THE GOVERNMENT TRIUMPH.—Only yesterday morning it was confidently reported in many quarters that the second Militia Bill would follow the first, and that Lord John Russell would amply avenge the manes of his own measure by the sacrifice of Mr. Walpole's. As his Lordship is presumed by many to have lost his position by the mere accident or caprice of an hour, he had only to lay hold of the prize, and it would be once more in his possession. He had been pettish, he had been undecided, he had even displayed an excess of delicacy; but the fit once thrown off, Russell was Russell again. The evening, however, brought the astounding result of a defeat, not by a bare majority, or a "working" majority, but by nearly two to one. Seldom have there appeared in these columns figures more portentous than those which announce—for the second reading of the Ministerial Militia Bill, 315; for the amendment supported by Lord John Russell, 165; majority for Ministers. 150. Infatuated as we thought the course taken by his Lordship, and certain as it appeared to alienate from him the best of his followers, we were not prepared for a division which indicates, not so much an extensive adhesion to the cause of the new Ministry, as a vote of censure on its principal opponent, Lord John Russell cannot but learn from it the very great difference between factiousness in opposition, and the same quality disguised and sanctioned by power. The arts by which Ministers overcome obstacles, and dispose of malcontents, lose their virtue as well as their plausibility in the hands of mere political leaders; and the bolt which, hurled from the Treasury Bench, would have laid all his foes in the dust, is powerless from the hands of the private adventurer or the fallen chief. But whatever the appearance or the result of this division, its highest and most unquestionable import is that the House of Commons, being assured by the principal authorities on all sides that something must be done to improve the defences of the country, will not stultify itself by throwing out, without an effort at improvement, the only measure of national defence before Parliament. The House of Commons is really not so much the dupe or the instrument of faction as to resolve that the country shall be left in a dangerous state merely that one circle of gentlemen may be set up and another pulled down by that patriotic resolution. So far the meaning of last night's division is rather negative than positive. We are not to conclude, and should for our part be sorry to conclude, that the House would accept the Ministerial bill in its raw state. That measure must evidently undergo considerable correction before it can meet the exigencies of the case or correspond to the dignity of the British Legislature. The public and the Parliament are pretty well agreed that so bald or impotent a conclusion is hardly worth the expenditure of a million or two, even in the present hopeful state of the national finances. So we cannot doubt that after resolving on a bill of one sort or another, by a majority of two to one, the House of Commons will now apply itself calmly, dispassionately, and considerately to the improvement of the present measure, neither rejecting it nor sparing it on account of its authors, but taking it on its own merits.—*Times of Tuesday.*

A COURT OF APPEALS, in our Church, has become a vital necessity. That is incontrovertible. But it is equally incontrovertible that no good Court of Appeals can be formed.

The egregrious want of judicial discriminativeness, the utter voidance of the judicial mind, of the judicial heart, manifested in some of our ecclesiastical trials, (not to add the palpable influence of party and even personal motives,) are a sad and flagrant proof that a corrective must be found, or we shall soon forfeit every vestige of character for maintaining law and justice.—The mischief, aye, and the misery, of our bastard verdicts and bastard sentences, are so glaring, that no specification of particulars can be required. Without an appelate tribunal, our discipline, though the victims bow to it as to other wrongs, will become a by-word and a proverb.

But—how can an appellate tribunal be framed?—"Aye, there's the rub." If we have not, in our clerical and episcopal ranks, enough judicial faculty and discernment and habit of thought, enough of the sound *spirit* of judgment, enough legal elevation, legal equanimity and magnanimity, for an inferior court, how can a higher and better court be fabricated of the same identical materials? There, verily, is the rub? Not one of our bishops has been trained to judgship, (not mere pleadership or lawyership) to thinking, as well as endeavouring to determine, according to the law and the evidence, and that alone, with no inclination whatever to other grounds of decision, however probable and cogent and weighty. And how is it possible, of such timber and such stone, forensically unhewn, to create a Court of Appeals, that will command the reverence of either the world or the Church? Clerical minds are devoted to expansive moral principles, not to close, literal statutes and literal testimony. The difficulty is fundamental. We have not the fit materials for such a court,—as indeed, we have not, if we would only face the truth, for any court, for any important judicatory whatever. This defect no legislation can cure. And our Church must even brook her lot.

