625 to purchase a site for the new Branch School. The property, purchased from James Lynch, was located directly opposite St. Nicholas chapel on Main Street. On October 18, 1884 the contract to build the Branch School was awarded to the McCarthy Brothers for the sum of \$1,500. On February 21, 1885 the contract for the new Day

8 Adalbert Callahan, op. cit., p. 110-111.

9 William Davis, op. cit., p. 423.

Street schoolhouse was awarded to George A. Hall of Allegany for \$6,575¹⁰. The new buildings were ready for use by the beginning of the fall term of 1885. The main building, on Day Street, was a two-story brick structure with four rooms, each capable of accommodating sixty pupils. The final cost of the building proved to be ten thousand dollars. The Branch Building, on Main Street, was also two stories high, with two rooms accommodating sixty pupils each. The final cost of building the Branch school was \$2,500¹¹.

The two schools opened in the fall of 1885 with a combined enrollment of 323 students. Six teachers were employed by the district, four to teach in the Day Street School, and two in the Branch School. Sister Mary Joseph Whalen and Sister Ignatius Boyle were the teachers in the Branch School¹².

Opposition

The sisters had now been employed as teachers by the village for more than twenty years. During that period apparently there was no open opposition to the school arrangement. There was, however, a brief show of opposition in 1886. The

10 R.W. Huebsch, op. cit., p. 2.

11 William Davis, op. cit., p. 423.

12 R.W. Huebsch, op. cit., p. 2.

opposition was led by Erastus Willard¹³. Mr. Willard, born in Lisle, New York, March 23, 1823, came to Allegany in 1842, where he became a successful business man, active in local Democratic politics. He served for many years as justice of the peace in Allegany¹⁴.

From the very beginning Mr. Willard had opposed the sisters' teaching in the Allegany schools. After repeated efforts, he finally succeeded in getting the sisters removed in 1886. Miss C.E. Willard and Miss Martha J. Powell were employed to teach in the Branch School¹⁵. The sisters, forced out of the village-owned Branch School, moved across the street and began teaching in the former St. Nicholas Church where they had previously taught for so many years. Their pupils, both Catholic and non-Catholic, followed them. The result was that the two teachers hired for the Branch School were left with but three pupils to teach¹⁶.

It was obvious that such a situation could not be allowed to continue. At the meeting of the Board of Education held on October 5, 1886 Miss C.E. Willard was transferred from

13 Adalbert Callahan, op. cit., p. 111.

14 William Davis, op. cit., p. 418, 445.

15 R.W. Huebsch, op. cit., p. 3.

16 Adalbert Callahan, op. cit., p. 111.

the Branch School to the Day Street School¹⁷. It would seem that at this time the sisters were invited to resume their teaching at the Branch School. It is possible that Sister Anastasia alone returned and that Martha J. Powell continued to teach in the Branch School. This may also have been true for the school year 1887-1888. There can be no doubt that Sister Anastasia taught in the Branch School during the year 1887-1888. The Minutes of the Board of Education for September 6, 1887 states that the following motion was carried:

That the \$25 appropriated at the annual school meeting for janitor at the Branch School be paid to Sister Anastasia Neville, teacher at said Branch School and that she be instructed to do the work¹⁸.

The Board Minutes for November 1, 1887 reports an interesting development that quite likely was an aftermath of Erastus Willard's unsuccessful efforts to remove the sisters from the Branch School. His wife, Harriet Willard, refused to pay her school tax. This was reported to the Board by I.E. Coleman who was the school-tax collector¹⁹. The matter was turned over to J. Arthur Corbin, attorney for the Board, who was instructed to proceed according to law to collect the

17 R.W. Huebsch, op. cit., p. 3.

18 Board of Education of Allegany, New York, Minutes of Union Free School District, No. 3, September 1887 - June 1909, manuscript, September 6, 1887, p. 1.

19 Board Minutes, November 1, 1887, p. 4.

school tax assessed to Mrs. Harriet Willard. The case, known as Edward A. Torrey²⁰ and others vs. Harriet Willard, was argued in the Cattaraugus County Court before Henry McKinley, Justice of the Peace on December 17, 1887, Mrs. Willard being represented by attorneys Carey and Ramsey, the Board by J. Arthur Corbin. Judgment was given in favor of the Board's right to collect the tax²¹.

Mrs. Willard took the case to the Supreme Court. At its meeting of January 3, 1888, the Board instructed J.A. Corbin "to continue the proceedings against Mrs. Harriet Willard in the Supreme Court²²". The appeal was heard in the December term of the Supreme Court in 1889. The decision of the lower court was upheld²³.

Meanwhile the Board of Education continued to employ the sisters in the Branch School. At the meeting of the Board, held on June 5, 1888, a communication was received from Sister Anastasia Neville and Sister Immaculata Mitchell applying for the position of teachers at the Branch School for the coming year. Their applications were accepted. Sister Anastasia was

20 President of the Board of Education.

21 Marcus T. Hun, reporter, Reports of Cases in the Supreme Court, "Case of Edward A. Torrey et al. v. H. Willard," vol. 55, Albany, Banks and Brothers, 1890, p. 79.

22 Board Minutes, January 3, 1888, p. 5.

23 Marcus Hun, op. cit., p. 80.

hired at a weekly salary of ten dollars; Sister Immaculata at a weekly salary of eight dollars²⁴. For the school year 1888-1889, Sister Anastasia received a total salary of \$370; Sister Immaculata, \$296²⁵. These two sisters continued together as teachers in the Branch School till 1891 when Sister Anastasia was replaced by Sister Irene Crandell²⁶.

The village schools had meantime become too small to accommodate the increasing number of school children. Accordingly, plans for expansion of the school facilities had to be made. On May 28, 1896 a special school meeting of the voters of the district was called. At this meeting "it was resolved to raise six thousand dollars for the purpose of enlarging the Day Street Schoolhouse and also the Branch Schoolhouse and furnishing the same²⁷". The resolution was carried by a vote of 77 to 16. On June 29, 1896 Mr. George A. Hall was awarded the contract to enlarge the Day Street School for \$4,325. On the same day Mr. L.L. Burr was given a contract to enlarge the Branch Schoolhouse for \$1,050.

The addition to the Branch School was completed in time for the opening of school in the fall of 1897; accordingly three

24 Board Minutes, June 5, 1888, p. 10.

25 Board Minutes, June 4, 1889, p. 31.

26 Board Minutes, May 12, 1891, p. 62.

27 R.W. Huebsch, op. cit., p. 5.

sisters were employed to teach²⁸. In addition to Sister Immaculata Neville and Sister Irene Crandell, Sister Leonora Lynch was also employed by the Board of Education. These same three sisters were employed by the Board the following year. In the fall of 1899, Sister Immaculata Neville was replaced by Sister Raymond White²⁹. These three sisters continued to teach in the Branch School till June of 1906.

