

COURT OF REVIEW.

June 22d, 1865.

Present :--- BADGLEY, BERTHELOT AND
MONK, J.
Atty-Gen., *pro Regina*, and The Grand Trunk
R. R. Co.

Held—That the Court has a discretionary power to give precedence to any particular case, notwithstanding 27-28 Vic., Cap. 39, Sec. 29 says : “ the case shall be heard in its order on the first day in term on which it can heard.”

H. Stuart, Q.C., for Atty-General.
T. W. Ritchie for Grand Trunk.

[The same decision was given on the same day in Cairns v. Hall.]

THE COLENZO APPEAL CASE.

The following is a letter of the Metropolitan's Counsellor as to the effect of the Judgment of the Privy Council in the Colenso Case on the Metropolitan's powers :—

MONTREAL, 6th June, 1865.

My LORD,—My attention having been drawn to a letter, purporting to emanate from “ A Canadian Churchman,” which is published in the last number of the “ Echo and Protestant Episcopal Recorder,” copied from the London *Record*, I take the liberty to offer the following remarks in answer thereto :—

As a matter of fact, it is not true, that the late judgment of the Privy Council in the case of the Bishops of Cape-town and Natal, either deprived you of the title and office of Metropolitan, or declared your appointment as Bishop of Montreal illegal and invalid, nor is there anything in the remarks of the Judicial Committee who pronounced that judgment to justify such a statement.

The opinion expressed by their Lordships on the occasion in question was, that although Her Majesty, “ as legal head of the Church, has a right to command the consecration of a Bishop, yet that the Crown has no power to assign him any diocese,” and that “ no Metropolitan or Bishop, in any Colony having legislative institutions, can, by virtue of the Crown's Letters Patent alone, exercise any coercive jurisdiction, unless such action on the part of the Crown be confirmed by a Colonial Statute.”

With this statement of the law, as enunciated by the Judicial Committee of the Privy Council, on the occasion under review, it will not be inconvenient to indicate the precise facts connected with your Lordship's

appointment as Bishop of Montreal, and the action of our Provincial Legislature in connection therewith.

On the 14th of July, 1850, (being in the 14th year of Her Majesty's Reign,) by Royal Letters Patent, under the Great Seal of the United Kingdom, the then Diocese of Quebec was declared to be divided into two Dioceses, whereof the Diocese of Montreal (according to certain limits therein defined) was declared to be one, and your Lordship was named and appointed to be Bishop of such Diocese, and the Lord Archbishop of Canterbury was commanded to ordain and consecrate you accordingly.

The Ordination and Consecration having been duly solemnized, your Lordship was duly inducted and instituted as Bishop of the Diocese of Montreal in the month of September, 1850.

In the following year the Provincial Legislature, by the Act 14th and 15th Vic., ch. 171, in which the Letters Patent of the 14th of July, 1850, are expressly referred to, enacted that there should be a separate Church Society for the Diocese of Montreal, as constituted by these Letters Patent, and that such society should be composed of “ the Lord Bishop of the Diocese of Montreal,” (namely your Lordship) and the several other persons indicated in the act, and that the said Bishop of Montreal and his successors should be “ a Corporation sole ” and “ be deemed to have been so from the time when the Letters Patent aforesaid took effect.” And in the Act, ch. 176 of the same period, the Letters Patent, and the division of Dioceses thereby created, are again expressly alluded to, and the *status* of the then Bishop of Montreal fully recognized, and in other subsequent acts of our Legislature the legal existence of the Diocese of Montreal and of the Bishop of Montreal is clearly admitted.

Whatever doubt, then, may exist in the mind of any captious person as to the strictly legal right of the Crown in the first instance to erect the Diocese of Montreal, and to appoint your Lordship to be its Bishop, there can be no room for doubt as to the action of the Crown in this respect having been confirmed by the Canadian Legislature in the most ample form that could be desired.

In the judgment under consideration it is also conceded that “ pastoral or spiritual authority,” is “ incidental to the office of Bishop,” and that the Crown may also legally appoint a metropolitan, with right of pre-eminence and precedence, although anything like power of coercive jurisdiction is denied to him in a colony such as this.—Being thus appointed, your Lordship, in ordaining and consecrating the Bishops o