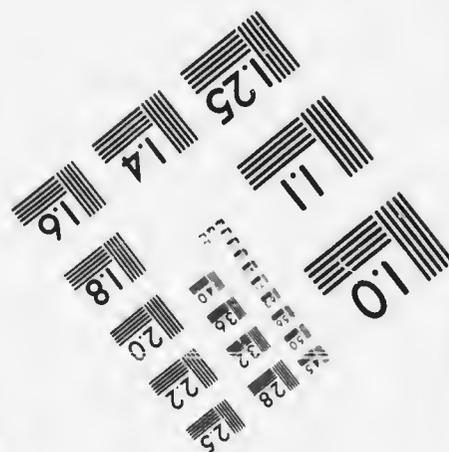
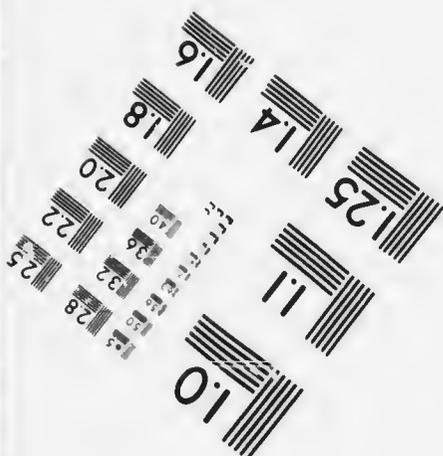
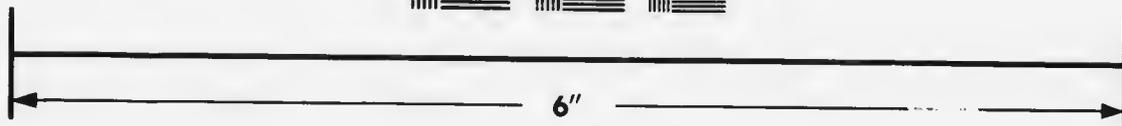
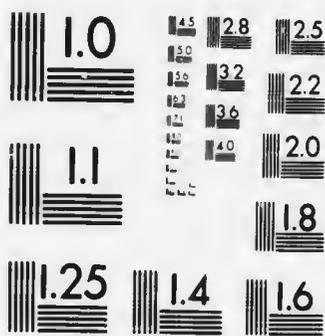


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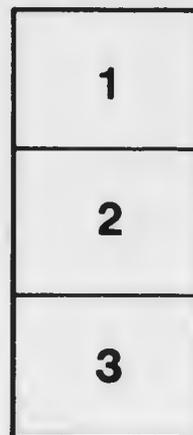
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IMPORTANT TRIAL.

SUPREME COURT—HALIFAX.

CARTEN vs. WALSH, et. al.—For Trespass.

MONDAY, DECEMBER 31, 1849.

[RE-PUBLISHED FROM THE "SUN."]

(The demand for the papers containing the Report of this important Trial, having largely exceeded the supply, the Publisher is induced to give it to the public in this form. He proposed to give the evidence more at length, but time would not permit, and the Report—the accuracy of which has not been impugned—stands as originally published.)

Mr. Ritchie opened for the Plaintiff. He traced the action from its commencement up to the stage in which it then was—and referred to the Declaration, defendant's Pleas, and the Replication in answer thereto, for the information of his Lordship. He then continued—

Gentlemen of the Jury.—The action which you have to try is a simple one of trespass. In opening the pleadings I have put his Lordship and yourselves in possession of the legal position of this case. It is now my duty to detail to you more clearly the facts in connection with it, in order that you may be enabled to form a just estimate of its merits. The action on the part of the plaintiff is a very simple one,—he claims from you, gentlemen, damages for injuries sustained, which injuries were inflicted upon him by the defendants in person, or at their instigation. The defendants' Pleas in answering to the plaintiff's declaration are in my

opinion unusual, and such as I cannot comprehend. It is well known that a defendant in answering a declaration is bound to put the distinct grounds of defence in his plea. The general denial that the assault had never been committed, I can understand—the plea in justification also recommends itself to my judgement. But I am at a loss to comprehend upon what principle of law or equity the defendant attempts to justify the trespass by pleading his right to commit an act contrary to law. If, gentlemen, the dwelling which Mr. Carten had attempted to enter had been a private residence of the defendant, and if the defendant had employed these persons to prevent such entrance—Carten had attempted to force his way, and the same scene been enacted which, took place in this instance, then, indeed, might such a ground of justification have been pleaded. But how can such a plea be recognized here? It has been averred

that William Walsh had full right to St. Mary's Chapel, by the rules, canons, and discipline of the Roman Catholic Church. Such principles are unknown to me, gentlemen, as, I doubt not, they are unknown to you. I know not what evidence the defendant may be enabled to adduce on this point, but I feel convinced that you could not entertain for a moment principles so utterly at variance with the dictates of common sense and justice. Nor do I believe that even by the polity of the Catholic Church, will they be enabled to prove to us the existence of such rules, canons, or discipline, as will justify the commission of the act upon which the present action is grounded.

[The learned Counsel here read a portion of the defendant's pleas, averring that the plaintiff was neither a Roman Catholic, a pew-holder, nor a member of the congregation.]

Proof of this may be attempted, gentlemen, but it must fail. If there be such an impression abroad it is founded not upon the fact that it is so—but from an assertion by one of the defendants to that effect. At this moment he is a pew holder and a Roman Catholic—and it will rest upon the defendants to prove by testimony the most conclusive and convincing that such is not the case, before you will be entitled to believe it. Why, gentlemen, for thirty years has Samuel Carten regularly attended the Catholic Church; before a stone was laid in St. Mary's, was he a pew holder in the old Church, and it so happens that when St. Mary's Chapel was built he, was the very first man who took a pew within it. Again it is asserted that he was not a member of the congregation, and therefore had no right to enter the Church;—but this even if true should never have found its way into the Pleas, it is an inference made up of law and fact. But let us for a moment admit the truth of all the statements contained in the Pleas—I ask you, gentlemen, if, when St. Mary's, a public Chapel was opened for divine worship, the Bishop of this Diocese would be justified in attempting to prevent the admission of any man within its portals? I think not, and if my supposition be true how much less would he be justified in preventing the admission of a man like, Mr Carten, having rights and privileges to which a stranger could lay no claim. That the

Bishop has the sole, absolute, undisputed controul over a building, erected by the Catholic community of Halifax, at their own charge, is a doctrine absolutely too monstrous to be entertained for a moment; and yet, the Pleas of the defendant assert this. What? has he the right to close it up? Yes! What! has he the power to turn it into a private dwelling house!—Yes! What! could he without the sanction of his congregation—nay, in opposition to their very wishes, rent it out as he would his own property? Yes! These, gentlemen, are the answers which would be given you, were you to direct such queries to the defendants in this action—and this the doctrine you are called upon to assert as just—this the principle which you are required to uphold. The defendants do not deny that a trespass has been committed, nor that Mr. Walsh as Bishop, commanded Mr. Carten forcibly to be ejected from the building. I will not veil the fact from you, gentlemen, that the defendant brought more prominently before you is Doctor Walsh—the two others, Keefe and Gowan, acting under his directions, and by his command, are not the parties aimed at; and I have yet to be convinced that, by the Rules, Canons, or discipline of the Catholic Church, any such power is conferred on him. Not only, gentlemen, is Samuel Carten a Catholic, but his family composed chiefly of females are Catholics also; imagine for a moment the position of that family—the father insulted, driven from the altar of himself and his forefathers—his innocent family deprived of that privilege which every christian values so highly—that of offering up according to the forms of the Church to which they belong—those supplications to the throne of mercy to which they had ever been accustomed. Now, gentlemen, what are the real facts of this case;—on the 29th July Mr. Carten, being a pew holder, a Catholic, and a member of the congregation of St. Mary's, went up to the chapel for the purpose of worshipping his God,—he was met at the door by two persons who resisted his entrance violently;—he did not return violence for violence—but asked by whose authority he was excluded and stated that if the Bishop or Priest should inform him that he could not obtain admittance he would not attempt it—but no satisfaction was given him. *You are*

excluded, was the only answer he obtained, and when he quietly attempted to enter he was jostled, seized by the collar, and by main force borne into the middle of the street, and was obliged to return home, his clothes disordered and torn. The reasons for Mr C's. exclusion were studiously kept from him, but we have every reason to infer that there was some lurking, latent reason, which has not yet been brought to light, and it was determined that revenge should be taken in this instance, for old scores. Happy is it for my client that he lives in a country where the rights of all men are equally respected—where the rich and poor, the exalted and the humble, find equal justice from a Jury of their countrymen.

[The learned Counsel was here about to enter into an explanation of the newspaper controversy which had taken place, when he was interrupted by the Counsel for the defendant, Mr. W. Young, who objected upon legal grounds to the introduction of that portion of the subject into the trial.—Mr. Johnston followed in answer, and His Lordship Mr Justice Haliburton ruled, that no evidence which rightly belonged to a trial for libel could be introduced in an action of trespass—and therefore the learned Counsel could not advert to the articles which had appeared, on either side, in the newspapers.]

Mr Ritchie, continued.—He said the case had not been entered into hastily by his Client; in proof of which he referred to several letters to Bishop Walsh and one from himself as counsel for Mr Carten to his Lordship enclosing amount of money as Mr Carten's pew rent,—to none of which letters had any written answer been returned—the money for the pew rent having been sent back without a reply. Mr C. felt it due to his family and himself, that this matter should be brought under your consideration, and he was obliged to come before you. Now, under all these circumstances I shall close, feeling that I have occupied a long portion of your time. The assault is an aggravated one, committed on the Sabbath day and in the face of a whole congregation, and he and his family have from that time to this been deprived of the benefit of his Church. This is an action brought by a Roman Catholic against his Bishop—as such you must view it, and in viewing it I ask you

to contrast the quiet demeanor of the man with the unchristian-like conduct of the Bishop;—I ask you to do my client nothing but justice—I seek no favor at your hands. With these remarks I leave this case to your judgment. Seldom have I felt the responsibility which weighs upon me as a counsel more than at present—but I feel that any deficiency of mine will be amply recompensed by the good sense and right feeling of the Jury I see before me.

Evidence.

Margaret Carten—Is a daughter of Samuel Carten—went with her father on or about the first of July last to Chapel. When he came to the door as usual, the Sexton said—You cannot come in here, —Michael Keefe is Sexton,—it was for eleven o'clock service—the people were assembling for worship. Father was just putting his foot on the step, when he was accosted by Keefe, who laid his hand upon his shoulder. My father asked him by whose authority he stopped him from going in? He said, "I wont tell you"—My father said he would go into his pew, unless any of the Clergywomen should prohibit him. Keefe then said again, "You shan't come in." My father then tried to go in, and Keefe and a man by the name of Patrick Gowau laid their hands on his collar, and pushed him back violently a good distance from the door. There were a number of others who took him by the collar, and pushed him—some had him by the back of the coat, and others in front—pushing him backward and forward. My father was pushed back to the middle of the street, a considerable distance. He said that he would go into his pew—a pew he had held for 20 years—and asked by whose authority he was prevented. He attempted to go in, and was again hustled and pushed back. We then, my father and myself, left the door and went home. Father's clothes were all disordered, and his shirt torn behind—during all this time he was not told by whose order he was prevented from going into the Church—although he asked twice. I was there once, just inside, but did not stay any time. My two sisters went to the Chapel after this—my mother has never been there—I went to the Chapel on the 8th of July for the purpose of paying new rent. I offered the pew rent to the Sexton, but he

refused to take it. It was about a quarter past nine on Sunday morning. He said there was twenty-eight days rent due. I offered him the quarter's rent, but he would not take it—he made some remark about my father being excluded. I was going up to my pew when he tapped me on the shoulder, and said that the place was locked up—by the place he meant the pew. I have been in the habit of going there as long as I can remember.—Keefe has been Sexton two or three years.

Cross-examined—The assault spoken of occurred on Sunday the first day of July—my father attended Chapel until he was excluded in May—my father was in the Chapel on the 29th June, on Friday—he was not there in May—did not mean to say that my father regularly attended Chapel up to the first of July. When we went to Chapel on the 1st of July we went there expecting to be refused admittance. Mr. Keefe called upon my father on the afternoon of 29th June, for what purpose I know not. I was with my father on that day—I don't think the Clergymen knew my father was going to the Chapel. I do not know that my father was entreated not to go—I do not know that Mr. Joseph Quinnan was to see my father on this day. I believe had I attempted to enter the Chapel I should have been allowed to do so. Keefe had hold of my father by the back of the collar, and his shirt was torn—I did not hear him say, "You know, Mr. Carten, you have been excluded from the altar, and I can't let you in." I heard my father say he would go into his own pew. I never heard Mr. Keefe give a reason why my father was excluded. I went with my father to assert a right which I had reason to know would be resisted—the pew rent had been paid the quarter before—Keefe was willing to accept the pew rent from me up to the time when my father had been excluded. When my father said he would go in Keefe and Gowan took hold of him.

