## UNCONSTITUTIONAL.

In our last issue, under the heading "State Education," we sought to show—and we feel that we have clearly demonstrated—that what is known as "Education by the State" is contrary to the law of religion and the law of nature. On broad principles we desire to prove that it is likewise contrary to the spirit of our constitution. As in our first article so in the present one, we advance our theories and present our arguments entirely upon our own responsibility; consequently, if we err, either in theory or in expression, we alone are answerable for such error. There are two grand and fundamental principles that underlie all just legislation; before applying them as tests to any special act we desire to enunciate them as clearly as we possibly can. Storey, the eminent American jurist and author of a number of standard works, states, in his preface to a treatise on "Criminal Law," that all laws that are just come from a Divine source. That is to say, that every law that is accepted in a constitutionally governed country and that is recognized as a beneficial law can be traced to a source—no matter how remote—in the realms of God's laws. A law that conflicts with the decalogue, with the Written or Spoken laws given by God to man, is an unjust law, and therefore the offspring of a tyranny. So self-evident is this broad principle, so elementary has it ever been, that no argument is necessary to establish its truth. We merely place it here as the basis of a broad foundation upon which we shall erect the superstructure of future argument.

There is another comprehensive principle which dates from remote ages and is perceptible in every system of jurisprudence that has commanded the respect of the world. It might be thus briefly expressed: a law that places the subject between duty and self interest is an immoral or unjust law. A few examples will serve to illustrate this principle. An enactment that would oblige a man to forfeit his property unless he abandoned his religion, would be an immoral enactment, and no legislative power could possibly justify an obedience to such a law. A law that would oblige a man to pay a certain fine unless he got married, or in case he did marry, would be an immoral law—because it would be an infringement upon the liberty of the subject and probably the source of countless miseries and even crimes. A law that would compel a man to undergo some material loss unless he were willing to do that which his conscience, or his religion, taught him was a sin, would again be an immoral law, and contrary to the spirit of the constitution. Examples might be multiplied by the hundred; but these will suffice to convey our meaning. Therefore any law—or enactment of a legislative body—that presents the alternative of obeying conscience or of suffering material loss, is, what in the language of jurisprudence is known as, an immoral law; and all immoral laws are contrary to the spirit of the constitution under which we live.

This is not a principle born of yesterday. In that grand era of Roman jurisprudence when Ulpien and Paul were authorities, it prevailed; its spirit animates the great Novels of Justinian and pervades the Theodosian code. It can be traced in all the works that have served as a basis to the laws that governed modern Europe. It is recognized by Pothier, Dumoulin, Aubry and Rau; it pervades the whole system of French jurisprudence, and is expressed by the commentators upon that embodiment of the civil laws in the Code Napoleon. It was taught from the chairs of Paris, Lyons and Angers. As far, then, as our Province is concerned, and in as much as the spirit of the old Roman and the more modern French civil laws lives on in our code, this principle is acknowledged. The law which places the subject between the horns of a dilemma—the one his conscience or Faith, the other his material gain, or loss—is an immoral, unjust and unjustifiable law.

But we go still further; this same principle underlies the whole system of British jurisprudence. Coke emphasizes it in one of his decisions. Blackstone distinctly says that any enactment which brings the law of the State into conflict with the law of God is contrary to the spirit of the constitution, and is dangerous to the well-being of the country. We can cite passage after passage from the most eminent British jurists to show that this broad principle has been ever regarded as a corner-stone in the structure of legislation. Moreover, it is so natural, so rational, so obvious, that one feels almost a surprise that it should ever have been deemed necessary to assert it. In a word, it is axiomatic.

These two elementary principles being acknowledged, we proceed to the logical statement of our *Sorites*. Such was the system of argument adopted by Leibnitz when the matter at issue demanded the enunciation of principles as the first link to a chain, the last link of which should be rivetted to an immutable and irrefutable conclusion. We repeat: 1st. Each law that is just must be an emanation of Divine law—or in accord with the law of God. 2nd. No law is just and moral or in accord with the spirit of the constitution that brings the conscience in conflict with the material interests of the subject.

1. It is God who implanted in the human breast that monitor called conscience, which is regulated according to the religious faith and training of the individual, and which, in turn, regulates the individual's thoughts, words and deeds.

2. Any human law that interferes with the free action of that conscience is a violation of the law of God.

3. As we showed in our first article, it is contrary to the Catholic's idea of religious and natural laws that the parent should be deprived of the full control over the education of the child.

4. The Catholic's conscience dictates to him that his child should be educated in a Catholic atmosphere—in schools where not only his faith will be fostered, but his ideas and sentiments moulded according to the principles of that faith.

5. The Catholic's conscience—as well as his religion—forbids him to have his child taught in schools where the germs of that faith are killed, where the text-books, the teachings and the methods all tend to a destruction of Catholicity in the heart of the child.

6. The Catholic knows, and is taught, that it is wrong, sinful and a violation of the law of God and of the Church to disobey the dictation of that conscience.

7. The Legislature passes an enactment whereby the Catholic is obliged to send his child to schools wherein his faith is not only untaught but even effaced, or else to pay a double tax—to support the forbidden school and also one that his conscience sanctions.

8. That law cannot be traced to a Divine source, because it is a violation of the law of God that gave the monitor of conscience to man; therefore, it cannot be a just law, since it conflicts with a supremely just and wise one.