By 1906 the Franciscan Sisters had been teaching in the Branch School for more than forty years. The people of the village were evidently quite satisfied with the arrangements between the Board and the sisters. On April 17, 1906, however, an event took place many miles from Allegany that was destined to bring an abrupt end to this amicable arrangement of many years standing. On April 17, 1906 the New York State Court of Appeals rendered its decision on the Lima School case. The Court upheld the decision of Superintendent Skinner forbidding public school teachers from wearing the religious garb while teaching in the public schools³⁰.

Either the Board of Education of Allegany sought from Commissioner Andrew S. Draper a clarification of their position or, without their requesting it, they received orders from him.

28 R.W. Huebsch, op. cit. p. 5.

29 R.W. Huebsch, op. cit. p. 6.

30 Vide supra, "Lima School Case".

At any rate they received orders from the office of the State Commissioner of Education that the school arrangement in Allegany could not continue. This is reported by The Allegany Citizen in its issue of May 12, 1906:

The Franciscan Sisters, who for thirty years or more have successfully taught the pupils of the Branch school of this district, under orders from State Commissioner of Education Draper to the local Board of Education will be dismissed after this term of school³¹.

The editor expressed his belief that the dismissal of the sisters would in all probability lead to the establishment of a parochial school in St. Bonaventure's Parish. He says:

The fact is that parents and especially Catholic parents, where possible, prefer to have their children taught at school under the tender care and beneficent influence of the Sisters of religious orders who devote their whole lives to this work, and it is thought that this change will bring about a new state of affairs in the district and the outcome the immediate opening of a parochial school³².

He also believed that if the parochial school became a reality the district would abandon the Branch School, since the portion of the school district served by the Branch School was composed almost entirely of Catholics.

Both these predictions proved to be correct. St. Bonaventure's Parish made plans to open a parochial school.

At the meeting of the Board of Education on June 5, 1906 a

³¹ The Editor, "Parochial School Probable", editorial in The Allegany Citizen, vol. 11, no. 7, May 12, 1906, p. 1, col. 1.

³² Ibid.

committee was appointed to confer with the authorities of the Catholic Church regarding the Branch School. The committee was given authority to lease the Branch School property during the ensuing year³³.

Two months later, however, the Board decided to abandon the Branch School altogether. At the annual school meeting, held on August 7, 1906 it was decided to sell the property and premises known as the Branch School to the Catholic Church authorities for the sum of two thousand dollars³⁴. At the October 2 meeting of the Board "the conveyance by the President and the Secretary of the Branch School property to St. Bonaventure's College" was ratified and confirmed³⁵.

In the fall of 1906, therefore, St. Bonaventure's parochial school was opened in the former Branch School building. In the December 29, 1906 issue of The Allegany Citizen, the editor included among the important events of the past year in Allegany this fact: "St. Bonaventure's parochial School was established³⁶".

33 Board Minutes, June 5, 1906, p. 502.

34 Board Minutes, August 7, 1906, p. 505.

35 Board Minutes, October 2, 1906, p. 511.

36 The Editor, "The Past Year in Allegany", news article in The Allegany Citizen, vol. 11, no. 40, December 29, 1906, p. 1, col. 1.

SUMMARY AND CONCLUSIONS

The nineteenth century in the United States witnessed various developments in the field of education. One of these developments was the transition from private church schools under the control of various denominations to the non-sectarian public schools supported by state funds; another was the establishment and growth of a system of Catholic parochial schools. In these two educational developments various factors were involved. The purpose of this thesis is to demonstrate that the "religious garb" issue was one of these factors.

The research worker in the field of history, in his effort to get at the concrete facts of history and extend the frontiers of knowledge, must necessarily isolate certain facts and study them in themselves. After discovering the facts, he must, in interpreting them, guard against the temptation of making his facts explain too much. He must not forget that factors, other than those which he has studied in isolation, have undoubtedly contributed to the results which he has discovered. In presenting the conclusions of this thesis, it would be an oversimplification of history, inaccurate and unwarranted, to maintain that the "religious garb" issue was the sole factor, or even the most important factor, involved in the secularization of the public school system or in the development of the Catholic parochial system. No such claim is made in this thesis. The claim is a much more modest one,

namely, that the "religious garb" issue did make its contribution to these educational developments.

This concluding chapter, after summarizing the facts presented in the foregoing pages, will attempt to show how the religious garb issue did contribute to these educational developments.

Extension of the Compromise Plans

The different "compromise plans", worked out by various local communities in New York State to meet their own educational needs, were spread throughout various parts of the State. The map on the following page indicates this geographical extension of the "compromise plans."

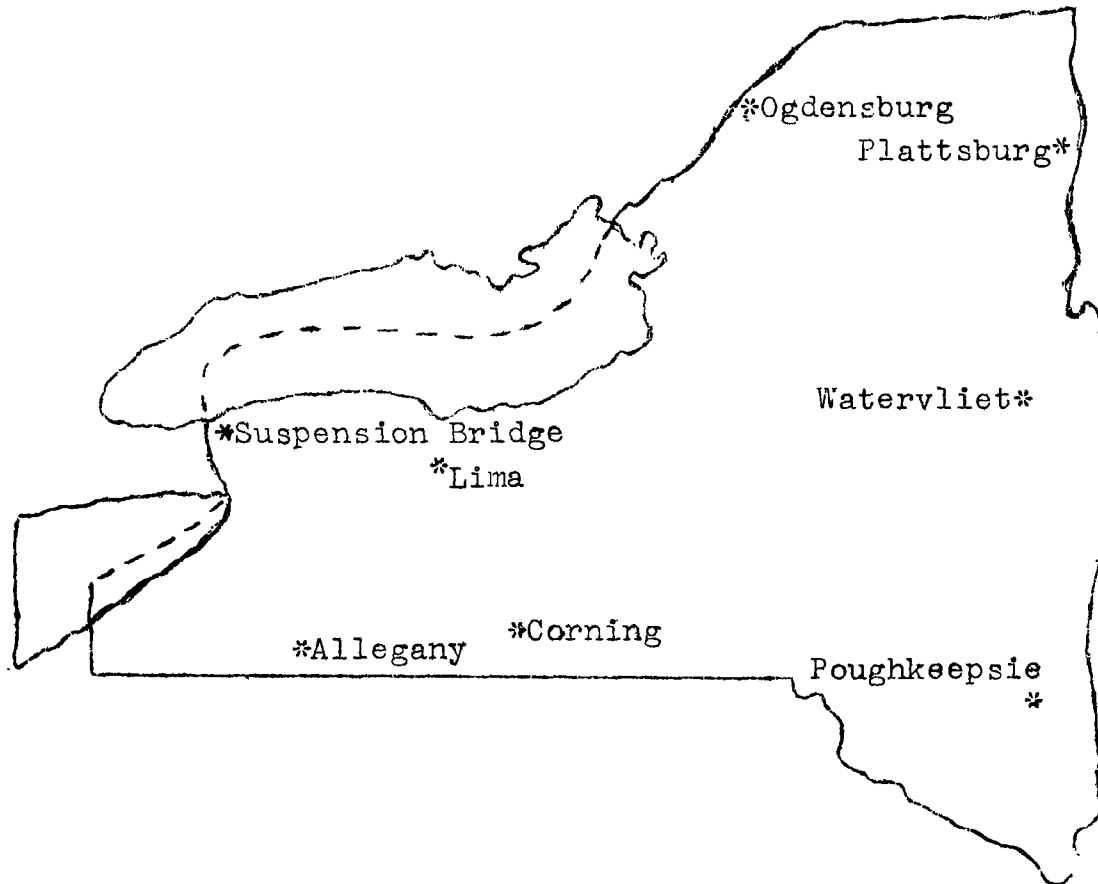


Figure 1 - Map Illustrating the Geographical Extension of the Compromise Plans.

