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BY

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The Legal News.

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A YEAR'S WORK.

In connection with the pressure upon our Quebec Court of Appeal, the following, from the *Alb. Law Journal*, about the New York Court of Appeals, will be read with interest:—

“Our Court of Appeals, after a heroic struggle, have substantially cleared their year's calendar at the end of the year—a feat never before accomplished by this Court. They have heard every cause ready for argument, and have decided 583 of the 608 causes on the calendar. They have handed down 560 decisions during the year. This is a great work, and this statement does not include the myriad motions heard and decided. The Court sit, in hearing and consultations, seven hours a day, five days in the week, and write their opinions in the evenings, on Saturdays, and in vacation. It is difficult to see where they get any time for reflection. The new calendar will number over 400 with an unusually large proportion of preferred causes. It is a serious question how long men can live under such a burden as the present, not to say how long, with the constantly increasing business, their decisions can continue to deserve the general approbation which they now receive.”

REMARKABLE LONGEVITY.

Some time ago, the case of Mr. Azgill Gibbs, of Rochester, N.Y., was briefly noticed in this journal (p. 138 of vol. 3). Mr. Gibbs was said to be the oldest lawyer in the world, engaged in actual practice. This example of vigor and longevity is better authenticated than the majority of such cases, for it happens that Mr. Gibbs' son is editor of *Hall's Journal of Health*, and the December issue of that periodical says:—

“Mr. Gibbs is now in his 94th year, and for seventy years has never been absent from his office for a single day on account of illness. He is to-day in the enjoyment of perfect health and in possession of all his faculties. This wonderful longevity and freedom from illness

are the direct result of a course of living which this journal has advocated for more than a quarter of a century. The secret of this long exemption from any serious disease and of this green old age is an open one. It is simply the avoidance in daily life of such things as all the world knows impair the health and strength of mankind and bring on decay. Mr. Gibbs has never used tobacco in any form, and as for intoxicating liquors, he is ignorant of their taste. His diet has always been ample but simple. Fond of the pleasures of the table, he enjoys them in moderation. An active and laborious life has been sweetened and prolonged by a rigid enforcement of the homely but golden rule, ‘Do not fret.’”

ONTARIO JUDICATURE ACT.

A Committee appointed to consider the proposed new Judicature Act of Ontario, has reported several suggestions in amendment to the bill as follows: First, The abolition of all unnecessary distinctions between the courts of law and equity, even in the names of the courts. Second, The decentralization as far as possible of the business of the courts, and, with that object, the establishment of the divisions of the proposed High Court in such places in the East, Centre and West of the Province as shall be most convenient and suitable, with the Court of Appeal at Toronto. Third, A practice which shall include all forms of actions, and under which actions shall be conducted, as far as possible, from their commencement to their termination, in the locality in which the litigation shall arise.

SIR JAMES W. COLVILLE.

The decease of another prominent English Judge is reported. The Right Hon. Sir James W. Colville, who delivered the judgment of the Privy Council in *Molson & Carter* on the 27th of November, died suddenly at his residence, Rutland Gate, on the 5th December, aged 70. He was the eldest son of the late Andrew Colville, of Ochiltree and Craigflower (for many years Governor of Hudson's Bay Territory), by his second wife, sister of the first Earl of Auckland, Governor-General of India; he was educated at Eton and Trinity College, Cambridge. In 1848 he was appointed Judge of the Su-

preme Court at Calcutta, and in 1855 Chief-Justice of the same Court; in 1871 he was appointed a member of the Judicial Committee of the Privy Council. He was a grandson of Isabella (grand niece and heiress of the last Lord Colville, of Ochiltree), daughter of Andrew Blackburn, a leading merchant of Glasgow in 1770.

THE COURT OF QUEEN'S BENCH.