It is a farce to summon presbyters for a trial, when a tolerably shrewd sagacity, knowing the men and the points at issue, can almost certainly predict the result, days or weeks before the judges have convened. It is even worse, it is a tragedy, to call the bishops together to sit in judgment on a brother bishop, when the keener eyes that look through the robes into the men can, with moral certainty, foretell more than half their votes, and pretty accurately conjecture the remainder of them; the principal uncertainty being as to the bishops who will actually be present. A humiliating tragedy it is to the Church, to behold a bishop, whether erring or innocent that is predestinated. And why thus predestinated? How can there be so reliable a foreknowledge of the event? Simply because there will be some other judgment than the purely judicial judgment from the law and from the evidence, and that other judgment can be too readily antedated.

And this whole glaring radical defect works injury not lenity to the accused,—for it opens the bench to his imprudences and errors of judgment, and doubtful, or perhaps equivocal doings, and constructive faults, and the like, not one of which does the LAW, the canon, intrust to their juridical action. For these mistakes or misdeeds, the canons, by their silence, allow the social penalty to be an adequate visitation; our courts have nothing to do with them. It must be added, that before and during the trial, the presenting bishops mingle freely and fraternally of course with the judge-bishops—and—what!—what!—treason? Oh, no! they vigilantly abstain from every sort of attempt to influence the Court! Most certainly they do! No treason! If the presenters are leading bishops, their natural influence will inevitably imbue the whole proceeding.

And why is it that a judicial oath is not administered to our clergy and bishops when they are to enter upon the judicial function? It would be a help to a candid mind, though it could not remedy judicial ignorance, and inexperience, and inexpertness. The oath should bind them to determine the matter, not by individual or by universal notions of right and wrong, but exclusively by the literal law of the Church, and the clear and certain evidence,—deferring also, absolutely, to every explicit law of Christ, and allowing none of them to be violated, such as, "Go and tell thy brother," &c., two or three witnesses." The judicial oath is every thing proper, and might partially correct the evil inherent in throwing the ermine over the unprepared surface of lawn—very partially however.

Individual bishops, obliged to assume the ermine may get *along* respectably by asking the advice of an eminent legal and personal friend. But a council of bishops, drawn from all parts of the Union, can hardly find such an adviser; or, rather, two or three able advisers would be offered them, each drawing a different way. In that respect, therefore, our present courts of bishops would be virtually helpless. And so would an episcopal court of apeals. The thing is impracticable.

Every movement for an appellate jurisdiction is an inconsistency,—being an involuntary confession that our bishops are incompetent to that as to any administration of pure and mere statute law. Yet such movements or opinions are perpetually increasing. In other words, our Church is gradually tending to a final condemnation of her ecclesiastical judicature. The bud of reprobation is formed. Whereunto the thing will grow is beyond the reach of mortal calculation.

A gleam of hope has at length shot athwart the moral gloom into which France had sunk without a struggle, and apparently without a prospect of relief. There are pages in our own history which may always justify us in looking to the sanctuary of jurisprudence as the last refuge frow political tyranny; and we trust that the experience of our neighbours will furnish, in this respect, a counterpart to our own. At all events it is something that, in the midst of that mute servitude which has been imposed on France, the calm, unimpassioned voice of justice and of law has spoken out; for the declaration by the Civil Tribunal of that country of its competence to decide upon the validity of the Orleans Confiscation decrees is an act of courageous honesty that inspires us with hopes which we had vainly endeavoured to cherish in the face of so many examples of cowardice and treachery in public men. To the Judges of France belongs the honour of having vindicated the supremacy of justice over brute force, and of having reversed the vicious maxim, *inter arma silent leges*, by making the voice of law heard even under the Presidency of Louis Napoleon. What may be the immediate effect of the upright and fearless course which they have adopted we do not attempt to predict; but it is certain that, in its ultimate results, it will be no less conducive to the political welfare of France than it is honourable to her character in the eyes of the world.