The school plans, involving the "religious garb" issue, operated in various Catholic dioceses throughout the State: the Archdiocese of New York and four other dioceses in the State. Seven different communities of sisters were involved as teachers in the various schools operating according to the "compromise plan."

The extension in time varied with the different school plans. The Suspension Bridge plan was the shortest in duration, lasting for less than two years; the Allegany plan was the longest in duration, lasting for a period of forty-two years.

The table on the following page indicates the number of years each plan operated, the community of sisters involved, and the Catholic diocese in which the plan operated.

Table III - Duration of, Religious Communities and Dioceses Involved in, the Various School Plans.

School Plan	Duration	Community of Sisters	Diocese
Suspension Bridge	2 years 1885-1887	Sisters of St. Joseph (Buffalo)	Buffalo
Watervliet	8 years 1889-1897	Sisters of St. Joseph (Troy)	Albany
Corning	31 years 1867 ¹ -1898	Sisters of Mercy (Batavia)	Rochester ²
Poughkeepsie	29 years 1873-1898	Sisters of Charity (New York)	New York
Lima	31 years 1875 ³ -1903	Sisters of St. Joseph (Rochester)	Rochester
Ogdensburg	13 years 1893-1906	Grey Nuns of the Cross (Ottawa)	Ogdensburg
Plattsburg	37 years 1869-1906	Grey Nuns of the Cross (Ottawa)	Ogdensburg ⁴
Allegany	42 years 1864-1906	Sisters of St. Francis (Allegany)	Buffalo

1 The school arrangement was made in 1862, the school being staffed by lay teachers until the sisters arrived in 1867.

2 When the school arrangement was made, Corning belonged to the diocese of Buffalo. It did not become a part of the diocese of Rochester till 1897.

3 The school arrangement was made in 1865, the school being staffed by lay teachers until the sisters arrived in 1875.

4 When the school arrangement began, Plattsburg belonged to the diocese of Albany. When the diocese of Ogdensburg was created in 1872, Plattsburg became a part of the new diocese.

Common Features

The different compromise plans operating in New York State exhibited a number of common features. In all the cases, except the Allegany case⁵, a school building belonging to the Catholic Church was rented by the local board of education. The boards of education paid an annual rental for the use of the school building. With the exceptions of Corning and Plattsburg, where a substantial sum was paid, the rent was only nominal - one dollar per year. Generally the religious name of the school was dropped and the school was designated by a number or by the name of the street on which it was located.

The sisters who taught in these schools were obliged to pass state examinations and obtain state certificates empowering them to teach in the public school system. The sisters were also obliged to enter into contract with the local board of education, the same as the other teachers in the public schools. These contracts would specify the number of weeks that they were to teach, together with the salary that was to be paid to them by the board of education.

5 In Allegany, for the last twenty-one years of the operating of the school plan, the Branch schoolhouse was owned by the village.

In all cases, except the Ogdensburg case⁶, the boards of education paid, in varying degrees, other expenses of the school besides teachers' salaries and the annual rental. Thus the board of education generally assumed the financial responsibility for janitor work, fuel, repairs, school supplies and insurance premiums.

In return for this financial outlay, the boards of education assumed the educational control of the schools. The principal or superintendent of the public schools was given authority over the rented school building. Text books were made to conform with those in use in the other public schools. The schools were to be open for classes to all the children of the district and for inspection to all the members of the board. The boards also claimed the right of appointment of teachers, though in practice they generally accepted the sister appointed by the religious superiors or recommended by the Catholic pastor. Prayers and religious instructions were forbidden during the school hours.

6 According to the terms of the agreement, all expenses of operating the school, except the teachers' salaries, were to be borne by St. Mary's Parish.

Conclusions

In evaluating the part played by the "compromise plan" and the "religious garb" issue in the history of education in New York State, three conclusions of major importance will be drawn.

1^o The religious garb decisions, by prohibiting the various compromise plans eliminated, in New York State at least, what threatened to become a divisive force⁷ in American education.

In clarifying this conclusion, it is important to realize that the various "compromise plans" originated in the common consent of Catholics and non-Catholics. In their origin, therefore, they seemed to be a unifying force, bringing Catholics and non-Catholics together in the common task of providing for the education of all the children of a particular community. The unification thus achieved, however, was more apparent than real. For Catholics and non-Catholics looked upon the "compromise plan" from two entirely different

7 The use of the word "divisive" must not be understood as expressing approval by the writer of the statement made by President James Bryant Conant of Harvard University in April 1952 that parochial schools constitute a divisive force in American education. For the writer is here concerned, not with parochial schools, but with something very different: the "compromise plan." Nor is it the writer's intention to pass judgment on the moral question involved, namely, whether or not the "compromise plan" is justified in principle; he is simply drawing a conclusion of fact based on history.

viewpoints. To the non-Catholic the "compromise plan" was largely a matter of expediency, whereas to the Catholic it was a matter of principle. Non-Catholics who favored the plan did so, not so much because they saw it as a means of fulfilling the just claims of Catholics to a share of the public funds nor because they saw it as a means of bringing some form of religious influence into the public school, but because to them it presented a practical and realistic solution to pressing financial problems. Renting Catholic school buildings and making certain concessions to Catholics seemed to be a much less expensive solution to overcrowded school conditions than the building of new public schoolhouses. Since their approval was dictated more by expediency than principle, when opposition arose they were not strongly inclined to defend the "compromise plan." The same attitude of expediency, which suggested adopting the plan, also suggested yielding to the pressure brought to bear to outlaw it.

To the Catholics who favored the "compromise plan", on the other hand, a matter of principle was involved. The "compromise plan" represented at least a partial fulfillment of Catholic claims to a just share of the public school funds. It represented a means of giving instruction to all the children in the one common public school system, yet preserving at the same time some religious influence in that system for those who wanted it. Because the "compromise plan" represented for

Catholics a matter of principle, they were much more disposed to fight for its retention, once opposition arose.

