

treal, (Mgr. Lartigue), decided on the 19th June, 1838, by the Court of King's Bench, Montreal, No. 861, composed of Chief Justice Reid and Messrs. Justices Pyke, Rolland and Gale. The judgment, which was given unanimously, is to the effect that the Court, "se déclare incompétente à prendre connaissance sur la présente demande de la sentence rendue par le défendeur en sa qualité d'Evêque diocésain, qui suspend le demandeur de ses fonctions sacerdotales ou curiales et de la procédure qui a eu lieu devant le tribunal de l'Evêque à cet égard."

On the same day, the same Court composed of the same Judges pronounced a similar judgment in an other case of Messire *Naud v. Messire Lafrance*.

On the 17th March, 1838, Sir James Stuart, then a practising advocate and afterwards the learned Chief Justice of the Court of Appeals on being consulted by Mr. Naud, said : " Upon the point whether the right of a *Curé* or Rector to be maintained in, or recover possession of his *Cure* or Rectory, can be made the subject of a civil action in His Majesty's Courts of Justice in this Province, it is only necessary that the most clear and express provisions of the law of France, as it obtains in this Province, vests the temporal courts with the exclusive cognizance of questions relating to the disputed possession (*le possessoire*) of *Cures* or Rectories." *

The expressions *as it obtains in this Province*, and *le possessoire of cures* indicate clearly that in the opinion of the learned jurist the whole body of the French ecclesiastical law had not been introduced into the colony. He does not say in fact that our civil courts have ecclesiastical jurisdiction, but that they have cognizance of the *possessoire* of the *cures*, an action which has always been regarded as of a civil nature.

Reference is also made to the case of *Harnois v. Messire Rouisse*, decided by Mr. Justice Rolland, 1844, in the following terms : " Considérant que le défendeur n'a pu refuser de donner le baptême à l'enfant nouveau-né du demandeur son paroissien, sans manquer à son devoir comme curé, suspendant à faire droit sur la demande en dommages et intérêts, et voulant donner au défendeur l'occasion de réparer en autant que cela se peut, la faute par lui commise, ordonne que le demandeur présente au plutôt et en temps convenable, aux fonts baptismaux, en l'Eglise Paroissiale, son dit

* Défense de Messire Naud, p. 237.