The question on which the Civil Tribunal was called upon to adjudicate originated in a demand, on the part of the Orleans family, that the Court should declare that the plaintiffs, as represented by their agents, had been unjustly expelled from the two domains of Neuilly and Monceaux, and were enttiled to be reinstated in the possession of those estates In answer to this demand, the Prefect of the Seine was instructed by the Government to call for a judicial declaration that the decree of January 22, by which the property was sequestered, was a legislative act—that the seizure of the domains was an administrative act—and, consequently, that the Tribunal had no jurisdiction in the matter. It may be well, before we proceed, to advert to the history of the somewhat complicated estate included under the title of "the Orleans property." The original foundation of that property was the appanage created in 1661 by Louis XIV., and made over by him to his brother in lieu of the inheritance which devolved on the latter from their father, Louis XIII. Besides this appanage, Louis Philippe possessed a considerable patrimony, which had accrued to him by inheritance from various sources, not in his character of Prince, but as a citizen of France; and he also held certain properties which he had himself purchased. Among these were Neuilly and Monceaux—the greater part of the former and the whole of the latter, which was a joint possession of the late King and Madame Adelaide, having been acquired before 1830. The original appanage reverted to the State on the accession of Louis Philippe to the throne; and consequently, the "Orleans property" now under discussion is solely a private domain, analagous in all respects to the property of any other individual owner. Of this private domain the Duke of Orleans made a grant to his family, on the 7th of August, 1830, two days before his accession to the throne; and there can be no doubt that such a transfer was perfectly legal, and, under the circumstances, as the event has proved, equitable and prudent.

But the case of the claimants does not rest here. The question whether the King of the French could retain a private domain was specifically raised in the Legislature in the debate of March 2, 1832, on the civil list; and it was forcibly argued that although, under the legitimate *regime*, the property of the Monarch was identified with that of the State, it was neither just nor politic to apply the same principle to a King who had been raised to the throne by the popular will, and who might be deposed with equal facility by the same authority. Accordingly, it was specially decreed that "the King shall preserve his property in the goods belonging to him before his accession to the throne; and that these goods, and those which he shall acquire during his reign, shall compose his private domain." This and other provisions to the same effect clearly establish the personal right of Louis Philippe, irrespectively of his Royal rank, to the domain of which Neuilly and Monceaux form part. Consequently, in addition to the title conferred by the grant of August 7th, 1830, the Orleans family claim the property as heirs to the deceased King and to Madame Adelaide. And they further take their stand on a possession of more than ten years, which in France constitutes a prescriptive title. Moreover, the peculiar circumstances of their position have strengthened the case by the additional obligations of international law; for, on the strength of the rights thus devolving on them, no fewer than seven contracts of marriage have been entered into with foreign Courts—whilst various transactions have been completed upon the faith of those settlements, involving property to the amount of nearly half a million sterling, and affecting the interests of not less than sixty-two families. It would be impossible to imagine a claim more completely secured, or more superabundantly reinforced by every title which can guarantee a proprietary right. Yet this is the case on which a Government which overthrew a Constitution for the sake of "law and order" disputes the right of the courts of law to adjudicate.

The position assumed by Louis Napoleon is utterly untenable. He endeavours to make good an act of confiscation by putting forward a legal claim. But he forgets that, in attacking the validity of the grant of August, 183 , he was thereby exposing himself to a demand for judicial decision on its alleged illegality. If he had ventured to brave the odium of a direct confiscation for avowed political reasons, or for no reasons at all, it would have been far more difficult to have brought the question before the judges; for M. Paillet does not pretend to dispute the equally arbitrary decree enforcing the sale of the estates. But the hypocrisy with which the President endeavoured to throw the veil of law over his lawless and tyrannical decrees has betrayed him into a position where he will find it alike difficult to retreat or to advance. Those persons who were weak enough to be deceived by Louis Napoleon's shallow pretence that, in violating his oath and destroying the liberties of his country, he was "departing from legality only to establish right," will probably at length discover that he is equally hostile to both. What more atrocious violation of the rights of property could have been perpetrated even by that "Socialism" the fear of which was the ready excuse for all the outrages which he has committed? Were the rights of "the family" or the interests of the "order" ever more audaciously menaced than by the very man who, as their champion, claims exemption from all law?

Sympathising as we have done with France in her degradation, we rejoice to witness what may, we hope, be regarded as a sign of her reviving independence. Nor can we leave this subject without expressing our admiration of that fidelity to justice and that abnegation of party which the eloquent leader of the Legitimists has exhibited in his advocacy of the rights of the fallen rivals of that house whose claims he has ever chivalrously maintained. It remains to be seen whether M. Berryer's resistance to Napoleon's act of confiscation will be less successful than his opposition to a similar proposition in the Constituent Assembly, which that body unanimously rejected. If so, Europe will be in a position to judge whether the President's Dictatorship affords a better security for "law and order" than the Parliamentary Constitution which he has overthrown.

Colonial.

BOARD OF SCHOOL TRUSTEES.

TORONTO, May 19, 1852.

The usual monthly meeting of this body took place this evening. Present:—Messrs. Beard, Brewer, Fisher, Gooderham, Hall, Lesslie, Maitland, McMaster, McGlashan, Paterson, Sheppard, and Workman, M. D.

