

The Legal News.

VOL. X. DECEMBER 17, 1887. No. 51.

Mr. Justice Tait, in the Shefford election case which will be found in the present issue, has stated very clearly the grounds upon which he rests his decision that the session ought to be counted in the six months under the election law. Mr. Justice Bourgeois, at Three Rivers, has decided that the session cannot be counted. In this view it is understood that Justices Taschereau and Davidson concur. On the other hand Mr. Justice Caron has given a judgment in the same sense as that rendered by Mr. Justice Tait.

An interesting question of club law was presented in *Gebhard v. The New York Club* (N. Y. Daily Reg., Nov. 15, 1887). The Supreme Court of New York (Barrett, J.) dissolved a temporary injunction granted to the plaintiff enjoining the club from taking proceedings for his expulsion from membership. The Court observed:—"It surely needs no extended discussion to point out that the issue raised by the plaintiff's earnest denial of the charges is an appropriate one to be tried by the club itself under its constitution and by-laws. These are questions of honor between gentlemen with which the courts have primarily nothing to do. When the plaintiff became a member of this club, he agreed to its constitution, which expressly provides the code regulating such offences, the tribunal for their trial and the procedure. The board of directors is, in fact, expressly authorized to expel a member for conduct which it shall consider dangerous to the welfare, interests or character of the club. Now, surely the board may lawfully say that it considers the conduct of the plaintiff—should the charges be proved—as coming within this provision. It certainly would be dangerous to the character of any association of gentlemen to have among them a member who has secured money, however honestly earned, by dishonorable means, and who retains it, even legally, by discrediting a fellow member's word, and

repudiating his own. The club, therefore, has ample jurisdiction to try the plaintiff upon these charges, while this court is entirely without jurisdiction in the specific premises. A court of equity will undoubtedly see to it that the accused member has a fair hearing, and that the club proceeds in accordance with the principles of natural justice. Thus the member is entitled to due notice of the hearing, to a statement of the charges, to hear what his accusers have to say, and to an opportunity of explanation. Unless these and still other rights, not necessary to be here specified in detail, are accorded, a court of equity will treat the proceedings and judgment as null and void. But before the club can be charged with having denied these rights, it should at least be permitted to grant them. The question of a fair hearing can only be solved when all the proceedings thereon are before us. Upon the hearing, the plaintiff can object to any particular member of the board, and if good and sufficient reasons for his challenge are furnished, the member may retire. If he remains, the reasons can subsequently be weighed when the court is asked to reinstate upon the claim that the ordinary principles of natural justice have been violated. But such reasons must be substantial. The jurors provided for in the organic law of the club are not to be lightly set aside. They are disqualified only when their sitting in judgment is, under clear and convincing facts, manifestly repugnant to those principles of justice which should govern in every inquiry however formal. So as to the denial of counsel. The president had no more authority in this matter than any other member of the board. The plaintiff, if he desired to raise this point effectively, should have appeared with his counsel before the board, at the time and place appointed for the hearing, and should then and there have claimed his privilege. He may still do so. If it is denied, the question will then be properly up for decision. I may say, however, that my impression favors the plaintiff's contention in this regard, and I should deeply regret to learn that the assistance of counsel had been denied to any man struggling against an accusation involving