Thus the "compromise plan", which began as an apparently unifying element in American education, came to be when opposition arose, a divisive rather than a unifying element between Catholics and non-Catholics. This is all the more apparent when one considers the fact that the "compromise plan" furnished such militantly anti-Catholic groups as the American Protective Association with precisely the propaganda material that they wanted in their efforts to convince non-Catholics of good will that Catholic influence was bent on destroying the public school system.

Not only did the "compromise plan" eventually threaten to divide Catholics and non-Catholics; it also divided Catholics among themselves, by reason of the bitter antagonism among Catholics between those who favored the "compromise plan" and those who felt it to be an inadequate solution to the demands of a sound Catholic education.

Hence it would seem just to conclude that the "compromise plan", whether one accepts it as justified in principle or not, was becoming as a matter of fact a divisive force in American education. The "religious garb" decisions, therefore, by prohibiting the various "compromise plans", eliminated in New York State at least, what threatened to become a divisive force in American education.

2° The "religious garb" decisions helped to hasten the complete secularization of the public school system. The State was officially committed, through the decisions of the State Department of Public Instruction, confirmed as they were by to the courts of the State, to a policy of complete secularization. Henceforth not only sectarian doctrine, but even religious influence of any kind was forbidden in the public school system.

3° The "religious garb" decisions helped to restore unity of thought among Catholics on the school question. Where before there had been bitter controversy among Catholics, between those who favored the "compromise plan" and those who felt it inadequate, the "garb" decisions helped to unite Catholics, both hierarchy and laity, in a common zeal for the development of a system of parochial schools that would be extensive and educationally adequate. At long last Catholics saw eye to eye on the school question. There could be no compromise with a public school system that had gone completely secular. The Christian State school, for which Archbishop Ireland had fought so vigorously, was impossible of realization. The hope for a strong Catholic population in the United States lay, not in the efforts to incorporate some elements of Christianity into the public schools, but in the establishment of Catholic parochial schools. The wisdom of the Fathers of the First Plenary Council of Baltimore was vindicated. Catholics

set themselves with a renewed and united vigor to carry out the orders of that Council.

The year 1906, therefore, marked in New York State the end of an experiment whose origin, in some communities at least, goes back to the years immediately following the American Civil War. The "compromise plan", involving the "religious garb" issue, had been an effort to preserve some semblance of religious influence in the public school system in New York State. By the year 1906 that effort had failed. Just as the beginning of the nineteenth century witnessed the decline of the denominational school and the origin of the non-sectarian, secular public school, so the beginning of the twentieth century heralded, in New York State at least, the final triumph of those who favored the complete secularization of the public school. Since Catholics could not share the enthusiasm of so many of their fellow Americans for a system of education that excluded religious influence, the beginning of the twentieth century also heralded a vigorous and unprecedented growth of the Catholic parochial school system.

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THE APPENDICES

The first three appendices narrate the account of three additional "compromise plans" operating in New York State. These cases were not included in the body of the thesis for two reasons: first, because they are cases primarily of local interest, the arrangements having been entered into and terminated largely by reason of local circumstances; and secondly, because the religious garb issue assumed no particular prominence in these cases. Hence they are obviously not to be included in the body of a thesis whose purpose is to discuss the religious garb issue involved in those "compromise plans" that were of state-wide importance and were terminated by official decisions of the State Department of Public Instruction.

These cases are included in the appendices, however, for two reasons: first, because they are a further indication that the "compromise plan" was by no means an uncommon thing in New York State in the latter half of the nineteenth century; and secondly, because their existence suggests the interesting possibility that similar plans may have operated on a local level in other communities in New York State.

The fourth appendix presents an abstract of the thesis.

APPENDIX 1

The Elmira School Case

The Sisters of St. Mary of Namur, founded in Belgium in 1819, made their first foundation in America in the diocese of Buffalo in 1863. Under the leadership of Mother Emilie, they established their motherhouse at Lockport. In 1866 they accepted their first American mission at SS. Peter and Paul's Parish¹ in Elmira, New York².

In July of that year the Reverend Peter Bede, pastor of SS. Peter and Paul's Parish, went to Lockport and requested of the Reverend Mother that she send sisters to open a school in his parish. Accordingly, on the morning of August 6, at seven o'clock, Mother Emilie left Lockport, accompanied by Sister Antonio, Sister Mary Claver and Sister Mary Angela. They arrived in Elmira at five o'clock that afternoon and were met and welcomed by Father Bede³.

The parish provided the sisters with a house for a convent and a building which could be used for school purposes. From the beginning the sisters conducted two schools: a free

1 Sister Mary Berchmans Gallivan, Institute of the Sisters of St. Mary of Namur, Buffalo, typed manuscript in the archives of the Sisters of St. Mary of Namur, Kenmore, New York, 1938, p. 101.

2 Elmira at this time, and until 1897, was part of the diocese of Buffalo.

3 Sister Mary Berchmans Gallivan, op. cit. p. 101.

school which was the parochial school and a select school or academy. The free school was conducted in the parochial school building; the select school known as the Academy of Our Lady of the Angels, was conducted in the convent⁴.

The free school retained its status as a parochial school for only one year. Even though it was the only parochial school in the city, the Catholics of Elmira were unable to contribute sufficient funds to defray the normal costs of running the school. Father Bede found even the cost of heating the building a heavy burden. In the summer of 1867, therefore, Father Bede petitioned the Elmira Board of Education and succeeded in having SS. Peter and Paul's School incorporated into the public school system as an auxiliary public school⁵. The Board of Education assumed the obligation of paying rental to Father Bede for the building and also of paying for the repairs and upkeep of the building. The sisters became employees of the local school Board. They entered into contract with the Board and from the Board they received their salaries. They were obliged to pass the examinations given by the Board. The school was subject to inspection by the

4 Sister Mary Berchmans Gallivan, op. cit., p. 101.

5 Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, diary of the SS. Peter and Paul's mission, manuscript in the archives of the Sisters of St. Mary of Namur, Kenmore, New York, September 2, 1867, p. 3. The diary speaks of the Catholic school as "having been placed under the direction of Protestants", i.e. the city Board of Education.

Board and religious instructions were forbidden during the school hours⁶.

Before the opening of school, the sisters took the required examinations. The results are described in The Institute of the Sisters of St. Mary of Namur:

The sisters' papers were considered exceptionally good; Sister Antonio's in particular were spoken of throughout the city in terms of the highest praise. It was said that never before had such excellent papers been presented by a candidate⁷.

SS. Peter and Paul's School opened for the first time under the direction of the Board of Education on September 2, 1867. By reason of its location, the school was referred to by the Board as the High Street School. About a month after school opened, the October 5 issue of The Elmira Daily Advertiser, quoting from the monthly reports of the teachers to the secretary of the Board of Education, listed the number of pupils registered in the public schools of Elmira as 2,413. Of this number 376, were in the High Street School⁸.