A conversation took place (Dec. 21) during the recent term of the Court of Appeal, with reference to the postponement of cases which are called when there are only four Judges on the Bench. A case which had been so postponed, during the illness of Mr. Justice Ramsay, having been called,

Mr. Justice RAMSAY remarked that the law made the quorum to consist of four Judges, and it should not be supposed that more were necessary. The Court had to get through one-fifth more work in each of the next two years than it had been able to get through on the average of the last seven years, and it was wasting the strength of the Court to insist on having all the five Judges present in every case. There was not another Court in the world, so far as his Honor was aware, where the whole Court sits in every case. There was a rule for supplying an *ad hoc* Judge in certain cases, but there was not a word in the law to require that five Judges must be present, and he could not conceive how they had fallen into the practice of the whole Court sitting. What would be said in the Privy Council, if it were proposed to adjourn the Court because one of the Judges was absent?

Mr. BETHUNE, Q. C., said the object had been to avoid an equal division of the Court, but the Court had been careful not to lay down the rule that a postponement could be claimed if five judges were not present.

Mr. Justice MONK observed that as far as he was concerned, he would be only too anxious to have the assistance of a full Bench.

Mr. Justice RAMSAY said they had laid down the contrary rule, of proceeding with four Judges, six years ago, and although there might occasionally be a re-hearing owing to it, yet that could be arranged without difficulty by submitting the case to a fifth Judge in Chambers. He considered this point of great im-

portance, because the Court was now pressed to the last extremity, and it was hardly possible for the Judges to go on much longer, without danger of some of them breaking down.

Mr. Justice MONK.—I can only say that when an important case comes before the Court, it is a great satisfaction to me to have five Judges present. It is an assistance to the Court, and probably obviates some difficulties.

Sir A. A. DORION, C. J.—I may say that we have endeavored to meet the wishes of the Bar in the matter.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, December 29, 1880.

Before TORRANCE, J.

SLEETH v. HARBOUR COMMISSIONERS OF MONTREAL.

Harbor Commissioners—Obstructions on the Wharf.

The action was to revendicate a quantity of wood. The defendants pleaded that the wood had been placed on the wharf under their control, and as it obstructed the thoroughfare, they had removed it as authorized by their by-laws Nos. 42 and 43, and they claimed a right of retention for their disbursements, \$20.21, until the payment thereof to them.

PER CURIAM. I am quite satisfied on the evidence of record that the plaintiff was in fault here. There was an undoubted obstruction of the thoroughfare, and in the removal of the wood by the defendants they were only doing their duty. The plaintiff by his note of 18th September, 1879, showed that he knew that he was in default, and made apologies promising a removal of the obstruction. Plea maintained.

McCorkill for plaintiff.

Abbott & Co. for defendants.

SUPERIOR COURT.

MONTREAL, December 29, 1880.

Before TORRANCE, J.

VANDAL v. PROWSE.

Damages—Negligence—Roofer—Metal falling from roof.

This was an action of damages for an injury to plaintiff by pieces of metal falling from the roof of a house upon plaintiff's head, through

the negligence of one of defendant's workmen making repairs to a roof. The defendant tendered \$50.

PER CURIAM. This is entirely a question of evidence. There are two doctors' bills which should only be allowed in part so far as the defendant is concerned. There is no specific damage proved by loss of practice as a lawyer but I do not consider that the \$50 offered by defendant is sufficient. It is to be regretted that the workman through whose negligence this action has arisen is not to bear all the consequences of his negligence. As it is, the Court has to assess the damages which should reasonably be paid by the master, who is responsible for the act of his journeyman. The Court has before it the case of *Glass v. Deblois*. That was a much more serious case, the plaintiff narrowly escaping with his life, and the damages given were only \$200. Here the damages are assessed at \$100 and costs.

Duhamel, Pagnuelo & Rainville for plaintiff.
Bethune & Bethune for defendant.

COURT OF REVIEW.

MONTREAL, November 30, 1880.

JOHNSON, OLIVIER, BOURGEOIS, J.J.

MASSÉ et al., Petitioners, and ROBILLARD, Respondent.

(Quebec Controverted Elections Act, 1875).

Clerical Influence in Elections.

A priest or clergyman may take the side of a candidate in an election, and support it by all lawful means, even from the pulpit. But if a priest does any unlawful act, such as using intimidation by refusing the sacraments to a person who will not vote as he wishes, he will be deemed the agent of the candidate, and the fact that he has committed the unlawful act in the exercise of his priestly office, will not protect the candidate from the consequences of such unlawful act on the part of an agent.