Mathew Young—I was present at chapel on the day mentioned—I saw Mr. Gowan on the left and Mr. Keefe walking up and down—I said to a person I think there is something going on to day—I then heard a voice say here he comes—I stepped to the door—Mr. Keefe was standing before Mr. Carten—Mr. C. asked what had he done, and told Keefe to bring the

Bishop and he would submit. I did not hear what Keefe said. Some one in the crowd said, "*you had time enough to arrange matters before.*" I wheeled round, and said—you had better mind your own business—I then turned again and saw Mr. Carten whipped into the street, where they whipped him too I don't know for I saw no more of him. Mr. Carten did not act violently—I saw the tears standing in his eyes—I saw his daughter standing on his left side—I have been a member of that congregation for 18 years, for 9 or 10 years that I knew Mr. Carten I very seldom missed him from his pew—was recommended to Mr. Carten as a good Boot and Shoe maker—I know that Mr. Carten attended church regularly up to May last.

Cross-examined. I heard through the week that Mr. Carten was to be expelled—I did not see all this transaction—Mr. Carten's manner was mild—he seemed about to cry—I did not hear him make use of oaths—he attempted to force his way in—there was a lot of persons collected there—I only saw and heard a part of what occurred.

William Stokes called but did not answer.

Richard Nugent, sworn. Knows the Sexton, Keefe. He receives the Pew Rent; don't know to whom the Rent is paid by Keefe, nor by whom he was appointed. Believes the money is paid to his Lordship the Bishop. Never troubled himself about these matters. Holds a pew in St. Patrick's. At a meeting in St. Mary's last winter, Mr. Carten spoke, and said he had been a pew-holder nearly 30 years—his Lordship the Bishop said in reply, he hoped he would continue to be a pew-holder 30 years longer.

James Tobin—I served the paper I hold in my hand at the office of Messrs Young & West. The paper was a notice directed to his Lordship the Bishop to produce a letter from Mr. Ritchie as Mr. Carten's Attorney to his Lordship.

A copy of the letter was put in and read.

James Tobin—Knows nothing of any answer having been returned to this letter.

Joseph Quinnan, sworn. Is a member of St. Mary's congregation—don't know positively by whom the Sexton is appointed. Mr. Keefe receives the pew rent, and the door collection, and the amounts for

the cemetery. I have seen him carry the money from the door into the Vicar General's room. Mr. Keefe does not keep the door—I should suppose he was altogether under the control of the Bishop—he has not charge of the building—Mr. Ryan has—I should call him a Sexton—the two in my opinion divide the duty—Keefe is not more under the control of the Bishop than Ryan.

Pierce Ryan, sworn. I act as Sacristan of St. Mary's Church. Mr. Keefe is Sexton—he stands at the door to collect pews—rents—I do not stand at the door, I am appointed by the Bishop and clergy—I do not know that Mr. Keefe violently excluded Mr. Carten from the Church—Mr. Keefe might exclude a person without the authority of the Bishop. I don't know who appoints Mr. Keefe—I don't know who it was told Keefe to keep Mr. Carten out of the Chapel. I heard Mr. Carten was excluded—but not until he was away from the Church—I heard it from a boy of my own, in the Vestry.

WEDNESDAY, 2nd Jan'y, 1850.

William Young, Esq., opened the case on behalf of the Defendants as follows:—May it please your Lordship—Gentlemen of the Jury, I listened to the address of the learned Counsel, who opened this case to you to day on behalf of the Plaintiff, with much surprise and some concern.—To me it seemed that many of the leading facts were entirely evaded; but gentlemen, I feel that they will be more clearly and fully developed to you before this case is closed. Some of the statements made by the learned Counsel have tended to strengthen a belief which I before entertained that he had been grossly misled by his clients. Think, you gentlemen, that the Catholic Bishop of this Diocese acting under the most sacred and solemn obligations—under the eye of the whole Catholic World—with a superior power to control him—and every Bishop holding the same rank as himself about to pass judgement on his conduct—would have come into this Court with a case which would not recommend itself to the good sense and right feeling of any Jury. We have to day before us the extraordinary and unseemly spectacle of a man calling himself a Catholic—who has made himself by

his own acts obnoxious to the head of his Church—who has been expelled from the bosom of that Church by every solemnity which it holds sacred—dragging the Pastor whom he should reverence and respect before such a tribunal as this—and doing all that in him lies to humiliate and degrade that faith to which he professes to be attached; and when I inform you that in the whole experience of the Mother Country or the adjoining Republic, I have been unable to discover one single case or precedent where a Catholic has dared to do that which Samuel Carten has attempted in Halifax, you will be enabled to understand the nature of the position which he has assumed. (The learned counsel was here interrupted by applause, from audience in the body of the court and gallery.)

Mr. Young proceeded. Perhaps his Lordship will permit me earnestly to entreat an uninterrupted attention on the part of all present here to day; it is desired by the Defendants—it is due to them. We will suppose for an instant that the Plaintiff is correct—that, notwithstanding the assertion of the Bishop of his Church to the contrary, he is a Catholic, a pew holder and a member of the congregation of St. Mary's, and that he claims the right of entering this chapel in opposition to his Bishop's express commands. If a Catholic can do this legally—where is the respect. Where the power attaching to the ecclesiastical Office? It is gone—vanished; and a civil tribunal, for the first time in Catholic history, even in the most exciting periods of Irish rebellion and English intolerance, attempts to divest that Church of its legal and reasonable power, and aims a mortal stab at Ecclesiastical independence. Do not imagine, gentlemen, that this question can be viewed in any narrow or contracted light; the principle at issue is by no means confined to the Catholic Church. I shall attempt to claim, for it, no higher power or more extended jurisdiction than belongs to the Church of England or the Church of Scotland. Do not suppose then, that *St. Mary's* alone will be affected by the result of your deliberations;—*St. Paul's* and *St. Andrew's*—every church in Halifax, nay all throughout this Province have an equal interest at stake. In times past dissensions and differences have convulsed the bosom of the Catholic Church.

but on this occasion, I am happy to be enabled to inform you, that these contentions have vanished—that on *this* stand, upon principle, the Bishop is sustained by the unanimous voice of his clergy and congregation in this city, with the exception of five or six who may award to the plaintiff a tardy, almost unwilling, approbation of his acts. His Lordship has been dragged into this court by a turbulent and unworthy member of his own body, who has been punished and justly punished too, for the commission of an act at once unjustifiable and disgraceful; and I think I may venture to assert that it will require no little forensic skill on the part of the plaintiff's Counsel to conduct his case to a successful termination. Samuel Carten has been read out from the altar of his Church—he has been excluded from the pale of *that* Church by an authority which even he recognises—and why? because he refused that submission which he was again and again entitled to award; because he refused to do that which, as a man—as a Christian, he was bound to have done—and which would have prevented this unseemly spectacle; but rather than bend his stubborn heart, he sets the rules and principles of his Church at defiance, and forces his Bishop before a Protestant Judge and a Protestant jury to *defend* acts which were perfectly *justifiable*. It is a most significant fact, that in a jury moved for at the commencement of the term, out of so large a body of Catholics as exist in this city, only nine were drawn of the forty-eight; and it is equally surprising that the Counsel for the plaintiff should have taken such care to exclude every one of these nine; so that now not a single man of his own faith remains upon the jury. It seems as though the plaintiff were afraid to trust to a jury composed of men of his own Church to decide between himself and his Bishop. Let us now, gentlemen, examine the issues on this record—the plaintiff on the 26th day of July issued his writ, claiming damages from the defendants to the amount of £1000. You have it in proof that the single act upon which this action for trespass is grounded was committed on Sunday the 1st day of July. By the rule of law applicable to Nova Scotia, but which I am happy to say the good sense of the English Parliament has abolished, we were obliged to plead to the

same injury four several times, in consequence of the plaintiff having set out the injury in four counts in his declaration. Our pleas in answer to the declaration, I hesitate not to affirm, cost my brother and myself more time and labor than any similar paper which I have ever drawn since I came to this bar—because in the whole range of English or American practice no case of a similar nature can be found—no precedent upon which to found the grounds of defence. We have alleged that the Rt. Rev. Dr. Walsh is the Bishop of this Diocese—that as such Bishop, he was lawfully possessed of and had full power over the Cathedral of St. Mary's—that Samuel Carten was not a Catholic, a pew holder, nor a member of the congregation—and that he had no right, such being the case, against the will of the Bishop, to attempt a forcible entrance into the Chapel of St. Mary's. To the second plea the plaintiff demurred on the ground of insufficiency. Now mark how the replication stands—to get in a portion of it the Defendant was obliged to make the following admission,—that the said William Walsh, before and at this time, was possessed of the same chapel, and held, used, and enjoyed it for the uses and purposes, and in the manner and form as in the said plea is stated, and by a rule of law it is not incumbent on the Defendant to adduce proof of any of the matters admitted on the record; the possession of the Bishop *has* been admitted, therefore, this difficulty is swept entirely out of the case.

You have the Catholic Bishop of this Diocese a Defendant—who holds his position by a principle which we Protestants, scarcely appreciate—but which a Catholic well knows. What says he on this record? You Samuel Carten on the first of July, 1849, had ceased to be, and was not, a Catholic, a pew holder, a member of the congregation. And it must have required no little courage on the part of the Plaintiff in defiance of this, to assert that he *was* all the Bishop declared he *was not*. But he goes even further than this and declares that he will enter the Church *in spite of the Bishop*.

I observed with pleasure the modest and unassuming manner in which the daughter of the Plaintiff gave her evidence; it was tranquilly and calmly given. She with-

held nothing, and when I contrast her statements with those of the learned Counsel who opened this case, how different a picture is presented. I ask my learned friend how he presumed to lay before you, statements so utterly unfounded, and inconsistent with the evidence he was to adduce? Not a word is breathed of the remonstrances of Mr. Keefe or Mr. Quinnan. Not a syllable uttered of the manner in which the sinner was exhorted to return to the fold from which he had strayed. Miss Carten tells you that she and her father went up to the Chapel to assert a right. I blame him not for this; but the moment Keefe's finger touched him, that moment his right of action was complete. Why then did he continue still to force his way? Why create a public disturbance before the door of that Cathedral where the solemn rites of his Church were about to be celebrated. The exclusion of Samuel Carten had become inevitable—the laws of the Catholic Church rendered it indispensable. The whole of the scandal which resulted was his own act—he is the party to blame for the trespass and this trial. I shall prove to you out of the mouth of the Vicar General, that from the moment he was read out from the altar, he ceased to be a Catholic or a pew holder. I shall prove to you that it is pollution to the Catholic ceremonies, according to the Catholic ritual, while the celebration of mass, one of the noblest mysteries of the faith is going on, for a party excommunicated to be present—Carten could not, he dare not, enter. But independently of all religious forms, he had no civil right to force an entrance there; the original title deeds cannot be found—but we have in our possession a copy of the deed as recorded.

(The learned counsel here read the deed which invested certain parties with a life interest in the property as Trustees.)

These parties then held a life interest in the property—at their death all personal right ceased and the Cathedral was vested in the wardens and electors,—a body elected from the pew holders who maintained their rights until the arrival of the present Bishop in 1842. It is the universally acknowledged rule of the Catholic polity throughout the whole world that all the temporalities of the Catholic Church shall, by virtue of his ecclesiastical office,

belong to the Bishop of the Diocese in which such temporalities are.

(The learned Counsel here read and commented on the Minutes of a meeting of the wardens and electors at which by a resolution, the power possessed by them was transferred to the Bishop—stating that the minutes were signed by all the the wardens and electors among whom was Mr. Carten.)