9. That law is not a moral law—according to the principle of jurisprudence universally acknowledged—because it places the subject between conscience, on the one hand, and material interest on the other.

10. If the Catholic does not send his child to the school prescribed by that enactment, he has the alternative of leaving his child in ignorance or of paying for the support of another school.

11. If the Catholic does send his child to the school prescribed by the State, he does so in order to escape the burden of a double tax, but in direct violation of the law of his Church and against the dictates of his concience.

12. In the first case his child runs the risk of growing up in legalized ignorance; in the second case the father sins in the eyes of God—because he violates his conscience.

13. The law which places the subject in that dilemma is, according to Roman, French and British jurisprudence, an immoral and unjust law.

14. An immoral and notoriously unjust law is contrary to the spirit of the British constitution, under which we live in Canada, and which obtains in our Federal and Provincial systems of legislation.

15. The school laws enacted by the Provincial Legislature of Manitoba come under the above heads, and such legislation is immoral, unjust, tyrannical, and contrary to the spirit of British jurisprudence.

Therefore, that much criticised school law is a violation of the constitution and is in every sense unconstitutional.

What remedy have we against a law that is notoriously unconstitutional? The answer to this question will be the subject of a future article.

## "A QUESTION OF JUSTICE."

Thus does La Minerve entitle an editorial in its issue of last Friday. We were somewhat surprised to find our contemporary coming along, after two or three weeks of silence upon the subject, to offer a reply to THE TRUE WITNESS on the question of the Catholic School Board appointments. If whosoever penned that editorial has taken three weeks to load the bomb, it is a pity he did not wait a month or so longer and his reply might have some effect. It is evident that it was only last week our friend came upon a copy of THE TRUE WITNESS, for surely such an able reasoner would not have waited until the whole question had been threshed out before coming into the field. It is also apparent that he has read only one of our articles on this subject. We would advise him to secure copies of THE TRUE WITNESS containing all our statements; had he done so he would not be playing Rip Van Winkle in the domain of journalism. Now, by stirring up the issues—especially in such a lame manner—La Minerve is doing its friends of the government a very poor service. It may not think so; but we can assure it that the less it has to say on this question the better will it be able to attain its ends.

There is no necessity of going over the arguments which we set forth in three different issues of our paper; but we desire to repeat (for the benefit of the writer who has not read our paper) that this was not, nor is it a question of individual interests; it is not a question of Mr. Hart, Dr. Brennan, Mr. Monk, or anybody else. If it has been found advisable to pass such a law as that now in existence, at least we want that the spirit of that law be carried out. La Minerve lashes itself into a special rage in order to show that "Dr. Brennan has all the qualifications necessary to represent his fellow-countrymen." We don't deny that; his fellow-countrymen being French Canadians, he certainly has the language, training, sympathies and education calculated to constitute him a very good representative of their interests on the School Board. This, we suppose, La Minerve will deny. We are able to give the most crushing proof—and it comes from Dr. Brennan's own lips and under circumstances that cannot fail to make a person squarely declare their nationality—that Dr. Brennan does not claim (for Church purposes at least) to be an Irishman; he professes to be a French Canadian. We have very good reasons for not stating, at present, the circumstances to which we refer. But we warn La Minerve that the less it has to do with the stirring-up process, the more satisfied will it and its friends be in the end.

Here is the great and wonderful argument. "Rev. Father Quinlivan and Ald. Farrell are on the Board. So out of nine the Irish have two; even supposing Dr. Brennan not to be considered as one of theirs." What does the law establish? A School Board consisting of nine members; three representing the Church, three the State, and three the city. Therefore, each of these elements—the Religious, Political and Municipal elements—is represented by three members. One is the third of three; it is the least that could possibly be allowed to any section of the community. The Church recognizes the spirit of the law and the representation of minorities; consequently, the Church appoints two French-Canadian clergymen and one Irish priest. The Municipal authorities likewise recognize the same spirit and appoint one Irishman and two French Canadians. The Government alone fails to recognize the spirit of its own enactment and it hides itself behind the name of a nominee. It is not Mr. Hart, individually, that we are defending: he requires no defense for his record is there. It were the same no matter who might have happened to have been on the Board at the time. Either the Government had to ignore entirely the Irish Catholic element in the appointment of its three nominees, or else to grant one out of three. As we said it could not give less than one, unless it tried to give half an Irishman; and that would be no easy task. La Minerve tries to narrow the argument down from a broad one on principle to a petty question of individuality. We are aware that such is the general method of political warfare between professed politicians, but we are not taking this subject from a political or partisan standpoint; we consider it from the higher level as described in our second editorial upon the question.

Suppose the case to be transferred from Montreal to some Ontario city; place the shoe on the other foot; let us imagine a DeCoursey and a Molyneux—Irishmen for seven generations and more—chosen to represent the French-Canadian minority. How would La Minerve care to be told that they were Frenchmen, that they spoke French, that their names were French? Would not our clever confrere ask: "but what of their education, their sympathies, the system under which they were brought up, the educational, social and domestic atmospheres they have breathed?"—or "In how far have they ever been considered by French-Canadians, as in sympathy with their movements?"—or "By what links have they ever identified themselves with the people whose interests they are supposed to represent?"

We leave La Minerve with these questions to dream over; and also with the advice that is written under the sign of the Golden Dog, over the old Post-office in Quebec. It don't do to come "three weeks after the fair," to startle people with ghost stories.