JOHNSON, J. This is an Election Petition from the County of Berthier, and the Petitioners alleged in the first instance almost every possible species of infraction of the provisions of the election law; but it is now perfectly understood, and it was so expressly stated at the long and careful argument of counsel on one side and on the other, that the present pretensions of the Petitioners are reduced to one class of offences against the Election Act, viz., the class of offences or corrupt practices mentioned in the 258th section of that statute, and called by the general name of "undue influence;" and they allege this undue influence to have been practised, not only by the Respondent's agents, but also with his own personal knowledge and consent; and they pray that the election may be avoided, and the Respondent be disqualified under the 267th and the 268th sections.

The election in question took place on the 1st of March, 1878, and the Respondent was returned as duly elected.

The Petition was presented on the 8th of June, 1878, and the Respondent, on the 14th, filed a general answer in fact and in law, and there was a hearing on that, and the Petitioners moved for particulars, which were furnished on the 5th of January, 1880. Some or most of these particulars related to the general charges not now insisted upon; but with respect to the particulars numbered from 6 to 18 inclusive, they related to the charges which are now before us, and to which, as I said before, the consideration of the case is now to be restricted. These particulars refer to the acts of six Roman Catholic clergymen of the County, of whom five are named; and, though in discussing this case, I use my own native tongue as being more familiar to me, yet, in a matter of so much importance, it may be desirable that the exact pretensions of the Petitioners in their own language, as they appear in the record, should be repeated, and that nothing should be risked by translation as to their exact meaning. They are as follows:—

INFLUENCE INDUE.

6ième particularité:—"Les Révérends Messires Clément Loranger, curé de la Paroisse de Lanoraie, Jean-Baptiste Champeau, curé de la Paroisse de Berthier, Urgèle Archambault, curé de la Paroisse de St. Barthélemy, Joseph St. Aubin, curé de la Paroisse de St. Norbert, André Brien, curé de St. Cuthbert, ont, immédiatement avant la dite élection, et pendant icelle, organisé un système général d'intimidation, dans le but d'influencer indûment le vote de tous les électeurs du dit District Electoral de Berthier, et particulièrement le vote de tous les électeurs des dites paroisses, situées dans le dit District Electoral de Berthier, en faveur du Défendeur et contre Louis Sylvestre, Ecuyer, l'autre candidat opposé au défendeur, et cela en dénonçant en leur qualité de pasteurs des dites

paroisses et de Prêtres de la Religion Catholique Romaine, publiquement et privement, soit en chaire, à leurs prônes de paroisse, les dimanches et fêtes pendant les offices divins, soit au confessionnal en confessant leurs ouailles ; soit en d'autres lieux où ils prétendaient, en leur dite qualité de pasteurs, de guider, par leurs conseils et leurs avis spirituels, la conscience de leurs paroissiens, aux électeurs ou aux épouses ou filles des électeurs des dites paroisses et du dit district électoral de Berthier, qui sont tous ou presque tous des personnes appartenant à la religion catholique romaine, le parti libéral auquel appartenait le candidat Sylvestre, comme un parti d'impies, de révolutionnaires et d'athées, professant des principes condamnés par les dogmes, les préceptes et la discipline de l'Eglise Catholique Romaine ; comme un parti condamné par et anathème à la Religion et à l'Eglise Catholique Romaine ; en menaçant en même temps, et aux mêmes lieux et occasions leurs paroissiens de peines spirituelles et temporelles, des malédictions de Dieu, des anathèmes de l'Eglise Catholique Romaine, et de l'enfer s'ils votaient pour ou appartenait au dit parti libéral et s'ils votaient pour le candidat Sylvestre ; et s'ils ne votaient pas pour le Défendeur ou pour le parti conservateur auquel il appartenait ; en les menaçant de leur refuser l'administration des sacrements de l'Eglise Catholique Romaine et de fait en leur refusant l'administration de tels sacrements si leurs paroissiens n'écoutaient pas leurs conseils et méprisaient leurs avis qu'ils prétendaient donner comme susdit en leur dite qualité de pasteurs ; enfin en intimidant la conscience des dits électeurs et les obligeant sous peine de ne pas participer aux avantages de la religion à laquelle ils appartenaient, et d'être exclus de l'Eglise Catholique Romaine ; de voter pour le Défendeur et de ne pas voter pour le candidat Sylvestre, et ce, à la connaissance, avec les consentement, autorisation, approbation et participation du Défendeur."