You heard me admit that Dr. Walsh had the power of appointing all the officers of the Church under his controul, including the sexton—and that since 1842 he has exercised that power—and that he was the sole, absolute, and uncontrolled possessor of the Cathedral of St. Mary. It is this principle which gives to the Catholic Church its unity of action and firmness of purpose. It is that which has preserved it in one unbroken and magnificent line up to our Saviour; it is the governing power, the saving principle, which has preserved the splendid fabric amid the fall of nations and the wreck of empires. Even they who deny its divine origin cannot deny the stability and grandeur which surround it. Men must acknowledge that the Papal Church, let their opinions be what they may, is a mighty evidence of the power of human wisdom; and does the plaintiff think, does Mr. Samuel Carten think, that he is to overthrow this superhuman structure? Who is Mr. Carten; is he some man of unblemished virtue and exemplary life, that he has undertaken this work. I will not follow the example, the bad example, set me by the learned Counsel for the Plaintiff. I shall not attempt to injure Mr. Carten, nor malign his character; but I may be pardoned for saying that Samuel Carten is not the man to shake the foundation of the Catholic Church; neither from his talents nor his virtue; possibly he may be able to write his name—but I am sure he could not write two grammatical sentences, and therefore I cannot but feel his conduct to have been most rash, inconsiderate, and unjustifiable; unjustifiable both as regards good feeling and in point of law. Has it been by a mere whim and caprice of Dr. Walsh, that Mr. Carten has been expelled. Think you that a man like the Catholic Bishop, to whom even his enemies cannot deny the most consummate ability, has thrust Mr. Carten out of his Church for nothing. In Febru-

ary you will perceive that his Lordship had no animosity towards Mr. Carten—for, when Mr. Carten stated that he had been a pew holder for thirty years—he answered that he hoped Mr. Carten might continue a pew holder for thirty years longer. You will perceive, gentlemen, that no religious body can exist unless the right of excommunication rest somewhere within it—otherwise what control could be exercised for the suppression of the most turbulent and sacriligious conduct; it has existence in all Churches with which I am acquainted—it is the same in the Church of Scotland to which I belong myself, and in the Church of England.

(The learned Counsel here read a portion of a work by Doctor Buchanan, shewing that the power of excommunication had existence in the Church of Scotland)

Now, gentlemen, I will put this case to you—suppose a member of the Congregation of St Andrew's were to attend that Church, Sunday after Sunday, and mock at, and insult the officiating minister, as I shall prove has been done by Mr. Carten over and over again in his own Church. What would you or I do—bring him before the sessions and expel him. The same course has been followed in a hundred instances before; but were the party to attempt to force an entrance the Sunday after his expulsion, would he not be opposed force by force and thrust from the sacred building.

The legal right of possession in St. Mary's Cathedral was, as I have before stated, in order more thoroughly to convince your minds that such being the case His Lordship was justified in ordering the expulsion of Mr. Carten—I shall cite several analagous cases. The Town Hall of Gloucester, in England, owned by the Court of Sessions, was used by a number of gentlemen, who were stewards, for the purpose of a musical festival; a person insisted upon entering by a ticket which did not admit him and he was forcibly ejected. The ejected party brought an action of trespass against the stewards, who pleaded that they were lawfully possessed of the building, and therefore had a right to prevent the ingress of any party attempting to force his way in illegally, and the plea was sustained. Again, a number of persons assembling at a room in Hackney, hired it for the night for the purpose of holding a meeting. A party entered the room and made use of some ludicrous expressions which were meant to ridicule the

Chairman—he was expelled from the meeting—and the same principle was upheld here, that, the right of possession being in the holders of the meeting they were justified in putting out any party obnoxious to them. Now, gentlemen, if I prove to you, and prove it I will by evidence which you cannot doubt, that by the canons, rules, and discipline of the Catholic Church, the Bishop was the legal, sole, and absolute possessor of the Catholic Church—can you doubt for a moment, under the principles I have just laid down to you, his right to expel any party violating its rules, canons, or discipline. We cannot pretend to read the heart or mind of the Catholic Bishop—nor are we capable of judging of the equity of his decisions. It will be proved to you that the sentence of excommunication is valid, and I deny the power of any common law or equity Court to interfere its authority between the lawful exercise of power by the Bishop and an offending member of his Church.

[The learned Counsel quoted a case from third Douglas, in which the exercise of power by Trustees, in ejecting a Schoolmaster from his School, had been admitted; and also, a case from Cowper's Reports, page 315, in which the fact of expulsion having been proved upon the trial, the Judge refused to go into the grounds of the expulsion.]

There are multitudes of cases in Law all to the same effect, and proving the soundness of the principle that where sentence of expulsion or excommunication has passed against a party upon just grounds, such sentence is final and conclusive. And, gentlemen, this doctrine is inculcated so strongly, and urged so powerfully in every portion of the Catholic polity, that I cannot see upon what grounds the right can be denied to the Bishop.

His Lordship Mr. Justice Haliburton said, it could not be denied that the power of excommunication or expulsion resided within every body, civil or religious.

Mr. Young—Yes, your Lordship, but I go a step farther—I assert that a sentence of excommunication or expulsion, pronounced by a competent authority, is conclusive in a Court of Law, and should not be questioned. And, gentlemen, you will perceive that *that* is very different from the fact which his Lordship has just conceded. I before asserted that the plaintiff had grossly misled his counsel in many of the statements made by him, and I shall prove it to you. Would you for a moment believe that at the celebration of the communion—the test and turning point of the whole Catholic faith—at a moment when every true Catholic believes in the actual presence of the deity—of the virtual body and the blood of Christ—that a man, calling himself a Catholic,

would, at that solemn and impressive hour—forgetting the devotion which prostrated the whole people—have grinned at such a ceremony and in such a presence,—and this vile and unchristian act has Samuel Carten perpetrated, not once but fifty times. I shall prove to you that again and again the members of the congregation complained of Mr. Carten's demeanour during divine service—and that the officiating Priest has been obliged to keep his eye turned from him in order to prevent his being insulted—and yet in the face of all this, the learned Counsel attempted to make you believe that there were no grounds for excommunication. No grounds for excommunication, gentlemen! I for one am astonished at the long forbearance; let me tell him that were the same acts to be perpetrated by any member of the congregation of St. Andrew's, there is enough Scottish spirit there to cause him to be thrust headlong from the sacred building which he defiled and desecrated by his presence—just as the Irish spirit in St. Mary's thrust Samuel Carten from among them. Ah! gentlemen, if Samuel Carten thought that he was about to control the power of his Bishop by forcing him before a civil tribunal he has grossly miscalculated his power and authority. If he thinks he is about to force the Bishop of this Diocese to admit him without due reparation made for his crime, he is mistaken indeed. Why, gentlemen, the Priest who celebrates Mass in his presence becomes himself *ipso facto* excommunicated; the Bishop dares not, for his Episcopal office, celebrate the rites of his Church whilst he is within it! Mr. Carten must, then, either submit to the discipline of his Church or forswear the Catholic faith. The instant a man is declared excommunicated, he ceases to be a Catholic—and according to the Rules of the Church no man, not a Catholic can hold a pew. Mr. Carten has been excommunicated—he has ceased to be a Catholic, and therefore he has no right to hold a pew within the Cathedral of St. Mary's. But the possession of the Church being in the Bishop, he had no right to the pew except as a tenant at will. The Act of 1849, you will perceive, can have no legal effect on this action—as it was to take effect after the Queen had signified her assent to it—that assent was not given till within the last month, after this action was commenced, and therefore can not operate upon it.

If, gentlemen, Samuel Carten be what he professes, an upholder of the Catholic Faith—and if for the criminal gratification of his own passions, he has been cut off as a rotten branch, then indeed is he to be pitied. I am averse to produce this document which will be read and approved of by thousands of Catholics in Nova Scotia as coming from the

spiritual head in this Province—but the Plaintiff has forced it upon me and I must perform my duty to my clients.

(The learned Counsel here read a case which recently occurred in India—where a Catholic Bishop had refused to bury a soldier because he had neglected his spiritual duties. A formal complaint was made, and it was decided by that ——— Roman Catholics were bound to act up to the rules of their religion or abide by the consequences.)

And now, gentlemen, to conclude, I ask you to watch well the course which the learned Counsel will take in closing this case—be misled by no dubious clouds, no logical sophistries—clear as day must be the principles which are to give the Plaintiff a verdict. This case may at first seem doubtful—but as the mists which settle round the base of a mountain for a time cloud its beauty, till the light wind springs up, causing the mists to arise and unveil its splendour—so will all doubt vanish, and everything be made clear and plain to you by the application of sound principles. It is the earnest wish of the Bishop that the Plaintiff should not abandon the faith of his fathers—that he should not wander from the fold which his own feelings teach him is the fold for him. And when, gentlemen, Samuel Carten shall be stretched upon the couch of death, one of the chief sins with which he will have to reproach himself will be that of dragging his Bishop and his clergy needlessly to the bar of this court.

Mr. Young proceeds with the Defendant's case and calls—

Thomas Ring, sworn. Is a member of St. Mary's congregation—had charge of the monies arising from pew rents and burial ground—a change took place in 1842—before 1842 the affairs of the parish were managed by the Wardens and electors—in 1842 the Wardens and electors transferred all the power they held to his Lordship—Mr. Carten was one of the electors. There was an original book of record kept of all the proceedings of the Wardens and electors—that is it—it was in my possession. His Lordship has since then exercised all the power they previously had. He appoints all officers including the Sexton, &c. This is the record book—it is a very ancient book—that is my signature—I saw all the others including Mr. Carten sign the paper—all the Wardens and electors signed it with the exception of one who was absent from the city—the electors were a body elected from the pew holders to manage the temporalities of the Church.

Mr. Young tendered the book.

J. W. Johnston examined Mr. Ring as to the admission of the book—the practice was to elect as vacancies occurred, a new officer out of the body of the people—the record of the original constitution is in the book—the Wardens were elected from the body of electors—can't say who was Parish Priest—Father Laughlin was Vicar General—Bishop Walsh was Coadjutor Bishop—Bishop Fraser was actual Bishop of the Diocese—I am not personally acquainted with the original constitution of the electors—I was present at the meeting of wardens and electors when the power was transferred to the Bishop. I never read the constitution. I do not know that the wardens and electors had the right to divest themselves of the power with which they were invested.

Mr. Johnston objected to the admission of the book of record—it was received subject to the objection.

The minutes of the meeting—4th Nov. 1842, were read.

Mr. Ring—by Mr. Young. Since that meeting his Lordship has exercised full power over the temporalities of the Church. Dr. Walsh was Coadjutor Bishop at that time. I am not aware that his power was in any way limited by this. I considered he was a Bishop and recognized him as such.

Cross examined by Mr. Johnston. The wardens met four times a year, and if there were any vacancies we elected a person to fill the place—we elected the wardens from the electors, and the electors appointed a committee to examine the accounts. All the collections and pew rents were paid to the wardens—they had no control over the Easter and Christmas Offerings. The wardens laid out the money—paid for painting, &c., and then paid over the remaining portion to the Parish Priest. The pews were rented annually, but a pew holder held his pew without any molestation unless he did not pay his rent. When a pew holder died it was the practice for his widow to hold the pew without molestation upon paying the rent—the rents were payable at the wardens office—they were payable on the first of January, and so quarterly. If the rent was not paid, thirty days grace was allowed when the pews might be sold. They were let from year to year for an indefinite

term as long as the rent was paid. The wardens had no authority to turn a man out of his pew if he paid his rent. Since 1842 the temporalities have been managed under the direction of the Bishop. Mr. Donohoe was appointed Sexton by the wardens—I don't think the wardens could appoint a Sexton without the sanction of the Parish Priest—the rents are now collected by the Sexton—he is appointed by the Bishop. Very fortunately the parishioners have nothing to do with the management of their temporalities. Mr. D. Creamer at first refused to sign the resolution, but afterwards concluded to do so.

Hon. E. Kenny, sworn—Has been a member of St. Mary's congregation for a long period. Was warden in charge in 1838—was an elector in 1842. I was present at the meeting spoken of—that is my signature—by that Resolution I consented voluntarily to surrender the power I possessed into the hands of Bishop Walsh. Since 1842 the Bishop has had control and possession of the Chapel—I know of no other authority to affect the management of the Chapel besides the Bishop. There is no controlling power in the world over the Bishop, with the exception of the Pope. Since 1842 to the present time Bishop Walsh has exercised the same power which the wardens and electors theretofore exercised.

