

The Legal News.

VOL. I. NOVEMBER 2, 1878. No. 44.

THE ORANGE PROSECUTION.

We have noticed from time to time, under the head of "Current Events," the leading incidents of the prosecution directed against certain reputed members of the Orange Association in Montreal. The last event to which reference was made was the charge of Mr. Justice Ramsay to the Grand Jury (*ante*, p. 477). The substance of that charge, his Honor has since stated from the Bench, has received the concurrence of his colleagues of the Court of Queen's Bench, and must be taken as an authoritative declaration of the law. Since the date of that address, the trial of the alleged Orangemen has taken place, and resulted in an acquittal. The defendants were tried on two indictments. The first, under the common law, was for unlawful assembly. That is to say, even supposing that the Orange Association is a legal organization, it was charged that the defendants by assembling to walk in procession, were guilty of a breach of the peace, or of an act tending to such breach.* On this indictment the prosecution put in some evidence, but at the close of the case, the presiding Judge (Ramsay, J.) directed the Jury to acquit. The other indictment was under the Statute, chap. 10, C. S. L. C., for being members of an unlawful association.† This prosecution also failed, for the reason that no direct or satisfactory proof

* The indictment, against the defendants jointly, charged that they "did then and there unlawfully assemble and gather themselves together for the purpose of walking in procession through certain public streets in the said City of Montreal with badges, emblems and regalia calculated to give offence to and excite the hatred of a large number of liege subjects of our Lady the Queen, and cause horror and alarm in defiance of a proclamation of the Mayor, &c., * * * and then and there well knowing that such assembling of themselves and others would provoke a breach of the peace," &c.

† The indictment against each defendant separately charged him with being a "member of the Society known as the Loyal Orange Association, the members whereof bind themselves and assent to an engagement of secrecy of the following import, &c., such engagement of secrecy, not being required and authorized by law," &c.

could be made that the defendants were members of the Orange Association. The only witnesses who could testify to the fact, declined to answer, on the ground that they would incriminate themselves, as their knowledge of the fact involved the admission that they were themselves Orangemen. When the defendants were discharged, the presiding Judge is represented to have said that "they now knew whether their society was within the law, and if they continued to remain in a society which was contrary to law, they put themselves in great peril, for it might happen that a case would arise where there would be a witness to complete the evidence." His Honor, therefore, holds clearly that the Orange Order comes within the Statute respecting seditious and unlawful associations, and for our part, we have never been able to see any good reason to question the soundness of this opinion.

In connection with this case, we have received a copy of the opinion given by Messrs. Wurtelle and Curran, in which a view differing somewhat from that taken by Messrs. Bethune, Carter, Ritchie and Barnard, (*ante*, p. 371) is expressed. The former gentlemen hold that the Orange Association is prohibited by the Statute, chap. 10, C. S. L. C., and its members "cannot possess any right to hold meetings, nor claim as such the right to walk in procession and make public displays" in the Province of Quebec; but since the repeal in 1851 of the Act to restrain party processions in certain cases, 7 Vict. c. 6, no statute exists which would authorize the civil or other powers to disperse a procession of Orangemen passing through the public highways in a peaceable manner.‡ The opinion appears at length in another part of this issue.

ELECTION LAW.

In connection with the election of a member to the Commons for the County of Jacques Cartier, several points of interest in the Dominion electoral law have been presented for decision. The candidates were Messrs. Laflamme and Girouard, and the returning officer having declared that the former had received a majority of the votes, a recount of the ballots by a judge was demanded. This took place before Mr. Justice Mackay. His Honor held that his duty under the Act consisted in seeing whether the