7ième. particularité :— " A Lanoraie, dans le dit district électoral de Berthier, pendant la dite élection immédiatement avant en vue d'icelle et avant la votation, le Révérend Messire Clément Loranger, prêtre, curé de la dite paroisse de Lanoraie, et l'un des principaux agents du Défendeur, a dit et déclaré en chaire, à ses prônes des dimanches et fêtes, au service divin du matin, dans l'église de la dite paroisse de Lanoraie, en présence d'une grande partie de ses paroissiens assistant au dit service divin, en substance, d'abord : — " que les électeurs de Lanoraie ne devaient pas se prononcer trop vite pour voter à la dite élection ; qu'il reviendrait sur le sujet ; qu'ils devaient attendre pour cela qu'il leur en parlât de nouveau" et ensuite : — " que le parti libéral " (c'est-à-dire le parti auquel appartenait le candidat opposant le Défendeur) " était le mauvais parti, et qu'ils devaient suivre le clergé qui combattait ce parti ; que les prêtres qui soutenaient ce parti étaient si rares qu'on pouvait les compter sur les doigts, et qu'il en resterait encore ; que les prêtres avaient droit de parler de politique et des élections en chaire ; et que le clergé garderait toujours son influence, en dépit de ce que pourraient faire les libéraux pour leur fermer la bouche," donnant clairement à comprendre, tel que, de fait, ça été compris, que le parti libéral était défendu et condamné par le

clergé et l'Eglise Catholique Romaine, et qu'en y appartenant, un électeur catholique péchait et ne pouvait faire son salut, et ce, dans le but d'intimider tous les électeurs Catholiques Romains, de la dite Paroisse de Lanoraie à qui il parlait et s'adressait là et alors, entr'autres : Thimothé Dufour Latour, Antoine Caisse, Joseph Marion, Louis Marion, Pierre Champagne, Edouard Champagne, Cyrille Ducharme, Daniel Bonin, Joseph Laroche, Louis B. Champagne, Maxime Rondeau, Honorius Paquet, Pierre Bergeron, Israël Robillard, Louis Lachapelle, Narcisse Nadeau, Maxime Larancune, Pierre Fafard, tous électeurs habiles à voter à la dite élection, et dans le but d'influencer indûment leur vote à la dite élection.

8ième particularité : A Lanoraie susdit, pendant la dite élection, immédiatement avant et en vue d'icelle et avant la votation, le dit Révérend Messire Clément Loranger a dit et déclaré à Adèle Bonin, épouse de Antoine Caisse, Cordélie Hervieux, épouse de Joseph Bonin, Rose Laroche, épouse de Joseph Nadeau, Hermine Caisse, épouse de Alexis Labreque, Emélie Hervieux, épouse de Alfred Lavallée, Iamène Rondeau, veuve de feu Alexis Desrosiers, Zoé Hervieux, maîtresse d'école, Théotiste Roy, épouse de Alexis Desrosiers, Félicité Harpin, épouse de Narcisse Nadeau, Emélie Matte, épouse de Alexis Pagé, Agnès Plante, épouse de Jean-Baptiste Pagé, Thérèse Tarte, épouse de Gonzague Joly, et Rose Caisse, épouse de Norbert Harpin, tous Catholiques Romains, ses paroissiens et électeurs habiles à voter à la dite élection, en substance ce qui suit, savoir : — " que c'était un devoir de conscience, pour chacune d'elles, les susdites femmes de travailler et d'employer tous les moyens à leur disposition pour faire abandonner le dit parti libéral par leurs dits maris, par leurs parents et amis et tous ceux sur qui elles pouvaient exercer quelque influence, parce que c'était le mauvais parti, et que cela était propre à attirer toutes sortes de malédictions et de malheurs sur elles et leurs familles, et que c'était à cela qu'elles devaient attribuer les malheurs qui auraient pu arriver déjà dans leurs familles ; et que c'était dû aux scandales et aux mauvais exemples causés par leurs maris à leurs enfants en s'entêtant à appartenir au parti libéral, malgré le clergé et leur curé ; " et ce, dans le but d'intimider les dits électeurs sus-nommés et d'influencer indûment leur vote à la dite élection ; et là et alors les susdites femmes ont rapporté et répété les dites paroles à chacun leur dit mari, parents et amis selon les recommandations et sollicitations du dit Révérend Messire Clément Loranger, dans le même but susdit.