Cross examined—I have been more or less acquainted with the church for twenty-five years. I came here when the church was being built—it was built under the superintendance of the wardens and directors. The monies for building the church were collected from the Parishioners. After the church was completed the debts remaining on it were paid off by the monies arising from the pew rent. The building has been used as a place of worship for 21 years. The pews were put up to public competition when they were finished—the pews were set up, and he who paid the most rent obtained the pew. My brother got a pew at that time—has held it ever since,—but few of the original buyers now hold the same pews they first bought—the reason is that many have died—many gone away, or voluntarily changed their pews—and some have been dispossessed, in consequence of not paying up their arrears. Mr. Carten has held his pew since the first

day the church was opened. He said, I believe, £1 8s. per quarter. When a party was in arrears the pew was disposed of by Auction. I think it very likely that when a husband died the widow would be left in possession of the pew—the wardens and electors were chosen from the body of the people—when a vacancy occurred by death or otherwise the place was filled up from the pew holders—I never knew that the pew holder had power over the wardens and electors—I was elected by the wardens and electors—their acts were referred to the senior Clergyman—until the arrival of Bishop Walsh, I don't know that there was any Parish Priest—Mr Laughan was Vicar General and Senior Clergyman, I don't know that he was Parish Priest—as I was not appointed by the pew holders, I did not believe that in divesting myself of the power which I held, I was bound to appeal to the people—Bishop Fraser was bishop of this Diocese in 1842.

William Stoker—Sworn, I am the body servant of the Bishop—I carried a small sum of money at the request of Dr. Walsh to Mr. Ritchie.

Cross examined—I was not present when the letter was handed to the Bishop, his Lordship desired me to say to you, that he felt deeply insulted at his being made a pew collector,—I received a Suppæna to attend as a witness—I did not receive the fee, but I considered that I received it,—it was not in my name,—I mentioned the fact to some of the Clergymen—they neither advised me to go nor to stay away. The truth is, I saw my name was not spelt properly, and I determined not to come—so I took a shy into the country.

The Reverend Michael Hannan—Sworn, I have been a Priest about four years and a half—I have been in Bermuda for about nine months—I read a paper in St. Mary's on the 15th April last from the Altar—it was Sunday, [a paper was handed to witness] this is the paper I read—I received it from His Lordship Dr. Walsh, I read it by his command—Mr Carten was present, the paper annexed is attested by his signature—I read the paper between the hours of 12 and 1 o'clock. The pamphlet referred to in this paper, is the Letters of Hibernicus.

Cross examined;—I read this paper with the exception of the last page—I

know nothing of that except that it is in the hand writing of the Bishop—I believe that from my own knowledge the statement contained in that is correct.

Mr. Young—objected to the plaintiff's counsel going into evidence of the contents of the paper.—If that course was pursued, he should tender the paper.

The paper was tendered.

Mr. Ritchie—objected on the ground, that he did not know the contents—the paper not having been proven.

The paper was withdrawn to be tendered at a future stage of the case.

The Very Rev Mr. Connolly, Vicar General—sworn. Is Vicar General of the Diocese of Halifax—the powers of that office are co ordinate with those of the Bishop, yet subordinate to his—the Bishop and the Vicar General form one and the same tribunal—in the absence of the Bishop the functions of administration and jurisdiction devolve on the Vicar General—the Vicar General is subordinate to the Bishop, as his appointment flows from him and depends upon his will—I was appointed Vicar General on the 17th March 1846, I arrived here from Ireland in company with the Bishop in October 1842—I came out with the Bishop as a Roman Catholic missionary in order to exercise the function of a Priest in this Diocese—on the occasion of the Bishop leaving here in 1844, I was appointed his Attorney and administered the temporalities of St. Mary's Cathedral—when I came here first the temporalities were under the control of the wardens and electors—the wardens and electors have always been under the control of the Bishop of the Diocese—I have examined this original record Book carefully, it commences in 1801—by the general rule of the Catholic Church the Bishop of the Diocese has control of all the temporalities and of every Cathedral—I am not aware that there is any lay body in the world holding authority distinct from the Bishop. There is none in Ireland and Italy. In 1842 a change took place in the administration of the temporalities of St. Mary's. Dr. Walsh was appointed full Bishop of this Diocese in 1845—the original Diocese was divided into two. Dr. Fraser was appointed to preside over one Diocese and Dr Walsh over the other—by the laws of the Catholic Church when the Coadjutor Bishop is first appointed the

to Rome it would require some signature to authenticate it, I think the signature of the Bishop or Vicar General necessary in an ecclesiastical court—but it is not necessary to the validity of the document—a monition is necessary to an excommunication, I consider the first of these papers a monition and an excommunication both—still the monition precedes the excommunication. It is not necessary for the validity of the excommunication, that any other sentence should be pronounced, Some time is given between the monition and the excommunication for retraction. I hold that a Catholic Bishop can by assigning one reason from the altar, declare that unless a party come before his church before some future time, and repent of his contumacy, he is *nunc pro tunc* excommunicated—the sentence does not come into operation until the time shall have expired—no further sentence is required. Sentence can be declared without any further notice to the offending party. I was not present when either of these papers was read from the altar; it is a general rule that a promulgation should be made in all public excommunications. Theologians assign 7 consequences of an excommunication—one is exclusion from the church—no rites can be celebrated in the presence of the excommunicate—he can not be present at the sacrifice, and is deprived of the reception and administration of the Sacrament: he is cut off from communication with the faithful, which in Catholic countries has a different meaning from what it has in this. I have read of instances of secret excommunication. If the Bishop were to excommunicate a party and confine that to himself alone the party would not be deemed excommunicate—the party has no means of disproving the facts alleged against him before the monition takes place—the person must know that the excommunication is to take place—I believe that a civil tribunal has no right to judge as to who shall or shall not enter a Catholic Church, the Bishop requires motives and strong motives to excommunicate a party—the party is not required to be present before excommunication—the monition can be read from the Altar before any previous notice has been given to the delinquent.

Mr. Johnson objected to the reception of the document, it not having been pleaded.

It was received subject to all the objections—and read.

The second Document was tendered and refused.

Mr. Connolly's evidence continued—I left Halifax on the 5th April—I heard that the sentence of excommunication had passed while I was in New York—I attended the meeting in February at St. Mary's, and observed the irreverent conduct of Mr. Carten there—some excitement being manifested in the body of the Court and Gallery, the Judge adjourned the Court until 10 o'clock the following morning—threatening that were the same conduct persisted in, he would adjourn it *sine die*.

Mr. Connolly—On my return I found these proceedings had been taken against Mr. Carten—I was in Halifax from that time till the trespass took place. Mr. Carten came to Chapel surreptitiously on the 29th June—it was not known that he did so until the service was nearly over. If it had been known in time the service must have been stopped.—When it came to my knowledge I held a consultation with the Bishop, and we decided to allow the service to proceed, in order to prevent the scandal which would have occurred had we put a stop to the service, as it was then nearly over. I gave instructions to the Sexton—to be most particular not to touch Mr. Carten—to stand two or three feet within the church, and only to prevent his ingress if he attempted to force his way. Up to the first of July Mrs. Carten and her children came to the chapel, and would never have been disturbed had it not been for Mr. Carten's attempt at intrusion.

Mr Young here tendered the record book of the Electors of St. Mary's. It was received and read.

Mr. Connolly—cross-examined—The office of Vicar General is co-ordinate with that of the Bishop in his jurisdiction—I could dismiss a priest—I could excommunicate. The Bishop could reverse my decision. Mr. Laughnan was Vicar General when I came here in 1842. When the Bishop came back Mr. Laughnan was not Vicar General of this Diocese. I performed duties higher than those belonging to an ordinary Priest—by order of the Bishop.—The Bishop can appoint a Priest to perform services other than those pertaining to his office. A Bishop has full control over all the temporalities of his diocese. In Catholic countries, and even in Ireland, the Parish Priest has certain rights independent of the Bishop. The Parish Priest keeps the keys, and has civil possession of the church. A Parish Priest canonically appointed can not be removed, unless

found guilty of some crime.—I mean to say that when the Bishop feels it right to shut up any church within his diocese he can do so—not without some alleged reason. A Bishop has not the same power over his church that a private person has over his dwelling. The clergyman, unless canonically appointed, is removeable at the pleasure of the Bishop—that is the case in Nova Scotia. I know nothing of this Parish previous to 1842.—My experience has been derived principally from Ireland. I have been in Italy, France and Ireland, and among ecclesiastics. Never been among them in Canada. Can't say whether the French system prevails in Canada or whether the temporalities are vested in laymen. It is so in some of the French parishes in this Province under the control of the Bishop—also in France—it does not exist in Ireland nor in Rome. The decisions of General Councils prevail throughout the Church. If the Council of Trent make any decisions as regards the Doctrines of the Church they are received; but it is optional whether their decisions touching discipline be received or not. An excommunication is binding on all occasions. In Catholic countries there are Bishop's Courts, in which the Vicar General presides. In such countries a sentence of excommunication is considered as the sentence of an Ecclesiastical Court. There are many laws of the Church which do not apply to the whole Roman Catholic world. The power of the Church in Nova Scotia is the same as in Italy. The farther a Bishop is removed from Rome the greater are his faculties. Members of the Church can appeal to Rome; and it has been done in many instances. It has been done in this City. The general Laws and Canons of the Church apply here so far as circumstances will permit. It is a general rule applicable to the universal Church that monition must precede excommunication. No special rule made at Rome applies to this country. In Roman Catholic countries in a Bishop's Court he decides according to his own knowledge.—If any of his Clergy inform him that a member of the Church has committed a crime, and the Bishop is morally certain that such is the case he excommunicates the offender, I think that many of the rules that prevailed in England when it was a Roman Catholic Country, now prevail in Ireland. The Bishop had no power here to prevent persons from either speaking or dealing with the excommunicate. The persons who have offended, need not be present when the Bishop receives evidence from his Clergy. It is not necessary that the delinquent know either the charges made or the person who made them, but one reason

must be stated in the monition. Evidence may be taken in presence of delinquent or in his absence; monition must be read in his presence. Contingent excommunication can be concurrent with monition—and can be annexed to monition. The first paper here is an excommunication and monition, and if it had been issued without any paper following it, it would have been a good excommunication, Mr. Carten by the fact of his not retracting; within the fortnight given him became then *ipso facto* excommunicated. I have been studying this subject lately. The Bishop and some of the Clergy have assisted me in making out references. We are bound here by general Laws of the Church. It is not necessary to the validity of a sentence of excommunication, that it should be in writing. If the delinquent appeals to Rome it is expedient for the Bishop in self-defence to have it in writing. There are thousands of instances in which no writing takes place, I have not seen any book in which it is stated that no promulgation is necessary to render sentence valid.

Two papers were here produced and proved—one in hand writing of Mr. Hannan, the other in hand writing of witness. The Bishop knew nothing of the paper written by me. I did not know of my own knowledge that Carten was in Church on the Friday spoken of. In coming into Church after being excommunicated, he incurred another excommunication from which the Pop only can relieve him. After hearing that the Plaintiff was in Church, I conferred with the Bishop, and I determined in my own mind to exclude him if he should come again. I myself gave the order for next Sunday. The witness was here asked a question by Mr. Young, to which he replied—I never heard an excommunication called in Ireland a sentence of a court—when I say sentence of a court, I mean sentence of a Bishop. The paper now shown to me, is a paper appointing Doctor Walsh administrator Bishop of this Diocese. It gives him power to excommunicate, but does not create him Bishop.

P. Furlong proved that he was one of the electors in 1842, and was present at a meeting on the fourth of November of that year at which the electors and wardens gave up their control over the temporalities of the church to the Bishop.

Pierce Ryan—There are regulations posted up in the Cathedral for information of pew holders. The one shown to me was put up in the middle of May last. I was in the Vestry and went into the Church to hear the excommunication read by Mr. Hannan. There is a passage between the altar and vestry. The Bishop heard the excommunication read.

John Skerry proved copy from the registry of the original deed of St. Mary's.

Thomas Power—I am a member of St. Mary's congregation. I was present in Church one Sunday this summer, when Carten came in. The bells were ringing—I had my face to the door. Mr. Carten was going in—Keefe put his hand on his breast and told him he could not go in, but his daughter could. Mr. Carten said he would go in—and did not think Keefe could keep him out. Keefe pushed him back out of the door, and said he had authority to keep him out. Carten said he would go into his pew, which he had occupied for thirty years—and said to send for one of the clergymen—but Keefe should not put him out. Carten resisted, forcing Keefe back—and Keefe then put him out. They had hold of each other by the arms. I am positive that Keefe did not strike Carten.

Edward Haley, sworn—I was in Chapel, I think, first Sunday in July last; Mr. Kandick and myself were coming down Spring Garden Road,—one of us said that must be Carten—I rushed in and went up to Carten and Keefe; I saw Mr. Carten about three feet from the door; Mr. Keefe said Mr. Carten was a disgrace to the Church and to all Irishmen. I said you know Carten what has been published from the Altar, and you ought not to come in. Miss Carten told me to mind my own business. I told her she was a hussy. I did not see any blows struck.