Some communications were read, after which, Mr. Lesslie, the Chairman of the Free School Committee, brought up the report of the committee on various documents regarding separate Roman Catholic Schools, which had been referred to the said committee. The chairman stated verbally that he had introduced the matter of debentures to the consideration of the Common Council; that the Finance Committee had reported in favour of the same; and that he anticipated no difficulty regarding the issue of the said debentures; but that according to the present municipal law, they could not be issued. The following is the report of the committee:

The Committee on Free Schools, to whom was committed the Letters of T. J. O'Neill, Esq., dated the 31st March and 20th April last, relative to the Appropriation of Funds for the support of Roman Catholic Schools, beg to Report:—

"That the Roman Catholic separate Schools, which have hitherto been recognized by the Board, are number 14, male and female schools, in St. Patrick's Market, and No. 8, female school, in Stanley street; and these have been under the direction of two Committees, appointed by the Board, under the compromise made with the Roman Catholic inhabitants in February, 1851. The amount appropriated last year to their support, both Sections having been voluntarily deprived of the Schools for a time, was £196 5s., but the sum appropriated was equal to two Schools, at an average rate of £110 each per annum.

With regard to the claims of separate Schools, established according to law, they are entitled, by the 19th section of the School Act, to share in the School Fund, according to the average attendance of pupils (the mean average attendance in summer and winter being taken), as compared with the whole average attendance at the Public Schools.

The School Fund consists of the Legislative Grant, and a local assessment at least equal to it in amount. If the assessment fall short of the grant, the amount of the grant is proportionately reduced; but if the assessment be greater, the grant is not increased. These equal sums united, form, according to the interpretation of the law by the Chief Superintendent of Schools, the common School Fund named in the Act, and is to be applied solely to the payment of the salaries of qualified Teachers. If any locality choose to levy a School Tax exceeding the sum required to secure the share of the Government Grant, that excess is at the disposal of the Board of Trustees, for general School purposes, and cannot, with any regard for propriety or justice, be applied to the support of separate Schools, whether Protestant or Roman Catholic.

Your Committee, desirous to meet the claim of the Roman Catholic inhabitants, so far as duty and law require, endeavoured to form a correct judgment as to the relative claims of those who demand separate Schools, whether Protestant or Roman Catholic, and the claims of our entire population, for whose welfare the system of Public Instruction has been established. Whilst your Committee admit that the law makes provision for separate schools, to meet an exigency,—namely, the anticipated intrusion of the religious dogmas of a majority upon a minority, yet no ground for such complaint exists, or has been urged against the Public Schools of this city—they having been established upon a broad catholic basis, rendering the demand for separate schools utterly indefensible upon any sound principle of political justice or morality.

It is one of the recognized principles of civilized society that all shall contribute to establish and sustain Institutions deemed essential by the majority—provided that the demand does not infringe upon the rights of conscience. Thus, the charges attendant upon every branch of public legislation, jurisprudence, or any other branch of social economy, security or defence, are, or should be, borne equally by all the inhabitants of the country, because all are partakers of the benefits resulting from the expenditure. No good citizen complains of being taxed to make the laws of his country, to guard it against foreign enemies, to secure its internal peace, to repress and punish crime, or to extend the benefits of public economy throughout society. Religious distinctions, in such cases, are unknown—the sectarian is wholly merged in the citizen. We never hear of separate Houses of Legislation being demanded by Protestants or Roman Catholics—separate Courts of Justice—separate Houses of Correction—or any other of the numerous arrangements which the peace, safety, and well-being of society demand. There is a universal admission of the rectitude and necessity of united co-operation in public affairs, and of submission to the burthen imposed to uphold those civil institutions which the majority may deem essential to the social existence or welfare of the whole.