It would appear that each year a new lease was entered into between the Board of Education and the pastor of SS. Peter and Paul's Parish. At least it is certain that this was true

6 Testimony of Sister Regina, Sister Mary Berchmans.

7 Sister Mary Berchmans Gallivan, op. cit., p. 101.

8 The Editor, "The Public Schools", news article in The Elmira Weekly Advertiser, vol. 13, no. 39, October 5, 1867, p. 5, col. 1.

for the last two years that the school operated under the Board - September 1874 to June 1876.

On May 22, 1874, Mr. John D. Fletcher Slee and Mr. William Dundas, representatives of the Board, came to the sisters' convent. According to The Elmira Diary of the Sisters of St. Mary of Namur, "they asked the sisters again to make their conditions, if they wished to have the school under the Board⁹". On August 4, 1874 the sisters sent a letter to the Board, setting forth the concessions they hoped to obtain. They were the following:

1° No man was to be appointed as principal.

2° The sisters were not to teach boys over twelve years old.

3° They were to have the liberty of saying prayers in school as before.

4° Catholic children were not to be prevented from attending the sisters' school.

5° The sisters were to be permitted to direct their schools as they wished.

6° The sisters' school was always to remain essentially a Catholic school¹⁰.

9 Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, May 22, 1874, p. 54, (Sister Eliza's translation.)

10 Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, August 18, 1874, p. 55.

At the meeting of the Board, held on August 11, 1874, the communication from the sisters was read, and the president of the Board, Mr. George M. Diven was directed to prepare a reply¹¹. On August 18, Mr. Edwin A. Scott, a member of the Board came to the convent and informed the sisters that their terms were accepted and the school would continue to function under the Board¹².

At the August 27 meeting of the Board, a resolution was passed:

That the High Street auxiliary public school be placed under the supervision of Principal (Luther C.) Foster of Grammar School No. 1 to inaugurate the system of instruction at present pursued in the several schools of the city¹³.

It is noteworthy that this resolution took away two of the concessions that had been requested by the sisters: namely, that no man be appointed as principal and that the sisters be permitted to direct their schools as they wished.

A few months later, at the meeting of the Board on January 9, 1875, a resolution was passed which threatened to remove yet another of the concessions asked for by the sisters.

¹¹ Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 21, no. 189, August 12, 1874, p. 4, col. 3.

¹² Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, August 18, 1874, p. 55.

¹³ Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 21, no. 202, August 28, 1874, p. 1, col. 3.

The resolution, proposed by Commissioner William Dundas read as follows:

That the Committee on By-Laws, Rules, and Regulations be instructed to prepare a rule or regulation that all primary and grammar school pupils shall attend school in the Commissioner District in which they respectively reside, unless otherwise specially permitted by the Board¹⁴.

On February 13, 1875 two sisters visited the Board to object to the Board's action in forbidding Catholic children of other districts from attending the sisters' school. The Board promised that they would keep the terms of the contract agreed upon, making an exception for the sisters¹⁵.

At the end of the school term, on June 22, 1875, the Board received a communication from the sisters, requesting that their school be included again among the public schools of the city for the coming year. The petition of the sisters was discussed at the Board meeting of July 5, 1875. After some discussion, a resolution, proposed by J.D.F. Slee, was adopted.

¹⁴ Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 22, no. 9, January 12, 1875, p. 4, col. 4. The committee prepared such a regulation and it was adopted by the Board some time in March. See: "Board of Education", news article in The Elmira Daily Advertiser, vol. 22, no. 223, September 21, 1875, p. 1, col. 3.

¹⁵ Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, February 13, 1875, p. 60.

The resolution authorized the Committee on Buildings and Repairs

to execute a lease for one year with the Sisters of St. Mary for the school building on High Street, provided that such lease shall contemplate and specify that said school shall be auxiliary to Grammar School no. 1 and shall also be subject in every respect to the rules and regulations of this Board¹⁶.

Soon after the signing of the lease, which took place on August 6, the question of the attendance at the High Street School of pupils living outside District No. 1, was again discussed by the Board of Education. At a meeting, held on August 17, 1875, Commissioner Chauncey N. Shipman proposed a resolution: "that none but primary pupils, residents of district no. 1 be allowed to attend school in the High Street building during the continuance of our lease for the same¹⁷". The resolution was not adopted at this time, but was referred for further consideration to the Committee on Examination and Organization of Schools.

Apparently with the hope of forestalling adoption of this resolution by the Board, a petition, signed by fifty-eight citizens and taxpayers of Elmira residing outside of District No. 1, was addressed to the Board on September 7, 1875. Pointing out the unprecedented progress made by their

¹⁶ Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 22, no. 158, July 7, 1875, p. 3, col. 3.

¹⁷ Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 22, no. 193, August 17, 1875, p. 4, col. 5.

children at the High Street School during the previous year, the petitioners made the request:

that they may be allowed by your honorable Board to send their children for the ensuing year to said High Street auxiliary school, as if they were residents of the said district no. 1 in which said school is located¹⁸.

This petition aroused the antagonism of various people in Elmira who were opposed to the giving of public funds to the High Street School. The September 11 issue of The Southern Tier Leader, after quoting the petition in full, commented on the forthcoming report of the Committee to which the petition had been referred:

The report of this Committee will be looked for with no small degree of interest. The Board, having established a Roman Catholic school on High Street, is now asked to allow the children of Romanists, from every part of the city, to attend the school¹⁹.

The editor of The Elmira Daily Advertiser, in a lengthy editorial on September 16, 1875, asserted that the Board was maintaining a Catholic school on High Street. Not only should the request of the Catholic petitioners be denied, he claimed, but the Board should sever all connection with the High Street

¹⁸ Reporter, "Board of Education - Regular Meeting", news article in The Elmira Daily Advertiser, vol. 22, no. 211, September 7, 1875, p. 1, col. 5.

¹⁹ The Editor, "Petition to the Board of Education", news article in The Southern Tier Leader of Elmira, New York, vol. 2, no. 29, September 11, 1875, p. 1, col. 3.

School. Thus the editor wrote:

Simply denying the prayer of the Catholic petitioners will not be sufficient. The whole arrangement must be wiped out. The public money must not be diverted from its lawful and constitutional purposes. There must be neither denominational schools nor denominational favoritism. No school must be exclusively under the care, much less under the uniform and garb, of a sect²⁰. The law makes our public schools common schools. This is a special school, maintained for a special object, managed in a special manner, taught by special teachers, and attended by special scholars. We are not versed in the law, but in our judgment it is such an illegal diversion of the public money as would not stand the test of the courts²¹.

The same issue of The Elmira Daily Advertiser carried an article reprinted, at the request of the Sisters of St. Mary, from The Elmira Gazette. The article, signed by J.H.H., pointed out the superior contribution being made by the sisters' school to "the growth and embellishment of the youthful minds" of the city. The writer denied that the school was sectarian. Protestant children, he said, could attend the school from primary grades to graduation and not have a single sectarian rule forced upon them. He hoped, therefore, that in view of the facts of the case the petition before the Board

²⁰ This is apparently the only reference to the "garb" issue in the Elmira school case.