[Here the Judge remarked that the evidence of this witness, made for the Plaintiff, as it proved abuse.]

The Defendant rested here, and the Judge allowed the Jury to retire for refreshments. After their return Mr. Young asked leave to examine another witness. His Lordship granted leave, and Mr. Young called—

Patrick McGrath.—I was in St. Mary's Chapel on the Sunday when the excommunication was read by Mr. Hannan—leading into the Vestry is a passage with a curtain on each side—the curtains were open, and the Bishop was standing between them—he must have heard the excommunication read—Carten was there—I was among the congregation, and saw the Bishop distinctly—he was inside the Chapel.

The Defence here rested.

Hon. J. W. Johnston,—If your Lordship please—Gentlemen of the Jury,—If my learned friend who opened this case to you was justified in representing it as one of no ordinary import, you and all present must be convinced that its magnitude and importance has been enhanced by the course pursued by the defendants. I ask you, gentlemen, to give the calm-

est consideration to the investigation of the question at issue; it is one on which the most momentous results depend. The plaintiff is deeply interested—as deeply concerned as it is possible for a man to be in the result of a civil investigation. The decision to which you may arrive will extend far beyond my client; a large, a prominent portion of the population of Nova Scotia will be affected by it; nor will it rest here,—we may be told that the question touches only an individual religious body—but if the law contended for on behalf of the defendant be sound law, the whole community must be affected by it—and all the interests of society must be saved from the consequences of placing in the hands of one man a power irresponsible, tremendous, overbearing in its character—powerful upon the whole population of this country. If such be the case you will hesitate to confirm the claims made here for a power not sanctioned by the law—a power singularly revolting in its nature and effects. The learned Counsel for the defendants was pleased to say in addressing you the other day, that he saw that my whole nature was interested in this case—that, to use his very expression, I had entered into it *con-amore*. What he meant by that, I know not; for up to the period of the case at which he addressed you, I had taken no active part in conducting it; a trifling application to the Court and the examination of one or two witnesses, being all the part I had taken in it. But, gentlemen, the learned Counsel is correct—my whole heart and soul is engaged in this cause—if ever there was an occasion which could call forth the feelings and spirit of a man who possessed one spark of manhood, that occasion I feel has arrived. It is easy to sail down the smooth streams when all the gales are favorable; it was so with the learned Counsel with a Bishop for his client, for whom he was claiming unrestricted power, pleading for a powerful hierarchy, and cheered on by the plaudits of an excited and admiring audience, he seemed almost to forget that *that* client was a man. I wish, gentlemen, that whilst he thus rejoiced, he could have felt some little of the meltings of humanity—something of that generous feeling that ought to have taught him to spare the feelings of the man who sits beside me. I would have been glad had he spared those coarse and rude attacks by which he sought to draw down the insults of that audience upon him; but, gentlemen, there he is, with me for his advocate, awaiting your judgment, which, if it be against him, is to strip him of everything which renders life worth living for, and send him abroad into the world, desolate, deserted, execrated. It is not, gentlemen, when the rich and power-

fall are backing and applauding a Counsel, that he should exert all his powers—but when he feels that every influence is brought forward to depress, degrade, and trample to the earth, the humble and the weak I, gentlemen, in conducting this cause, have but one feeling regarding it—the consciousness of my utter inability to do justice to the Plaintiff's position—it will be for you, gentlemen, to supply those deficiencies. The action on the part of the plaintiff is a simple one of Assault and Battery;—Samuel Carten, the plaintiff, with his daughter, approaching the door of St. Mary's Cathedral, is informed that he cannot enter, by one of the defendants;—he asks the reason, and it is not given. I don't believe in the statement that a reason was given, and I will tell you why. It was distinctly sworn to by Miss Carten, that her father asked Keefe to send for one of the Priests, and let him say that he was excluded and he should be satisfied. This was a moderate and a rational request, but it was refused—and therefore, gentlemen, it is, that I doubt that statement. He did not attempt by force to obtain ingress to the building, but simply pressed forward as any other man would have done on a similar occasion, force is immediately used, and he is thrust headlong from the building. This you have, gentlemen, from the testimony of Miss Carten—the simple truthfulness of whose manner must have impressed every one of you in her favor—truth beamed forth in her whole manner, and carried its weight to every heart. Mr. Carten does not fill the position of an enemy to the Catholic faith—I can easily understand the strength of the hostility to him, and as easily how unmerited it is. He comes into a Court of Justice to inquire if there be not some boundaries to a power which is utterly inconsistent with the personal liberties of the British people. For this he should be lauded, not lacerated;—he comes here to ascertain by the law of the land whether any Priesthood is to be allowed to trample under foot every vestige of freedom of thought and action—not to deny to the Romish Church the same internal freedom of management which must of necessity belong to every religious body of Christians. Now, gentlemen, what is the nature of the justification attempted to be set up. After all that has been said touching the pleadings, it is not necessary that I should occupy much of your time in speaking of the particular issues. In answer to the plaintiff's declaration the defendant has put in four pleas—in each of which he has averred that the Bishop was possessed of St. Mary's Cathedral, that Mr. Carten was no Catholic, no pew holder, and had no right to enter that Cathedral—that he

did attempt to enter, and that by order of the Bishop two other defendants, Keefe and Gowan, excluded him, as they had a right to do. The replication in answer to these pleas admit the possession but denies everything else, and the defendants are therefore bound to shew that they had such a possession by clear testimony. We demurred to the second plea, and the defendants asked leave of the Court to amend—that leave was granted, and two additional pleas put in, to which it was impossible to demur, for they alleged that Dr. Walsh claimed possession of the chapel of St. Mary's upon the same title that any of you, gentlemen, hold your private dwellings. So much for the pleadings. I will now turn your attention to the speech of the learned counsel for the defence—it was one of a most singular character. He claimed for his client a position occupied by no man living under British laws and British institutions—a position conferring power without limit—beyond all controul. Had he stopped here perhaps all might have been well, but in that impassioned speech which lasted for some hours, and which was drank in by his admiring and excited hearers, he clothes his client with a degree of indefinable sacredness which one can feel but not express. Such a course places a counsel, situated as I am, in an awkward position. The learned counsel asks you if you believe that such a man as Bishop Walsh, a man of consummate ability, would bring a bad case into this Court? and asserts that Mr. Carten must be a bold man to deny the authority and impeach the power of the head of his Church. A bold man, gentlemen—did it require any boldness in Mr. Ritchie or myself to assert that Mr. Carten was a Catholic, a pew holder, and a member of St. Mary's, and require from the defendants proof that he was not? It is a pity, gentlemen, that the learned Counsel could not spare for the defenceless Samuel Carten a little of that feeling which he possessed to such a large degree for his own client. With me, gentlemen, just the weaker and more helpless a client is, if he be an honest and an upright man, so do I feel my duty to be more responsible—and did the opposite and more powerful party be the wearer of more mitres than Yorick ever imagined to be showered upon his luckless pate, that duty should be done only the more faithfully,—and if his Bishop has mistaken his authority—if the act which he has done has been contrary to law—is there any reason why he should not be made responsible for the infringement of Mr. Carten's civil rights,—and yet the learned counsel tells us that an inquiry of this kind inflicts a mortal wound in the ecclesiastical polity of the Catholic Church.

(The learned counsel here read a portion of Mr. Young's speech for the defence.)

Now, gentlemen, this language goes as far as it is possible for language to go, and claims an authority as powerful as authority could be. The learned counsel was mistaken in saying that he claimed no greater power for the Catholic Bishop, in administering the laws of his Church, than was vested in some portion of every religious body. I assert that no such power as the Bishop demands is laid claim to by any—there is no legal power exercised by any body of Christians which would justify them in expelling a party from their Church during service, even after he had been excommunicated. I really, gentlemen, could not help thinking that the learned counsel was unfortunate in some of his illustrations. That was certainly an extensive requirement which claimed for the Catholic Church an unbroken and magnificent line of succession from Bishop Walsh to our Saviour.—The learned counsel must have been mistaken in tracing that line up to so high an authority. It was not from the Saviour that such a power could spring—he was not troubled much by the care of temporalities or the troubles of secular affairs. Neither do we find from what took place in the upper chambers, where the early christians met, that they were sought for by them. No, no, they desired to be freed from all such care—they wished to be disengaged from all earthly trouble—they sought not all the power *and all the temporalities*; to me it seems as though the learned Counsel should have stopped at some respectful distance from the age of the Apostles, and the period of our Saviour's existence upon earth. The learned Counsel then asks:—"Does Samuel Carten think that he is going to shake this system;" he has no such idea, no such wish. Mr. Carten is seeking from this Court, justice for a wrong done him—reparation for an outrage perpetrated upon him. But he does not stop here, he goes on to ask:—"Who is Samuel Carten?" and then answering the question himself, he says—I believe he can just write his name. Whatever feelings dictated these remarks, or in whatever spirit they were made, I think, gentlemen, that you will agree with me that they might just as well have been spared. Mr. Ritchie in opening this case to you, said not one word which did not belong to it; and in that lies the distinction between a party who travels out of a case to wound the feelings of another, and he who deals fairly and justly with those subjects which come under his consideration. This is not the first time, however, in matters connected with the present action, that Mr. Carten has been reproached with the lowliness of his condition.

This reproach is *surely* not consistent with the principles of a Church, the glories of whose hierarchy extend back in one *brilliant and magnificent* line to the Apostles and the incarnate son of God; how can such a principle be contended for as held by one who was content to be upon earth a Carpenter's son—or of those who as Meehanics were content to minister to their respective wants, and who neither laid claim to *all the power*, nor *all the temporalities*. The learned Counsel was extremely kind to us, who did not bask in the sunshine of Episcopal knowledge, when he said, he hoped the Counsel for the Plaintiff were ignorant of the effects of excommunication. It is because we do know the effects, gentlemen, that we abhor the act; it is because we well understand its illegality that we oppose the principle. You, gentlemen, are not so well aware of the proceedings in a Court of Justice, as we who are engaged here on all occasions, and I doubt not but you were somewhat taken aback when the learned Counsel so sympathetically offered to spare the feelings of Mr. Carten the reading of the excommunication. What means all this sudden regard for the feelings of the plaintiff? Such was the question we asked ourselves, and we felt at once there was a screw loose somewhere; the result proved our surmise to be correct,—it was not admissable evidence—the document could not be adequately proved; and therefore the learned Counsel, not from any regard to Mr. Carten's feelings, wished to get the document quietly before you without any objection. But the learned Counsel is not content with all the power—he must also claim the victory for his clients in the newspaper controversy, in which he tells you that if there was point on one side, there was abundant insolence on the other. This, gentlemen, was what we might have expected; after having been told of the consummate ability of the Bishop—and ascertained that he wielded the sharper sword, we might suppose that he would cut the deeper.