9ième particularité : " Au dit lieu de Lanoraie, le dit Révérend Messire Clément Loranger, pendant la dite élection et immédiatement avant et en vue d'icelle et avant la votation a dit et déclaré à Xiste Stingue et Anselme Stingue, tous deux Catholiques Romains, ses paroissiens, et électeurs habiles à voter à la dite élection, en substance, ce qui suit, savoir : — " Que le dit parti libéral était un mauvais parti, condamné par le clergé et l'Eglise Catholique ; qu'ils ne devaient pas en conscience voter pour le candidat Sylvestre qui appartenait à ce parti, mais pour le défendeur, qui appartenait au bon parti, le parti conservateur, avec lequel marchait tout le clergé Catholique ; que sans cela, ils ne pourraient faire leur Religion et

leur salut ; ” et ce, dans le but d'intimider les susdits électeurs et d'influencer indûment leur vote à la dite élection.

10ième particularité : “ A Berthier susdit pendant la dite élection immédiatement avant et en vue d'icelle et avant la votation, le Révérend Messire Jean Baptiste Champeau, prêtre curé, de la dite paroisse de Berthier, et l'un des principaux agents du Défendeur, en chaire, aux prônes, des dimanches et fêtes, au service divin du matin, a dit, déclaré et prêché, en substance ce qui suit, et cela en présence d'une grande partie de ses paroissiens, assistant au dit service divin, dans l'Eglise de la dite paroisse de Berthier, savoir “ qu'il ne pourrait pas absoudre un pénitent qui s'accuserait d'être en faveur de l'abolition du Conseil Législatif ” (voulant parler du conseil Législatif de la Province de Québec pour l'abolition duquel le candidat opposant le défendeur s'était notoirement prononcé ainsi que son parti) “ parceque ” ajoutait-il, “ ce Conseil était d'institution divine, ce qu'il prouvait en citant la Sainte Bible ; que les rouges, ” (appellation généralement donnée aux électeurs du même parti que le candidat opposé au défendeur) “ travaillaient à l'abolition du Conseil Législatif, travaillaient contre les Saintes-Ecritures et la Religion ; que le Lieutenant-Gouverneur Letellier était un rouge ; que le premier ministre Joly ” (supporté par le candidat opposé au défendeur) “ était un Suisse ” c'est-à-dire un apostat “ et un Protestant supporté par tous les protestants ; que Monseigneur Conroy ” (prêlat délégué par le Pape au Canada) “ loin de donner gain de cause aux libéraux, ” (ceux dont le candidat opposé suivait le parti) “ était venu pour les condamner et comme le Pape Pie IX, il défendait de transiger avec le libéralisme ; qu'il espérait leur en avoir dit assez pour leur faire bien comprendre pour quel parti ils devaient voter ; qu'il avait reçu une circulaire lui ordonnant d'instruire le peuple et qu'il allait le faire, malgré qu'un jugement de la Cour Suprême restreignait la liberté des prêtres ; qu'il n'avait pas droit d'après ce jugement de faire des menaces à cause de la politique mais qu'il dirait tout ce qu'il pourrait dire, sans se compromettre aux yeux des juges libéraux qui se permettaient de juger les prêtres ; ” et ce, en parlant et en s'adressant à tous les Catholiques Romains, ses paroissiens entr'autres, à Alfred Coutu, Olivier Fréchette, Elie Pellerin, Euclide Coutu, Charles Coutu, Louis Roy, Alexis Belisle, Charles Gravel, Sifroid Denis, Eugène Pelland, tous électeurs habiles à voter à la dite élection, dans le but de les intimider et d'influencer indûment leur vote à la dite élection.”