²¹ The Editor, "The High St. School", editorial in The Elmira Daily Advertiser, vol. 22, no. 219, September 16, 1875, p. 1, col. 3.

would receive favorable consideration²².

The Board of Education, however, failed to look with favor on the petition that had been addressed to them. Recalling the resolution adopted on January 9, 1875 and the regulation made in March of the same year forbidding pupils to attend school in a district other than the one in which they resided, the Committee, to which the petition had been referred, declared that "no good reasons exist for making the High Street School an exception to the general rule²³". It was agreed, therefore, at the Board Meeting that the petition should be denied and that the High Street School should be "subject to the same rules and regulations by which the other schools of the city are governed²⁴". Mr. Edward Danforth, superintendent of the Elmira public schools, was directed to notify the teachers of the High Street auxiliary school to dismiss every pupil attending the auxiliary school who resides outside of District No. 1. He was also to inform them that they were not to admit any such non-resident pupils in the future²⁵.

22 J.H.H., letter to the editor of The Elmira Gazette, (volume and date not available), quoted in The Elmira Daily Advertiser, vol. 22, no. 219, September 16, 1875, p. 3, col. 2.

23 Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 22, no. 223, September 21, 1875, p. 1, col. 3.

24 Ibid.

25 Reporter, "Board of Education", news article in The Elmira Daily Advertiser, vol. 22, no. 224, September 22, 1875, p. 2, col. 2.

Mr. Danforth carried out his mission on September 22, 1875. Accordingly, by reason of the order of the Board of Education, the sisters were obliged to dismiss from their school some seventy pupils who lived outside the district²⁶.

Neither the pastor of SS. Peter and Paul's Parish, the Reverend Thomas Cunningham, nor the sisters were disposed to continue the compromise plan under the new conditions laid down by the Board. It was understood therefore, that at the end of the school year public funds would no longer be given. Graduation on June 22, 1876 was, therefore, the last under the Board²⁷. Thereafter, the High Street School became the parochial school of SS. Peter and Paul's Parish.

²⁶ Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, September 22, 1875, p. 67.

²⁷ Sisters of St. Mary of Namur, Académie de Notre Dame des Anges, June 22, 1876, p. 74.

APPENDIX 2

The Albion School Case

The Church of St. Joseph in Albion, New York was built in 1852, the first Mass being celebrated on May 20 of that year. The first resident pastor was Reverend Father Byrne. He was succeeded by the Reverend Fathers Bradley, Barker and Stevens. In January 1862 the Reverend John Castaldi was appointed pastor¹.

The construction of a schoolhouse was begun in August, 1869 and completed in the beginning of the year 1870. While the schoolhouse was in the process of construction, Father Castaldi visited the Motherhouse of the Sisters of Mercy at Batavia and requested the Reverend Mother for sisters to staff his school. In January 1870 the sisters arrived and were given the priest's house to use as a convent, Father Castaldi taking up his residence in a small office at the back of the church. At the opening of school about two hundred pupils presented themselves for class².

The parochial school continued in operation for six years, when the financial outlay proved too great a burden for

1 Albion Reporter, "The Albion Mission", article in The Catholic Union of Buffalo, vol. 5, no. 26, October 26, 1876, p. 5, col. 6.

2 Ibid.

the little parish. Consequently, on January 3, 1876 Father Castaldi announced to the children that from that time the school would be closed. He directed them to apply on the following morning for admission to the village schools³.

The following morning Mr. Cowles and Mr. McCracken, the teachers in the East District School, found the school overflowing with pupils. Questioning the children, they learned what had happened and immediately informed the school Trustee, Mr. N.Z. Sheldon. Mr. Sheldon came to the school-house and told the Catholic children that accommodations would be found for them as soon as possible. Meanwhile, they were to remain home until proper arrangements were made⁴.

The Trustee set about at once to find classrooms for the children. He visited Mr. George H. Sickles, president of the Albion Academy, with the hope of obtaining temporary use of classrooms on the second floor of the Academy building. Mr. Forbes, the principal of the Academy objected to any such arrangement, stating that great confusion would result from conducting two schools in the same building⁵.

3 Reporter, "Albion Aroused", news article in The Rochester Democrat and Chronicle, vol. 44, no. 12, January 14, 1876, p. 4, col. 3.

4 Ibid.

5 Reporter, "Mr. Sheldon's Statement", news article in The Rochester Democrat and Chronicle, vol. 44, no. 12, January 14, 1876, p. 4, col. 3.

On Wednesday evening, January 5, Mr. Sheldon visited Father Castaldi to enlist his help. He asked the priest why he had so suddenly closed the parochial school. Father Castaldi told him: "Mr. Sheldon, it was as mortifying to me as any one. I don't want to make trouble for anybody, but financially I am broken down⁶".

The Trustee, thereupon, suggested that the Catholic schoolrooms might be rented by the village for school purposes. This suggestion was welcomed by Father Castaldi, and an agreement was made whereby the school district rented the former parochial schoolrooms for a rental of one dollar a week. The question of teachers was discussed. Mr. Sheldon agreed to hire the three sisters who had been teaching in the parochial school, provided they passed the examination by the school commissioner of the district. The problem of the payment of salaries to the sisters was also discussed. Mr. Sheldon expressed his concern regarding this matter, pointing out that his school budget for the year did not include provisions to meet emergencies such as the one that had arisen. Father Castaldi offered the suggestion that the Trustee pay the sisters whatever he could. Finally an agreement was reached, whereby one of the sisters, who was to act as principal of the school, would be paid seven dollars and fifty cents per week; the other two sisters were to receive six and

6 Ibid.

four dollars respectively. It was further agreed that no religious exercises, not even the saying of the Lord's Prayer, would take place in the school⁷.

On Saturday, January 3, the examinations were given to the sisters by Mr. Edward Posson, the school commissioner. The examination lasted two hours and a half. Mr. Posson expressed himself as more than satisfied with the papers written by the sisters⁸.

The following Monday, January 10, 1876 the former parochial school was reopened as one of the public schools of the district. Mr. Sheldon was present for the opening of the school and cautioned the teachers that no religious exercises were to be held in the school. If they wished to have such exercises, the children were to be taken to the church⁹.

The news of the agreement entered into by the school Trustee with the Catholic Pastor spread quickly throughout the village and engendered considerable excitement. Some of the people of Albion were vehement in their protests. They charged that the agreement was the fulfillment of a campaign promise made by the Trustee at the time of the school meeting held in October, 1875. At that time, so it was claimed, Mr. Sheldon

7 Ibid.

8 Ibid.

9 Ibid.

had agreed that, if he received Catholic support for his election to the school trusteeship, he would see to it that the school district would assume financial responsibility for the Catholic school. This charge was published in the local paper, The Orleans American. In the issue of January 13, 1876 the editor wrote:

As the people of this community are aware, very soon after our last annual School Meeting, reports or rumors were rife that an understanding was effected or reached between the present Trustee and certain other parties, that in case of his election as trustee the Catholic school, which had been established and maintained as a denominational school, should receive a share of the public funds, or in other words be made part and parcel of our Common Schools, so far as support was concerned¹⁰.