Let me now turn your attention to Mr. Connolly's examination; he tells you that the Bishop received from the wardens and electors of St Mary's in 1842 the controlling power which they exercised over the temporalities of St. Mary's; and that since March, 1845, he has been the absolute and uncontrolled owner and possessor of the same; that Mr. Carten had been excommunicated, &c.; and that a monition and an excommunication sometimes went together. But mark this most singular fact, that when asked by Mr. Ritchie whether he could put his hand upon a single precedent confirming such a course, he stated that he could not. It was also stated by the learned Counsel that this was not the course pursued

in Canada, Ireland or France. I ask you then, gentlemen, if Mr. Carten should be looked upon with execration, because he has attempted to extend the civil freedom of the members of his Church. Again, Mr. Connolly told you that a monition might be concurrent with an excommunication. Mark the effect of that; an innocent man may be judged, sentenced and punished, without a single opportunity having been afforded him of pleading his own cause, or establishing his own innocence. The excommunication is to this effect, that unless Samuel Carten do before a certain day make retraction or apology, he is on that day *nunc pro tunc* excommunicated.—The Rev. witness himself told you he could turn to no precedent establishing this principle—but he seemed to consider it so perfectly natural that he did not deem any substantiation necessary; in my opinion it is as unnatural, as it is inconsistent with the dictates of reason—or the first principles of common justice.—This then, gentlemen, is the evidence upon which this defence must turn—and I ask your attention whilst I attempt to lay it clearly before you. It is admitted that up to May, Mr. Carten was a Catholic, a pew holder, and a member of the congregation of St. Mary's; there are two grounds of defence, first that he had no right at any time to enter the Chapel of St. Mary's, contrary to the will of the Bishop. I controvert that it is not law, and there has been no authority shewn for it.—We have had allegations and general statements; Mr. Connolly has destroyed the universality of his own testimony by declaring that the practice in Ireland is totally different; the exception in this case makes the rule.—But it seems as though Nova Scotia were the peculiar place sought out to establish these abhorrent principles. You have it before you, that this Chapel was built when the old one became too small to accommodate the increasing congregation. I have no doubt but Bishop Burke contributed as far as possible towards its erection—but the main amount came from the pockets of the people, who built this edifice in order that they and their children might secure to themselves a place where they could worship God according to the dictates of their consciences, and the ceremonies of the religion to which they belonged. It has also been sworn to that the property came under the management of wardens and electors, who had full power to manage its affairs, but no further; they could eject no man from his pew, so long as he paid his rent. When Bishop Walsh came out in 1842 they transferred their authority to him; but you will perceive, gentlemen, that they could give him no power which they did not

themselves possess; then so long as Samuel Carten paid the rent, so long had he a right to hold and enjoy that pew. It has been proven to you, that he did occupy and pay the rent for it; and you are now told that Bishop Walsh, irrespective of any fault committed by Mr. Carten, can deprive him of it. I ask you to discharge from your minds, this claim of Bishop Walsh; upon it does not depend that strict administration of discipline, which the learned Counsel contended was absolutely necessary to the support of the principles of the Catholic faith, he certainly has the right to exercise this power over an offending Church, where the civil liberties of men are not involved; but to control the liberties of mankind in this way, is repugnant to every noble feeling in their natures. The Bishop is invested with no such power, and this brings us to the main question at issue, *the excommunication itself*.

If this be a monition and not a sentence of excommunication the whole defence falls to the ground. You will perceive, gentlemen, that the defendants are placed in this singular dilemma, that if this paper be a monition there is no sentence of excommunication—and the whole ground work of the defence is cut away—and if it be a sentence of excommunication—where, I ask is the monition required by the laws of the Catholic Church? there is none—and either way the defence is invalid. Here, gentlemen I must turn your attention to the law; first then to make a monition valid it should be a notification to a certain individual that charges have been preferred against him, and that if, on a certain day he do not appear and answer these charges he will be dealt with as contumacious. But gentlemen the moment you view it as a sentence it assumes a very different aspect. On the 15th of April without any means of answering the charges made against him, Samuel Carten is denounced from the altar of his Church as guilty of crimes the most audacious.

The learned Counsel here read the excommunication, as follows:

William by the grace of God, and the favour of the Apostolic See, Bishop of Halifax:—

“Whereas it is the sacred duty of the Pastor to preserve his flock in peace, and to protect them from the assaults of the powers of darkness, and the incursions of all ravenous wolves; and whereas for several years past, it has been notorious, and is now manifest by many proofs, that an unfortunate member of this congregation, named Samuel Carten, has done every thing in his power to resist the authority of the Church, to disturb the peace

of the Catholics of this city, to sow discord, and excite dissension, to insult and annoy his fellow Catholics, to interfere with sacrilegious wickedness, with the lawful jurisdiction of his chief Pastor, to deride his authority and that of his clergy, and to hold them up to public contempt. And whereas he has constantly mocked at the sacred rites and festivals of the Holy Roman Catholic Church, and turned them into derision, and with impious audacity exhibited in the very house of God, his irreverent, scandalous, and rebellious conduct. And whereas he has publicly exhibited and exposed a defamatory pamphlet, containing gross, offensive, unchristian and calumnious charges against various Catholics of this city, both lay and clerical, and has been convicted by his chief Pastor, on his own admission of shameful hypocrisy and falsehood, touching said act.

"And whereas, from the said Chief Pastor he has received paternal and salutary admonitions touching his soul's health, and the reformation of his morals—all of which he has despised.

"And whereas, in consideration of his family, and in hope of his sincere amendment, his long and wicked course of mischief has been mercifully passed over, without any Ecclesiastical censure; and whereas, notwithstanding, he has on recent public occasions come forward with renewed violence, and endeavoured to rend asunder the seamless garment of Jesus Christ, by resisting His anointed Ministers, and disturbing the peace of His Church, uttering and publishing schismatical sentiments and deliberate calumnies before the whole public, and in the face of this congregation.

"And whereas, for many years past he has openly disobeyed two precepts of our Holy Mother the Church, promulgated in the Fourth General Council of Lateran (Canon Omnis utriusque sexus fidelium.)

"And whereas, he has heretofore solemnly promised and declared before the People, Clergy, and Bishop, in this very Cathedral, that he would never more interfere with Parochial, or Ecclesiastical matters, which promise he lately broke in the most insolent manner.

"And whereas, all methods of charity and forbearance, accompanied by paternal advice, have been hitherto employed in vain, and that the said Samuel Carten ap-

pears to grow more wicked, rebellious, and obdurate every day.

"And whereas, any further connection of one so contumacious, turbulent and scandalous, with the flock of Christ, would be injurious to our Holy Religion, subversive of peace, unity and order in a Congregation so long heretofore distracted by similar causes; these presents are to notify the said Samuel Carten, in a Canonical Admonition, on the part of the Right Rev'd. Father in Christ, William, Bishop of Halifax, that, by virtue of his ordinary powers, he will proceed, by Ecclesiastical censure, to separate the said Samuel from the society of the faithful, and to cut him off from all participation in the Sacraments, Prayers, and Suffrages of the Catholic Church, *unless he retract*, either verbally, or in writing, his principles and give a solemn public assurance, that he will, in future, conform, as an obedient member, to the laws and discipline of the Holy Catholic Church, and never more presume to resist the lawful authority of his Pastors.

"And it is further declared on the part of the said Right Rev. William, Bishop of Halifax, in the name of the Father, and of the Son, and of the Holy Ghost, that if the said Samuel Carten do not make such verbal or written public retraction, and promise as aforesaid, before the hour of twelve o'clock, at noon, on Saturday, the twenty-eighth day of this present month of April, he, the said Samuel, shall be, and hereby, now for then, is declared to be *at that hour* excommunicated and cut off, as a rotten branch, from the Holy Roman Catholic and Apostolic Church, and deprived of all share in the Sacraments and Sacrifice, in the prayers and suffrages of the faithful, and of Christian burial after death.

"And whereas, moreover, any further appearance of the said Samuel in the Church of God, without such Retraction, would be an outrageous insult to Almighty God, to his anointed ministers, and his faithful people, the said Right Rev. William, Bishop of Halifax, *enjoins, directs, and commands* the said Samuel, *not to enter this Church, or any other Church in the Diocese of Halifax without his express permission, or that of his Vicar General, under pain of excommunication, as aforesaid, to be incurred by the very fact of such unlawful and sacrilegious entry; so that if*

he presume so to enter, despite this prohibition, he is, and shall be, *thereby* excommunicated.

" And whereas, one of the chief objects of this admonition is the salvation of the said Samuel Carten, and the delivery of his soul from the power of the Devil, he is hereby most earnestly conjured, in the name of Jesus Christ, the judge of the living and the dead, to reflect seriously on his present awful situation, and to merit by sincere amendment, and true repentance, that entire pardon and reconciliation which his Spiritual Father in Christ aforesaid, will be most happy to extend to him, and above all the pardon and forgiveness of his offended Father in Heaven.

" 15th April, 1819 "

There is a paper which we are told is a monition, I ask, you if on your judgments as men you believe it to be such ;—why gentlemen one of the charges contained in it—is made upon a surmise of acts done by Mr. Carten some six or seven years ago—and yet Bishop Walsh at a meeting which took place in February openly stated that he hoped Mr. Carten would continue a member of his Church and a pew-holder for thirty years longer.

(The learned Counsel here cited authorities from Godolphin and Brown's Civil law to the effect that an excommunication could not be pronounced without a just charge and all due solemnities ;—and that the Canon law required a previous summons or citation before any party could be sentenced.)

Now, then gentlemen I put it to you—have these requisites been complied with in this case ? to my mind they have not. I do think this is trifling with one to cite a man to appear and *retract or make reparation for a crime* at one and the same time —it is as absurd as it is unjust. What, gentlemen was the answer given by Mr. Connolly yesterday when pressed upon this point ? Why, he was asked, was not the monition issued first, and time given for Mr. Carten to appear and make his defence—and the sentence promulgated ? His answer sounded strangely in my ears—most strangely ; because, it would save the Bishop trouble. What, gentlemen, is this an answer to such a question which ought to satisfy you ; when in dealing with rights the most sacred and the most holy—rights the loss of which damns the reputation and character, think you this a good and sufficient excuse for such a course. Is it right that this paper containing the narration of his guilt—and his sentence should be promulgated at one time, for no better reason than that it would save the Bishop trouble. It does seem to me that such

a course is but trifling with the most sacred feelings of our nature—dealing with them in a manner in which none of you would wish to have your slenderest rights dealt with. You are called on to say that Samuel Carten was justly exeluded—according to the rites canons and discipline of the Catholic faith ;—can you do so with the evidence before you ? can you on your oaths affirm that the crimes charged against Samuel Carten are crimes which he did commit ? is there any evidence of his culpability ? I ask you gentlemen in behalf of a fellow subject—to give him those privileges and immunities the birthright of every British subject. Mr. Carten denies the justice of these charges—he has asked for an opportunity to refute them—that opportunity has been denied him, he has been seized by the collar—thrust from a building which he was entering—and which he had a right to enter—condemned and punished and you are asked to give your sanction to such an outrageous violation of every principle of justice—asked to sanction a condemnation couched in language from which the human soul revolts in horror.

I will now turn your attention to an analogous case—*Beurain vs. Sir William Scott* :

The defendant as Vicar General and Official Principal of the Consistorial and Episcopal Court of the Bishop of London had required the plaintiff to appear as guardian *ad litem* to his son, (who was a minor, and whose wife was proceeding against him for a separation in that Court), and ordered him to be excommunicated for refusing to do so—and this was an action in the case for unlawfully excommunicating the plaintiff. Two grounds were taken for the plaintiff : 1st, That the Ecclesiastical Court had no authority to compel Mr. Beurain to become guardian against his will ; and 2ndly, because no regular citation or monition had been served on Mr. Beurain before the excommunication had been directed. On the other side, the counsel of Sir William Scott did not deny that the action might be maintained if the Ecclesiastical Court had exceeded its jurisdiction ; but they called witnesses, among whom was Sir John Nicholl, Judge of a Supreme Court, who on appeal had affirmed Sir Wm. Scott's sentence, to prove that the plaintiff was bound to become guardian for his son, and that the proceedings against him were perfectly regular. It was also proved that Sir Wm. Scott had behaved with great generosity to the plaintiff in his subsequent misfortunes, for which the plaintiff had himself expressed great gratitude. Lord Ellenborough left it to the Jury to decide upon the effect of the evidence, stating that he himself did not perceive anything unreasonable in the plaintiff being required to become guardian *ad litem* in the

manner described, and that the plaintiff seemed to have had sufficient notice of the appointment according to the practice of the Ecclesiastical Court. The Jury, however, found for the plaintiff forty shillings damages, observing that they did not mean to throw the slightest reflection upon the highly respectable character of Sir Wm. Scott.

Mr. Johnston pressed this case on the attention of the Jury as shewing that both the authority of the Ecclesiastical Court to act in any particular case, and also the regularity of its proceedings, could be inquired into in a Court of common law; that Sir Wm. Scott, whose abilities and legal knowledge were of the highest order, did not claim that immunity from investigation that Mr. Young claimed for Bishop Walsh, and that Lord Ellenborough had left the case with the Jury, although his own opinion appeared to lean with the defendant.

In answer to an observation of Mr. Young, Mr. Johnston also stated that the case of *Beaurain vs. Scott* went further than that under trial, because there the Judges were held answerable in damages for the mere consequences of his judgment, while here the Bishop had undertaken himself to give efficacy to his sentence, and in doing so to interfere with the personal liberty and rights of Mr. Carten.

Now,—gentlemen, I ask you if you can sanction such a proceeding? Will you give any man unrestricted power to damn on earth and to damn to all eternity;—with none to ask the reason why, no tribunal upon earth with power to say—wherefore was this done? Will you allow a man to be excommunicated with all its attendant horrors unless he consent to criminate himself—to acknowledge crimes of which he is confident he is innocent? You Alexander Wilson—you William Silver—place yourselves in Samuel Carten's position, question yourselves—let your own hearts say, how you would feel, were you placed in the plaintiff's situation? Neither of you would ask for your Church such a power,—legitimate authority—authority in consonance with reason and common sense is all you would ask.

