138, and *Newark Patent Leather Co.* v. *Wolff*, 14 L.C.J. 18, followed. (See *Batten* v. *Close*, 1 Rev. Crit. 247).

Robidoux for plaintiff.

Adam & Duhamel for defendant.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

December 13, 1879.

Present—Lord SELBORNE, Sir JAMES W. COLVILE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, and Sir R. P. COLLIER.

VALIN v. LANGLOIS.

Dominion Controverted Elections Act of 1874—*Application for leave to appeal from judgment of Supreme Court of Canada.*

The following is the judgment of the Privy Council referred to at p. 9 of this volume:—

Their Lordships have carefully considered the able argument which they have heard from Mr. Benjamin, and they feel glad that so full an argument has been offered to them, because there can be no doubt that the matter is one of great importance. The petition is to obtain leave to appeal from two concurrent judgments of the Court of first instance and of the Court of Appeal, affirming the competency and validity of an Act of the Dominion Legislature of Canada. Nothing can be of more importance certainly than a question of that nature, and the subject matter also, being the mode of determining election petitions in cases of controverted elections to seats in the Parliament of Canada, is beyond all doubt of the greatest general importance. It, therefore, would have been very unsatisfactory to their Lordships to be obliged to dispose of such an application without at least having the grounds of it very fully presented to them. That has been done, and I think I may venture to say for their Lordships generally that they very much doubt whether, if there had been an appeal and counsel present on both sides, the grounds on which an appeal would have been supported, or might have been supported, could have been better presented to their Lordships than they have been on the present occasion by Mr. Benjamin.

In that state of the case their Lordships must remember on what principles an application of this sort should be granted or refused. It has been rendered necessary by the legislation which has taken place in the colony, to make a special application to the Crown in such a case for leave to appeal, and their Lordships have decided on a former occasion that a special application of that kind should not be lightly or very easily granted; that it is necessary to show both that the matter is one of importance, and also that there is really a substantial question to be determined. It has been already said that their Lordships have no doubt about the importance of this question, but the consideration of its importance and the nature of the question tell both ways. On the one hand, those considerations would undoubtedly make it right to permit an appeal if it were shown to their Lordships *prima facie*, at all events, that there was a serious and a substantial question requiring to be determined. On the other hand, the same considerations make it unfit and inexpedient to throw doubt upon a great question of constitutional law, and upon a decision of the Court of Appeal there, unless their Lordships are satisfied that there is *prima facie* a serious and substantial question requiring to be determined. Their Lordships are not satisfied in this case that there is any such question, inasmuch as they entertain no doubt that the decisions of the lower Courts were correct. It is not to be presumed that the Legislature of the Dominion has exceeded its powers, unless upon grounds really of a serious character. In the present case their Lordships find that the subject matter of this controversy —that is, the determination of the way in which questions of this nature are to be decided as to the validity of the return of members to the Canadian Parliament—is beyond all doubt placed within the legislative power of the Dominion Parliament by the 41st section of the Act of 1867, to which reference has been made. Upon that point no controversy is raised. The controversy is solely whether the power which that Parliament possesses of making provision for the mode of determining such questions has been competently or incompetently exercised. The only ground on which it is alleged to have been incompetently exercised is that by the 91st and 92nd clauses of the Act of 1867, which distribute legislative powers between the Provincial and the Domin-