The editor did not presume to judge whether or not the rumor was correct. He did suggest, however, that it was more important to consider what the Trustee was actually doing in the present rather than what he might have done in the past; and, as the editor saw it, the Trustee had taken over the financial responsibility for the maintenance of what was to all intents and purposes a sectarian school - with the same teachers, pupils and textbooks and (so he had heard from authority that could not be questioned) with the same religious exercises as formerly.

¹⁰ The Editor, "The School Question Locally", editorial in The Orleans American of Albion, New York, vol. 44, no. 11, January 13, 1876, p. 3, col. 2.

The editorial concludes with a word of warning to the Trustee:

The community care nothing about the religious tenets or views of teachers or trustee; but they do and will continue to demand that the schools be strictly non-sectarian in character. This the majority are fully resolved upon, and whoever attempts to defeat or defy the people's will on this point are destined to defeat and discomfiture. If this experiment proves to be strictly non-sectarian, the people will be contentll.

The next issue of The Orleans American included a letter to the editor, written by a Mr. Wyant, that was severely critical of Mr. Sheldon's action. Pointing out that it was a very strange procedure for a trustee of a common school district to make arrangements with a Catholic priest for the wages of public school teachers, he told the Trustee that the rented school was a common district school "in no sense except that you pay a part of its expense out of the public funds". He went on to say:

It is the parochial school of St. Joseph's Catholic Church, in the same yard as the Church, in the same building as Father Castaldi's private rooms¹², taught for the benefit of the children of his parish by teachers of his selection, and as completely under his control, in all essential respects, as it was before Christmas¹³.

11 Ibid.

12 The Catholic Union of Buffalo states (foot-note no. 2) that Father Castaldi's rooms were at the back of the church.

13 Mr. Wyant, "The School Question", letter to the editor in The Orleans American of Albion, New York, vol. 44, no. 12, January 20, 1876, p. 3, col. 3.

So general was the excitement occasioned by the Trustee's action that The Rochester Democrat and Chronicle considered the matter of sufficient interest to send a special reporter to Albion to investigate. The reporter visited Mr. Sheldon in his hat and glove store. Mr. Sheldon told the reporter that he had visited the school on the day it opened and that "there was not and is not now the slightest Catholic religious exercise in the school¹⁴". He vehemently denied that he had made any previous arrangements with Catholic interests at the time of the election. He said:

People accuse me of seeking the Catholic vote before election. If any one can prove it, I have \$50 to donate to charitable purposes or for the public library. I have never had much confidence in the Catholic element¹⁵.

Mr. Sheldon pointed out that "the Catholic school can close any time when I want it to¹⁶". Indeed, he informed the reporter, Father Castaldi had expressed hope of being able to run his own school again very soon.

The reporter from The Rochester Democrat and Chronicle also visited some of the prominent people of the village to

14 Reporter, "Mr. Sheldon's Statement", news article in The Rochester Democrat and Chronicle, vol. 44, no. 12, January 14, 1876, p. 4, col. 3.

15 Ibid.

16 Ibid.

learn their reaction to the school arrangement.

He found one universal opinion and that was one of condemnation of the act and a locally expressed conviction that the whole affair was a scheme and plot concocted by Mr. Sheldon and the Catholics previous to the election of the former as trustee¹⁷.

The newspaper article drew the following conclusion on the basis of the investigations made by the reporter:

To all practical intents and purposes the school is Catholic. It is on Catholic property, taught by Catholic nuns, Catholic religious exercises are conducted by the priest in the Church adjoining before school and the children then march into the school-rooms. When a priest enters, the pupils rise to their feet, which proceeding would look very peculiar in "an ordinary district school"¹⁸.

In spite of the protests and criticisms, the arrangement made by Mr. Sheldon continued to operate. On May 22, 1876, however, an event took place in Albion that was destined to bring the school arrangement to a speedy end. For on the evening of May 22 at a district school meeting a resolution was passed, establishing a Union Free School District in the village of Albion. The Union Free School District was to be administered by a Board of Education composed of nine members.

¹⁷ Reporter, "Public Sentiment", news article in The Rochester Democrat and Chronicle, vol. 44, no. 12, January 14, 1876, p. 4, col. 4.

¹⁸ Ibid.

This Board of Education replaced the office of school trustee¹⁹.

At this same school meeting of May 22 the nine members of the Board were elected by an almost unanimous vote. Their election officially terminated the office of school trustee. The editor of The Orleans American professed to see the settlement of the Union Free School question as "a just rebuke to the outrages perpetrated last fall, wherein the public funds were turned from their proper channels²⁰".

The establishment of the Union Free School District terminated, not only the office of trustee, but apparently also the "compromise plan" entered into by Mr. Sheldon. At a meeting of the Albion Board of Education, held July 31, 1876, the matter of obtaining new school accommodations for the district was discussed. Mr. Moore reported that "the Catholic school building could be hired at a reasonable rate²¹". No action, however, was taken on this report.

19 The Editor, "The School Meeting", news article in The Orleans American, vol. 44, no. 33, May 25, 1876, p. 3, col. 4.

20 Ibid.

21 Albion School District, Minutes of Union School District No. 1, Albion, New York, manuscript, July 31, 1876, p. 23.

It would seem quite likely, therefore, that in September, 1876, St. Joseph's School was again opened as a parochial school. Thus, the hope expressed by Father Castaldi "of being able to run his own school again very soon" was fulfilled, possibly sooner than he had expected.

APPENDIX 3

The Troy School Case

On May 21, 1847 the Reverend Peter Havermons began the construction of St. Joseph's Church in the city of Troy, New York. A year and a half later, on November 1, 1848 he celebrated the first Mass in the new church. The sermon at the dedication ceremony was preached by Archbishop John Hughes of New York City¹.

A few weeks later, probably in the beginning of the year 1849, the Jesuit Fathers were placed in charge of the parish, the Reverend Peter Verheyden, S.J. being the first Superior. At this time the parish included the entire southern section of the city of Troy².

In 1860 the Reverend Joseph Loyzance, S.J. became pastor of St. Joseph's Parish. He it was who invited seven sisters of St. Joseph from Carondelet, St. Louis, to come to Troy to staff a parish school. The sisters arrived, with Sister Leonie as their Superior. A small home was provided for them at 441 Third Street³.

1 St. Joseph's Church, Troy, Souvenir Journal of St. Joseph's Church, vol. 1, no. 1, January 6, 1902, p. 2.

2 St. Joseph's Church, op. cit., p. 3.

3 Sisters of St. Joseph, History of the Sisters of St. Joseph of Carondelet in the Troy Province, Troy, Argus, 1936, p. 81.