This case comes before you under very peculiar circumstances—with you rests the interests of the plaintiff—I put his case fearlessly into your hands; the law has placed you in your present position and by the oaths which you have taken and which are recorded in heaven, I charge you to do my client that justice which he deserves. You have solemnly sworn before God, and in the presence of your Country to decide this case according to the evidence—and on your verdict hangs the fate of the plaintiff; fearful are the odds against which he has to contend; fearful the result if it terminate against him. There are certain

peculiarities in this case which I feel bound to advert to before closing—we have sometimes had in this Court the strange sight of a learned Counsel with his back to the judge and a cold shoulder to the jury addressing in a very pleading manner the audience outside; working upon the passions in a way which was sure to tell with a powerful effect upon excitable hearts—especially when the subject of declamation torched the deepest feelings of man's nature; and the effect has been witnessed in the loud plaudits which which have followed. The learned Counsel certainly did, with an unparing hand lay bare the system which he was advocating. It is true he wreathed it around with terms of adulation, but still its true nature and character was too plain to be misunderstood. We now well understand the extent of the power claimed—and the arbitrary and unjust exercise of it in the present instance. I can not imagine, gentlemen, how any man can desire that in one relation of life which he would trample upon in another. I can imagine the learned Counsel on some other occasion, before the same audience, giving them a lecture upon the rights and privileges which they enjoyed or in his opinion ought to enjoy, and pleading the cause of freedom with all the power of which he was master. What a contrast does his speech of the other day present to you. When the learned Counsel next attempts anything of that kind, let him remember the cause of Carten vs. Walsh—and the singular commentary which it will present upon the course he then may take or the sentiments he may give expression to, will certainly teach us to admire his consistency. This gentlemen is a question which touches the dearest interests of each one of you—it enters into the very vestibule of the heart;—I call upon you therefore not to swerve for one moment from the strictest line of duty; I feel that the power sought for by Bishop Walsh is utterly inconsistent with the liberties of the people; he may be a man to whom such power might be intrusted—but his successor may not. The strongest mind becomes blinded when wielding power—the heart is led astray—principles are forgotten and slumber, power, irresponsible power may, may must be, from man's very nature, abused. It was in the very worst taste, that the learned Counsel made the remarks he did touching the Jury who were to try this cause. Why, gentlemen, suppose for one moment it were a Catholic Jury who were called upon to decide it,—what a singular position would they be placed in—when we are told that their Bishop may excommunicate, and right or wrong they must submit. This case is before you—it is in your hands, you are competent to decide—

and on your verdict rests the consequences;—a verdict gentlemen which may form an important epoch in the annals of your Country. What will a verdict for the defendant's achieve? need I expand the idea that flashes across every brain.

But we are told that a verdict for the Plaintiff will unhinge a Church; now I ask is such an effect to be produced? No, gentlemen, if it have any effect at all, it will be that of extending its means of usefulness. We are informed by Mr. Young that while Mr. Carten was at the door of St. Mary's, he observed the tears in his eyes—and well might they be there; he wished no injury to the church of his fathers—nay, his desire was to adhere to that faith still; and he was touched to the heart by the treatment he received. Yes, gentlemen, the tears stood in his eyes. The tears of women are easily called forth and can be lightly brushed away, but if there be one spectacle on earth more affecting than another, it is when manhood is stripped of its stern character, and under the influence of the noblest feelings of our nature melts into tears. It is only when the iron is in the soul—when the stroke has reached to the depths and recesses of the heart, that this can be. Samuel Carten stood at the door of St. Mary's—a spectacle of scorn—obloquy and insult had been heaped upon, violence had been used against him, and that too in the presence of his child—that young girl who was before you the other day, and whose excellent demeanour must have proved to you unmistakably that she came from a home where morality and religion were cherished; she, too, had seen her father's insults and her father's wrongs. Again, the learned Counsel told us that the mother and daughter had never been prevented from attending chapel;—that is the unkindest cut of all. What, gentlemen, to have the offspring who had come from his loins—the wife whom he had cherished on his bosom, attending day by day, and Sunday by Sunday, the place of worship to which the father once accompanied them, and seeing the vacant seat which he should have filled. The injury to the man *alone* is nothing, you cut down the blasted tree and it is forgotten—but invest it with the garniture of leaves and blossoms, and you cannot touch it without destroying them. So if a man be surrounded by children, a family, friends, you cannot aim a blow at him, but it strikes them. Samuel Carten till but lately, has been a stranger to me. I have known him but to admire him, because of the firm honesty of demeanor which has characterised him—the calm self-possessed manner in which he has carried on this inquiry; had I seen in him any spirit of factious opposition, or determined revenge, I should have

arrived at a very different conclusion; but I have seen none, and I marked the humiliating, contemptuous manner in which he was treated, with a feeling akin to disgust. If, gentlemen, you believe that the defendants have made out their justification, give them a verdict; if on the contrary, from the evidence before you, you are of opinion that Samuel Carten has been harshly and unjustly treated, then I ask you to discharge your duty fearlessly and well; your oath demands it of you, recorded as it is in heaven; then, if you believe the Plaintiff right, you must affirm it regardless of consequences. The learned Counsel closed his speech with a reference to Mr. Carten's death bed scene; this, gentlemen, though not often referred to in a Court of Justice, is not inappropriate here; but when we speak of *this*, earth and earthly feelings must be forgotten,—something higher and holier than the casual interests of this life are brought to bear upon our erring natures. But, when the learned Counsel referred to this, I could not but feel that before the tribunal of the Almighty he would scarcely urge a distinction between a Shoemaker and a Bishop. No, gentlemen, Samuel Carten the Shoemaker, and William Walsh the Bishop, before that awful throne, will stand on an equal footing; and on that day in which you will meet them there, you will be called upon to say whether you did *them* that justice which *you* yourselves will then require, by the golden rule of him, the mighty Lord of all. I leave, then, this case in your hands—see that your verdict be just

FRIDAY.

His Lordship Mr Justice Haliburton charged the Jury as follows:

Gentlemen—my desire has been from the commencement to the close of this protracted, perhaps unnecessarily protracted trial, to exclude all matter not bearing directly upon the issue. Accordingly at the very outset I refused to receive evidence in reference to certain articles alleged to have been printed in a certain Newspaper; and throughout the investigation I have pursued the same course,—excluding all testimony of an extraneous or irrelevant character. I was anxious, gentlemen, to submit my charge to you last evening, but there were one or two reasons, in my mind, of sufficient weight to induce me to postpone it until now. 1st—I had listened to a very able argumentative speech from the learned Counsel for the Plaintiff, and from any undue influence which it might possibly have had on the mind I was anxious to be relieved by the effect of a night's

repose and a few hours of calm deliberation. And again, gentlemen, although I admit that the behaviour of the audience in general was on last evening rather improved and more orderly than on the day previous, it was, nevertheless, not such as to permit a Judge to bring to a review of the important question at issue, a desirable calmness and self-possession. Gentlemen, before I proceed it may be advisable that I endeavour to remove one or two false impressions which portions of the speech of the learned counsel for the defence may have stamped upon your minds. Mr. Young, in the course of his address, stated that it was a very humiliating sight to behold Bishop Walsh dragged before such a tribunal as this, and he did me the honor to point at me as a *Protestant Judge*, and at you, gentlemen, as a *Protestant Jury*. Gentlemen, I cannot understand it. I cannot comprehend how a man who calls himself a Protestant can entertain such a horror of Protestant Judges and Protestant Juries. I could understand Mr. Carten were he to complain at being tried before a Protestant Jury and an old Tory Judge. Mr. Young's horror at Bishop Walsh's being here tried I can not comprehend. Why, gentlemen, all *subjects* save one, I mean the Representative of the Crown, may be tried before this tribunal. The learned Counsel told you that Mr. Carten had mocked and laughed at somebody—and seemed to consider his so doing as a very heinous crime; but scarcely had the words passed his lips when he committed the very same offence himself. Who is this Samuel Carten? he asks:—he is a low fellow—can scarcely read or write; cannot put two sentences of English together, &c., and as if he were some Jack the Giant Killer, pointed his finger at him, and so close to his mouth, that had he been the "ravenous wolve" he is represented to be, he would have bitten it off. Now, this was wrong, and I am sure Bishop Walsh, who is a gentleman and a scholar, never instructed his Counsel to adopt such a course. There is another subject which I must bring under your consideration. Out of the forty eight jurors drawn, you are aware that each party has the privilege of striking off a certain number until it is

brought down to twenty four; and from that number the jury are drawn. Now suppose the Plaintiff did strike off all the Catholics on the jury, which the learned Counsel seemed to consider so remarkable a circumstance, was there not good reason when the learned Counsel tells you that every good Catholic in the city has a pang at his heart—is thrilled with horror at the Plaintiff's conduct. Now, gentlemen, the principle laid down by Mr. Young, that the right of excommunication must reside within every religious body, is perfectly just and right. The question for you to try is—has Mr. Carten been legally cut off from his Church—is the paper which has been put in evidence an excommunication and a monition both—and whether the Bishop has the power, by assigning one reason, to excommunicate any member of his Church. This has been asserted on one hand and controverted on the other, upon various grounds—one of which is that the paper of itself carries internal evidence that something more is required. To assert that Mr. Carten is not a Catholic is nonsense. Mr. Carten denies not the tenets of his Church—he does not desire to quit that Church—all he asserts is that he does not admit the right to put him out in this way—to invest any man with such a power as is sought for by Bishop Walsh is repugnant to the spirit of our Laws; if, gentlemen, in considering this question you arrive at the conclusion that Samuel Carten has been illegally excommunicated your verdict must be for him. In conclusion, gentlemen, I charge you to do your duty—simply—firmly—plainly; regardless of persons or consequences. I have the advantage of trying this cause before a Jury not one of whom I know—and in the presence of a talented Bar, whom I sincerely respect, with not one of whom, however, am I on terms of intimacy. I have never been a popular Judge—and I never will be one—for I believe it to be utterly inconsistent with popularity for any man to speak plain and unpalatable truths.

The Jury retired, and after having been absent the best part of the day, returned to Court without agreeing upon a verdict when they were dismissed by the Judge.

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APPENDIX.

[Since the foregoing Report was published, we received the following "authenticated" copy of Mr. Justice Haliburton's charge to the Jury—which, in justice to his Lordship, we feel it to be our duty to give in this place.

Gentlemen of the Jury,—This is an action of Trespass brought by Mr. Samuel Carten, of this place, against his Lordship, Dr. Walsh, the Roman Catholic Bishop of Halifax, and Michael Keefe and Patrick Gowan, two of the subordinate officers of St. Mary's Cathedral. The plaintiff sets forth in his declaration that when the Assault took place he was a Roman Catholic, a pew-holder in St. Mary's, and a member of the congregation that assembles there to worship, and that he was consequently entitled to enter that Church as he had heretofore been accustomed, for the purpose aforesaid, when on a Sunday in the early part of July, he was forcibly excluded by the two last mentioned defendants, acting under the authority and by the command of the Bishop.—To this the Bishop (for he assumes the responsibility of the acts of his officers) pleads:—1st, a general denial. 2nd, that at the time spoken of he was Roman Catholic Bishop of Halifax, and as such invested with the possession of St. Mary's Cathedral, and the plaintiff not being a Roman Catholic, nor a pew-holder, nor entitled to admission, endeavoured to force an entrance without his permission, whereupon he ordered him to be removed as he lawfully might according to the canons, rules and discipline of his Church. 3rd, laying aside his episcopal character and answering in his own name as William Walsh, he says that he was possessed of St. Mary's Cathedral as of his own property, and the plaintiff attempting to force an entrance, he ejected him, as he lawfully might, any intruder upon his own dwelling house. On these pleas issue has been taken and they constitute the subjects to be submitted for your investigation. You will find, however, presently, that they will be still further simplified by the manner in which I shall put it to you, for after all, there is in my opinion, but one main subject for your consideration—whether the plaintiff has been regularly and legally expelled; the other issues being substantially involved in that question.—I could have wished to have closed this long protracted trial last night, but there were several reasons that operated in my mind, to withhold my charge until this morning. 1st, I felt that it was hardly fair upon you at that