11ième particularité : “ Au dit lieu de Berthier pendant la dite élection, immédiatement avant et en vue d'icelle et avant la votation, le dit Révérend Messire Jean-Baptiste Champeau a refusé de confesser, d'absoudre, et d'admettre à faire leurs Pâques, plusieurs Catholiques Romains, ses paroissiens, uniquement parce qu'ils appartenaient au parti libéral politique, c'est-à-dire au parti du candidat opposé au Défendeur, et qu'ils refusaient de l'abandonner pour suivre le parti du Défendeur, ou de voter pour lui à la dite élection, entr'autres : Louis Roy, Alexis Belisle, Charles Gravel, Sifroid Denis et Eugène Pelland, tous électeurs habiles à voter à la dite élection, et ce, dans le but de les intimider et d'influencer indûment leur vote à la dite élection.

12ième particularité : “ Au dit lieu de Berthier, pendant la dite élection, immédiatement avant et en vue d'icelle, et avant la votation, le dit Révérend Messire Jean-Baptiste Champeau a dit à plusieurs catholiques Romains, ses paroissiens, qu'il ne les confesserait, les absoudrait, les admettrait à faire leurs Pâques qu'à la condition qu'ils abandonnassent le dit parti libéral politique et le candidat opposé au Défendeur pour voter en faveur de ce dernier, ou qu'ils s'abstinsent de voter à la dite élection ; et que sans cela, il refusait de, et ne pouvait les confesser, absoudre et admettre à faire leurs Pâques, entr'autres à Louis Roy, Alexis Belisle, Charles Gravel, Sifroid Denis et Eugène Pelland, tous électeurs habiles à voter à la dite élection, et ce, dans le but de les intimider et d'influencer indûment leur vote à la dite élection.

13ième particularité : “ A St. Norbert, dans le district électoral de Berthier, pendant la dite élection, immédiatement avant et en vue d'icelle et avant la votation, le Révérend Messire Joseph St. Aubin, prêtre, curé de la dite paroisse, et l'un des principaux agents du Défendeur, en chaire, aux prônes des dimanches et fêtes dans l'église de la dite paroisse de St. Norbert, en présence de la plus grande partie de ses paroissiens, a dit, déclaré et prêché, en substance ce qui suit, savoir : “ que le parti libéral ” (celui auquel appartenait le candidat opposé au Défendeur) “ était un mauvais parti, condamné par l'Eglise Catholique Romaine ; que ce parti avait à sa tête, dans la personne du premier ministre Joly, un Protestant et même un Suisse ” (apostat) “ et qu'il était impossible pour un catholique de supporter ce parti ; que le supporter ce serait faire dommage à la Religion Catholique et la renverser ; que le libéralisme politique et le libéralisme catholique étaient une seule et même chose, condamnable et condamnée par l'Eglise Catholique, que le parti conservateur, ” (celui auquel appartenait le Défendeur) “ était le seul bon parti, que l'autre était le chemin de l'enfer ; ” et ce en parlant et s'adressant à tous les catholiques Romains, ses paroissiens, entr'autres à François-Xavier Dubeau, Adolphe Roch, Thomas Fréchette, David Fréchette et George Fréchette, tous électeurs habiles à voter à la dite élection, dans le but de les intimider et d'influencer indûment leur vote à la dite élection.”

14ième particularité : “ Au dit lieu de St. Norbert, pendant la dite élection, immédiatement avant et en vue d'icelle, et avant la votation, le dit Révérend Messire Joseph St. Aubin a dit à George Fréchette, un de ses paroissiens et électeur habile à voter à la dite élection, en substance, ce qui suit, savoir :— “ Qu'il attribuait le malheur dont était affligée la famille du dit George Fréchette, dans la personne d'un de ses membres frappé d'aliénation mentale, au fait que le chef de cette famille appartenait au parti libéral ; et que si le dit George Fréchette persistait dans ses opinions politiques en faveur de ce parti il lui arriverait les plus grands malheurs ; et ce dans le but d'intimider le dit George Fréchette et d'influencer indûment son vote à la dite élection.”