The school was opened in September 1861. Since no schoolhouse was available, two rooms in the parish rectory were fitted up for classrooms. The number of pupils who presented themselves for class was far beyond expectations. Consequently, a small two-story building, that had been serving as a storehouse, was cleared and pressed into service for classroom purposes⁴.

In 1879, a two-story dwelling house on Fourth Street came into the possession of the sisters and was converted into a new school building. The sisters continued to teach in this building until 1883, when a new schoolhouse, erected by the parish at Monroe and Third Streets, was completed and ready for occupancy⁵.

In that same year, 1879, the school building was leased to the city of Troy and the school was incorporated into the public school system⁶. Apparently the Troy Board of Education assumed the financial expenses of the sisters' school. In return for this financial outlay, the Board took over the control and management of the school. The sisters were required to take the examinations given by the Board to all the teachers in the public schools. Devotional articles, crucifixes, statues

4 Sisters of St. Joseph, op. cit., p. 82.

5 Sisters of St. Joseph, op. cit., p. 82.

6 St. Joseph's Church, Souvenir Journal, p. 19.

and sacred pictures, were removed from the schoolrooms. The sisters were obliged to conduct school on holydays of obligation. They were also obliged to accept the textbooks being used in the other public schools. The sisters' school was subject to visitation and inspection by the Superintendent of the city's schools⁷.

The "compromise plan" in Troy lasted apparently for only a short time. The history of the sisters refers to its duration as a "brief period of time⁸". Thomas J. Jenkins, writing in The Catholic World in 1891 stated that "the Jesuits' school in South Troy, New York, was under the supervision of the public school board of Troy for several years⁹". The Souvenir Journal of St. Joseph's Church, Troy would seem to suggest that the plan ceased to operate some time before 1883. For, after describing the arrangement entered into with the city, it states: "This arrangement came to an end, and it became evident that the school accommodations were insufficient for the increasing number of pupils¹⁰". It then goes on to relate that in 1883 the new school building on Monroe Street was ready for occupancy.

⁷ Thomas Jefferson Jenkins, "American Christian State Schools", The Catholic World, vol. 52, February 1891, p. 646.

⁸ Sisters of St. Joseph, op. cit., p. 82.

⁹ Thomas Jefferson Jenkins, op. cit., p. 646.

¹⁰ St. Joseph's Church, Souvenir Journal, p. 19.

In the available sources two reasons are mentioned for the termination of the school arrangement: the sisters objected to the examinations conducted by the Board; the Jesuit Fathers objected to the plan itself¹¹. Hence it was abandoned.

It would seem clear, then, that the "compromise plan" at Troy lasted for no more than four years, possibly for an even shorter period of time.

11 Thomas Jefferson Jenkins, op. cit., p. 646.

APPENDIX 4

ABSTRACT OF

The Religious Garb Issue As Related to the School Question in New York State¹.

The nineteenth century witnessed, among other developments in the field of education, the gradual secularization of the public school system and the development and growth of the Catholic parochial school system. One of the factors involved in these two developments was the "religious garb" issue.

The "religious garb" issue arose out of a number of "compromise-school plans" that came into being in New York State during the latter half of the nineteenth century. These "compromise plans" represented for Catholics the effort to have their children educated in the public school system, while yet preserving some semblance of religious influence in that system. To most non-Catholics who accepted the plan, it represented simply a practical and realistic solution to the financial problems engendered by over-crowded school conditions.

The various "compromise plans" operating in New York State displayed significantly common features. The plans were effected in a given community between the pastor of a Catholic parish and the local board of education. A Catholic schoolhouse,

¹ Ph. D. Thesis presented by William H. Shannon, in 1952, to the Faculty of Arts of the University of Ottawa, p. xix-263.

closed because of lack of funds, was rented by the local board of education for school purposes. The school was conducted as an auxiliary public school, with religious exercises forbidden during the school hours. Sisters of Catholic religious communities, who had formerly taught in the schools, were retained and hired by the board as public school teachers. As employees of the board of education the sisters were required to possess state teachers' certificates, pass the required examinations, and enter into contract with the board. The contracts stipulated the number of weeks they were to teach and the salaries they were to receive from the board. The schools, thus set up as auxiliary public schools, were subject to the same regulations as the other public schools.

The presence of sisters as teachers in the public school, and especially their wearing of the religious garb in the classroom, was looked upon by many as inconsistent with the non-sectarian atmosphere that was becoming more and more characteristic of the American public school.

The first formal protest to the State Department of Public Instruction against the "compromise plan" was made in 1886, when Leander Colt appealed to the Department in Albany, asking that it set aside the agreement made by the Suspension Bridge Board of Education with St. Raphael's Parish. Andrew S. Draper, the Superintendent of Public Instruction at the time, decided on March 24, 1887 that the wearing of a religious garb

by a teacher in the public school was contrary to the educational policy of the State and must, therefore, be forbidden. This was the first religious garb decision in New York State.

In 1894, delegates from all over New York State met at Albany to draft the State's fourth Constitution. After much debate, the Committee on Education offered to the Convention a proposal forbidding the State to use its money, credit or property in aid of any school or institution of learning that was wholly or in part under the direction of a religious denomination or in which denominational tenets were taught. Accepted by the Convention, this proposal was ratified by the voters of the State in November 1894 and became Article IX, section 4 of the new State Constitution.

After 1894 this constitutional enactment was invoked by State Superintendent Charles A. Skinner in prohibiting "compromise plans" in Watervliet, Corning, Poughkeepsie, and Lima. In each of these cases the Superintendent decided that the wearing of the religious garb in the schoolrooms was in violation of the New York State Constitution.

The Reverend Simon FitzSimons, pastor of St. Rose's Church in Lima, determined that these "religious garb" decisions should not go unchallenged. Accordingly, he succeeded in getting the Lima case into court. The case was tried in three courts, including the highest court of the State, the Court of Appeals. The courts upheld the legality and

reasonableness of the "religious garb" decisions rendered by the Superintendents of Public Instruction.

The decision of the Court of Appeals in the Lima case was rendered on April 17, 1906. This decision removed all legal foundation for the existence of the "compromise plan" in New York State. The Constitution of New York State, as interpreted by the highest court of the State, included the "compromise plan" under the prohibition of Article IX, section 4.

In that same year three other school cases, involving the "compromise plan" and the "religious garb" issue were brought to the attention of Andrew S. Draper, the new Commissioner of Education, whose office had succeeded in 1905 to that of the Superintendent of Public Instruction. On the basis of the Lima decision, these three school arrangements, operating in Ogdensburg, Plattsburg and Allegany, were also prohibited.

The "religious garb" decisions, rendered by the State Department of Public Instruction and confirmed by the courts of the State, officially committed New York State to a policy of complete secularization in public education.

Since Catholics could not subscribe to a concept of education that excluded religious influence, the "religious garb" decisions united Catholics in their efforts to establish a strong, vigorous system of Catholic parochial schools.