late hour to send you to the cold and uncomfortable jury room, and leave you the alternative of either spending the night there, or of hastily adjudicating upon the cause. 2nd, altho' the conduct of the audience had been much improved from what it was on the day preceding, still it was not such as to ensure my entire confidence. And 3rd, because as you had just listened to a very eloquent speech and powerful appeal to your feelings from the able advocate of the plaintiff, I thought a little repose and a night's quiet reflection, might better enable you calmly and coolly to do your duty,—you have now the day before you, and will be neither fatigued nor hurried. The cause itself, gentlemen, is one of great importance, as it affects directly or indirectly the independant action of every religious body, and we cannot wonder at the great interest it has excited, and the very large audience it has attracted,—but the difficulty it presents is infinitely less than its importance, for as I have just observed, the whole depends upon your opinion as to the one point to which I shall shortly direct your attention. It is said to be a strange and unusual cause, and considering the parties to it, it certainly is so—but I regret to say some very strange and unusual things have been said and done in it, that requires to be noticed, as likely to produce a prejudice on the mind; and I regret this the more as it withdraws our attention from the main object of our investigation. But we are not here to try a cause by prejudice, but by law and evidence, and by those alone—without reference to the respective stations of the parties, their creeds, or personal influences. Mr. Young in the course of his address stated that it was a very humiliating thing to see Bishop Walsh brought before such a tribunal as this, with an emphasis and a manner implying no little contempt, and did me the honor to point to me as a Protestant Judge, and to you also as a Protestant Jury. Why this should be done, or why this distinction should be alluded to, to the annoyance and injury of both bodies of Christians, I am at a loss to comprehend.—Still less am I able to understand how an advocate who has very unnecessarily avowed himself a Protestant (for we inquire into no

man's creed here) and several times asseverated that he is a Presbyterian, can really be so shocked at a Protestant tribunal. When I read that the great Hungarian patriot, Gen. Bem, has conformed to the religion of Mahomed, I can comprehend, if he is sincere, his horror at seeing a christian, and his calling him a dog, an unclean thing, and an infidel Frank—and if he should find one in his Mosque, that he should put him to death as an unbeliever. So I could understand a man in the situation of Mr. Carten, not being wholly exempt from prejudice, and saying—"I am a Radical, and a Roman Catholic, and I feel alarmed at being tried before an old Tory Protestant Judge."—But I cannot understand Mr. Young who is a Lawyer and a Presbyterian, claiming any such exemption for his client—and I must remove all prejudice on this score by saying at once plainly and emphatically, that it is very meet and fitting that the Bishop in common with all other subjects of her Majesty, should be amenable to the established legal tribunals of the country, and I know of no privilege conceded to any person but one, and that is the Queen's Representative, the Lieut. Governor of the Province. If Mr. Carten enters the dwelling house of his Lordship and ejects him, it is meet and fitting that he should come here and claim the protection of the law, and most assuredly he would obtain it—and on the other hand if the Bishop expels him from his Chapel, it is equally seemly that the legality of the repulsion should be here inquired into. I hope, therefore, that we may never more hear a repetition of such inodious and improper remarks. Indeed I will do Bishop Walsh, who is a gentleman and a scholar, the justice to believe that he never authorized any such claims of exemption, and feel assured that he would, if he heard that it had been put forward, utterly repudiate it as inconsistent with his own dignity and the rights of the civil power. Another singular feature in this cause is the extraordinary manner in which Mr. Young has gone out of his way to raise a prejudice against the plaintiff. He says that the offence committed by him for which he was expelled, was mocking or laughing at some one in authority, tho' who that person was he has not informed us. This offence, he says, was of so serious a nature, as to call for and justify the highest punishment known to the Church, no less than that of excommunication; and yet he had hardly uttered these words when he did the same thing himself by mocking and ridiculing the plaintiff personally before one of the largest audiences ever seen in this building,—changing his position, and pointing his finger at his face so close, that if he had been the "mad dog" he is represented to be, he could have

snapped at it. He asks "I want to know who Mr. Sam. Carten is?" as if he had never seen him before in his life—and then after waiting some time for a reply, continued, "I will tell you who he is—he is a low fellow—an ignorant fellow that can scarcely read and write his name, and if it were to save his life could scarcely put two sentences of English together," and then turning his back on the bench and jury box, he adopts the unusual and extraordinary mode of addressing the plaintiff personally, in an insulting and ironical tone, as if he were some "Jack the Giant Killer,"—So you, Mr. Carten, think you are the man to shake the faith of one hundred and fifty millions of Roman Catholics in the world, and of six or seven thousand of that body in this city, do you? You expect, do you, to upturn the great Cathedral of St. Mary's in this city, and so on. Now, gentlemen, this is all very bad, very bad indeed, and very much out of place here. No man can or ought to go out of the record, and personal infirmities are not fit subjects for remark—and are out of the reach, as they ought to be below the notice, of an advocate, for it is invoking prejudice in a place where above all others, we must exclude even the appearance of it. There is one topic more and only one, that I shall allude to. By the law regulating special juries, forty eight names are drawn indiscriminately from the list, of these each party strikes off twelve, whereby the panel is thus reduced to twenty-four, and from these the first twelve that are drawn are the Jury to try the cause. Now, a grave charge is made against the plaintiff, that he struck off nine of his own communion from the list, from which act an inference is drawn that, being afraid to submit his cause before persons of his own creed, it is evident that he feels and they know that he is wrong. I cannot imagine anything more culpable than these observations. The right of challenge exists without enquiry and without remark. A man is bound to assign no reason, nor entitled to ask one, and the exercise of it is not subject to comment or animadversion. He has, accordingly, offered no explanation; but Mr. Young, at the same time that he made the charge, assigns a justification—for he tells you that all the clergy and (with the exception of five or six persons) the whole congregation are thrilled with horror, and their hearts pained and grieved at the plaintiff's conduct, and then goes on to claim the right of a most summary excommunication in and for the defendant.—If such be true, he was well warranted in what he has done in striking off their names—but whether right or wrong one thing is most certain, he has great reason to complain of any attempt whatever to raise a prejudice against

him on this score. I repeat, gentlemen, I greatly regret the introduction of these topics, on account of their tendency to infuse undue influences into the mind, and also on account of their withdrawing our attention from the main object of our inquiry, but I felt it necessary first to dispose of and exclude all these extraneous matters before we enter the great question at issue, for it is my desire, as it is my duty, that both parties should have a fair and impartial hearing. I have already told you that the difficulty of the inquiry was by no means in proportion to the importance of it, and I shall now show you that it is within very narrow limits. In order to aid you in your deliberation, I will lay down a general principle for your guidance. "Every body, whether Lay or Ecclesiastical, whether it be a congregation for worship, an association for promoting temperance, a lodge for Freemasons, or a club for social purposes, has a right to lay down in its own way rules for its own government; and as every such body necessarily and inherently possesses the power of expulsion for the violation of its rules, all that is necessary to legalize such expulsion is an observation on its own part of the rules and forms for such case made and provided." Acting on this principle, I do not stop to enquire whether the power here claimed is arbitrary or not. I abstain from assenting to or dissenting from the creed formula and discipline of the Roman Catholic Church. We are not a Court of Appeal on Ecclesiastical matters, and in this cause, according to my view of it, we have nothing to do with such points. Conceding to them the power of excommunication according to the rules and discipline of their Church, the only question which you have to decide is this, "had Bishop Walsh observed and followed the rules and discipline of his Church in the mode and manner of excommunicating Mr. Carten?" This he is bound to do to legalize his expulsion, and this the plaintiff has a right to require to be done before he submits to be deprived of his Christian privileges; or, on the other hand, has the prescribed and established form been dispensed with, the usual notice not given, or hearing been had, or the sentence been irregularly and inopportune pronounced. If the course pursued be the regular and accustomed one, there must be a verdict for the defendant; if not, your verdict will be for the plaintiff.

The proof by the pleadings necessarily rested on the Bishop; now to show the regularity of his proceedings, he puts in a paper which you have read, which he calls both a monition and an excommunication. It notifies the plaintiff on the 15th day of April, 1849, that if he does not submit himself by Saturday

at 12 o'clock, on the 28th of the same month, he will be excommunicated *nunc pro tunc*, that is, that his excommunication will have relation back to the 15th April. In support of this document the Rev. Mr. Connolly is produced, who is high authority, being Vicar General of the diocese of Halifax, and versed in the usages of his Church--and he says clearly and distinctly that it is in due form--that it is both a monition and a contingent excommunication, to take effect by the lapse of time therein named--that one monition only is required--and that one reason only need be assigned in it, and that reason the Bishop need not furnish the proof for, moral certainty being all that is requisite. On the other hand the document is controverted by the plaintiff; he says the document is incomplete--it is either a monition or an excommunication, but cannot be both; if a monition there is no excommunication--if an excommunication then there is no monition. He says first, that the document bears internal evidence of its being incomplete, as to both characters,—1st, because in it the Bishop says 'in the future tense) he will proceed by censure to cut him off, *unless he retract*, by the 28th day of the month, whereas, *non constat*, he did not retract by that time.—2nd, because by the last clause he calls it only "an admonition," and holds out hopes of pardon. 3d, because it is not authenticated by the Bishop's hand and seal. 4th, because there is appended to it a certificate of its having taken effect, under the hand and seal of the Diocesan, though not proved--nevertheless, it showed that the authorities of St. Mary's considered it incomplete without other formalities than those contained in it. It is further argued that it can only be a monition, because it assumes the guilt of the plaintiff,—assigned no time for hearing, and, therefore cannot be an excommunication, because that would be to punish Carten unheard. Several law books have also been cited to show that the Crown Law requires a man to be heard before he is condemned. The necessity of this is denied by Mr. Connolly, and assentingly maintained by the other side--and authority has been quoted to prove that it neither is nor ever can be sound law, because it is not in accordance with the principles of justice. But there is one book bearing on the subject which has not been referred to by either side. We read that Festus told King Agrippa that Felix had left a man in bonds there whom the chief priests wished him to deliver up for execution, but that he told them it was not according to Roman Law that any man should suffer until he first knew what was alleged against him, and saw his accusers face to face, which is good law bearing on this point that will not be

disputed. Such are the conflicting claims and arguments of the parties. I repeat that the question of regularity and formality of proceedings is what you are first to decide; if every thing is correct there must be a verdict for the defendant,—but as that document asks us to give our sanction to a practice repugnant to our Laws, contrary to the spirit of our jurisprudence and other rules of evidence adopted by our courts, and the consequences are no less than denial of the rights of burial and Christian fellowship with his countrymen and coreligionists, you ought to be well assured that you are warranted in saying so;—on the other hand, if Mr. Carten, in your opinion, has been irregularly (and illegally according to Roman Catholic views) expelled, the verdict must be in his favour, with large damages, for the injury sustained by him, as I have already stated, is very great. In the Church sense he may be said to be no Roman Catholic, but in common parlance it is an abuse of terms to say he is not one, in heart, in creed, in sympathy, in association, and in every feeling of a man.—He says he does not want to leave them—he will obey the authority of the Church, and submit himself to his clergy, but he will not submit to arbitrary expulsion.

Gentlemen—such are their respective positions, and such their claims and rights; let there be no mistake as to my views. Even at the hazard of fatiguing you, I must say for the last time—if you shall view the Bishop's expulsion of the plaintiff regular, according to the rules and discipline of his Church, he must be acquitted—if not, he must pay damages accordingly. I have now done my duty, firmly,

plainly, and fearlessly, and I invite you to do the same. I have had the advantage, or disadvantage, as you may consider it, of trying this cause before a jury not one of whom I know—before a numerous bar, with not one of whom, much as I respect them, am I on terms of intimacy—and before an audience to whom I am, with some few solitary exceptions, a total stranger. It is necessary that you should be equally untrammelled, and to be so it is essential that you view with indifference what any person or bodies of men may think. To please others is a hopeless task.—We must seek our own self-approbation, and endeavour to satisfy our own consciences, and attempt no more. I have been on the bench, gentlemen, for upwards of twenty years, and, on a review of my judicial labors, I find I never have been, and I think I never shall be, a popular judge—for, in my opinion, popularity is wholly and totally irreconcilable with a firm and honest discharge of our duties. It is not in the nature of things, that a man who passes sentence, inflicts fines, decides between excited individuals, and governs bodies of men, and, above all, who speaks plain and unpalatable truths, can be popular; and if I were to find that I had had accidentally become so, I should pause and reconsider my conduct, and ask myself in what particular I had erred. I recommend the same stern performance of duty to you, irrespective of persons, parties, and popular opinions—and with this recommendation, I leave this cause, with great confidence, in your hands for your decision.