Among all the instrumentalities employed to secure the moral elevation and to promote the best interests of society, none appear to be more important than a wise and liberal system of public instruction, based upon moral law, but free from sectarianism. To promote intelligence and virtue all admit is better than to punish for ignorance and crime; to pay by a public tax for the moral and intellectual improvement of youth (committing their instruction in dogmatic theology entirely to parents, guardians, and religious teachers), experience has proved to be the best public economy. The system of Free Schools, recently established in this city, rests upon the recognition of an entire equality of rights and privileges among all classes of citizens. The religious convictions of all denominations have been scrupulously respected, and their rights sedulously guarded by the law under which the schools have been established. No Protestant teacher can thrust his religious opinions upon Roman Catholic youth, nor can a Roman Catholic teacher upon Protestant youth. In this respect, our educational system differs essentially from that of Lower Canada: there, the schools of the majority are essentially sectarian; here, on the contrary, they are emphatically unsectarian—they are secular but moral. When, however, twelve resident householders of different religious faith to the teacher appointed to any school section, or twelve coloured persons, apply to a Board of Trustees for a separate school, it must be granted, although there is no alleged ground for complaint. Still, in such cases the law evidently guards against such schools being recognized as upon an equality with the public schools generally. It concedes a certain measure of public aid, but regards their existence as an undesirable exception to a great principle, that the State should afford an opportunity to every youth in the land to enjoy the benefit of a good moral but secular education.

Your Committee would further remark that Roman Catholics are required as well as Protestants, according to the assessed value of their property, to contribute their share to the entire local tax levied for school purposes,—not merely that which is required to secure the share of the Legislative grant, but any excess which the Board of Trustees may determine, your Committee acknowledge that they should share in the advantages of the whole fund equally with others—not however as Roman Catholics or Protestants—*not as the professors of any system of religious faith*—BUT AS CITIZENS. If either party, members of the body politic, choose to isolate themselves from the rest of their fellow citizens on the ground of holding to certain religious opinions; if they refuse to co-operate in arrangements for the general good which do not at all infringe upon their rights as religious communities; and, if, thus they voluntarily forfeit the advantages they are invited to enjoy equally with others, the blame rests not with the Board but with themselves. Neither the general nor the local Government of the State have any warrant to make laws or to collect taxes to build any system of religious faith whatever. Such functions belong exclusively to the lawful authorities of religious communities. If Roman Catholics or Protestants are to share in the moral and political advantages which arise from the promotion of intelligence and virtue in society by means of unsectarian public schools, they are required, in justice, to pay for such advantages in common with their fellow citizens generally. If either Protestants or Roman Catholics desire to super-add other schools to indoctrinate their youth with their own peculiar religious opinions, common justice and propriety demand that it should be done by their own agencies and at their own cost. The principle is false which makes any secular government become a tax-gatherer for churches; and it bears unjustly and grievously upon those who conscientiously repudiate the interference of Government in providing for the teaching of sectarian dogmas, or for the support of religious communities.

Your committee are fully convinced that justice to society—to every religious persuasion—can never be fully enjoyed but upon the invulnerable ground so highly eulogised by the present Roman Catholic Archbishop of New York—namely, that *Civil Government has no moral right to legislate upon the subject of religion.* That eminent ecclesiastic referring to the rights of conscience in other countries being often secured by affirmative laws, thus refers to the superior security afforded in the United States by a "Constitutional Negation of all power to legislate on so sacred a subject." His words are, "In other countries they are secured by some positive statute—here they are safer under a constitutional provision forbidding any statute to be ever enacted. In other countries toleration was granted by the civil authority—here the great men who framed the constitution saw, with keen and delicate perception, that this right to tolerate implied the equal right to refuse toleration; and on behalf of the United States, as a civil government, they denied all right to legislate in the premises, one way or the other; "Congress shall make no law on the subject of religion, or prohibiting the free exercise thereof."

The vital principle involved in this interesting quotation from the lecture of the Archbishop is the only rightful and efficient guarantee for the protection of the rights of conscience. Let civil rulers cease from legislating upon the subject of religion and all will be safe. Religion wants no such aid; it will flourish the better without it; and it will live when governments will die.

The School Act, in the opinion of your committee, violates the principle, inasmuch as it makes provision for the establishment of sectarian schools where no reasonable cause exists for their establishment, that is, in cases where no rights are violated, or offence is committed against the religious opinions or prejudices of the applicants. The end would have been better attained by a legislative negation of all power to introduce sectarian religious teaching into any of our Public Schools.

Accompanying the communication of Mr. O'Neil, submitted to your Committee, dated the 20th April, is a statement showing that the whole number of Roman Catholic Schools in the city amounts to seven, embracing eleven teachers, one assistant, and 706 pupils. These include the schools taught by "the Christian Brothers," and "the Loretto Female School." The cost of these, as computed by the Roman Catholic Trustees, reckoning the same rate of expenditure as is required for the support of other schools, embracing Teachers' salaries, rent, and fuel, amounts to £1,150. This is presented to the Board, no doubt, as a mere ground for calculation, but affords no proper data for the computation of the amount which the parties may legally claim for the support of the separate schools recognized by the Board.