15ième particularité : “ Au dit lieu de St. Norbert, pendant la dite élection, immédiatement avant et en vue d'icelle, et avant la votation, le dit Révérend Messire Joseph St. Aubin a sollicité et cabalé, en faveur du défendeur, plusieurs électeurs habiles à voter

à la dite élection, ses paroissiens, en leur déclarant et disant en substance, ce qui suit, savoir : " Que le parti conservateur " (celui auquel appartenait le défendeur) " était le parti du Bon Dieu ; qu'ils devaient, en conscience, voter avec ce parti pour le défendeur ; que le parti libéral (celui auquel appartenait le candidat opposé au défendeur) " était le méchant parti ; qu'ils devaient abandonner ce parti ; que s'ils persistaient ou s'obstinaient à le suivre, il leur arriverait de grands malheurs à eux et à leurs familles, et ce entr'autres à François-Xavier Dubeau, David Fréchette, Adolphe Roch, Thomas Fréchette et George Fréchette, dans le but de les intimider et d'influencer indument leur vote à la dite élection.

16ième particularité. " A St. Barthélemy, dans le dit district électoral de Berthier, pendant la dite élection, immédiatement avant et en vue d'icelle, et avant la votation, le Révérend Messire Urgel Archambault, prêtre, curé de la dite paroisse de St. Barthélemy, et le Révérend Messire Brien, vicaire ou assistant curé de la dite paroisse, tous deux agents du Défendeur, en chaire, aux prônes des dimanches et fêtes, dans l'Eglise de la Paroisse, en présence de la plus grande partie de leurs paroissiens, ont dit, déclaré et prêché, en substance ce qui suit, savoir : " Que le dit parti libéral était impie, suisse, " (apostat) " et révolutionnaire ; que c'était le mauvais et le méchant parti ; le parti condamné par l'Eglise ; et qu'ils défendaient absolument à leurs paroissiens de voter en faveur de ce parti : que personne ne les empêcheraient de parler, ni Evêque, ni Pape, que ceux qui disaient qu'on allait les arrêter de parler avaient menti, et que quand ils disaient menti, c'était menti, qu'il n'y avait qu'un seul bon parti et qu'il fallait absolument le suivre, le parti conservateur, que le libéralisme catholique et le libéralisme politique étaient une seule et même chose, condamnable et condamnée par l'Eglise Catholique, que les curés des autres Paroisses qui parlaient ou agissaient autrement qu'eux sur cette question, étaient des judas, des mauvais prêtres et des prêtres apostats ; que les libéraux de la dite paroisse étaient des SERPENTS ; que ceux qui ne les écoutaient pas, en voulant être toujours libéraux étaient des têtes croches et des enfants du diable ; " et ce, parlant et s'adressant à tous les catholiques Romains de la dite Paroisse, entr'autres, à Pierre Dumontier, Euchariste Ayotte, Désiel Rémillard, Bernard Ribardy, Elie Dumontier, Gilbert Comtois, Edouard Béland, Joseph Dumontier, Jérémie Plante et Adolphe Lajoie, tous électeurs habiles à voter à la dite élection, dans le but de les intimider et d'influencer indument leur vote à la dite élection."

17ième. particularité : " Au dit lieu de St. Barthélemy, pendant la dite élection immédiatement avant et en vue d'icelle, et avant la votation, les dits révérends Messires Archambault et Brien ont refusé de confesser, d'absoudre et d'admettre à faire leurs Pâques plusieurs Catholiques Romains, leurs paroissiens, uniquement parce qu'ils appartenaient au dit parti libéral politique, c'est à dire au parti du candidat opposé au Défendeur, et qu'ils refusaient de l'abandonner pour suivre le parti du Défendeur ou de voter pour lui à la dite élection, entr'autres, Gilbert Comtois, Pierre Dumontier, Edouard Béland, Adolphe Lajoie, Jérémie Plante et Joseph Dumontier, tous électeurs habiles à

voter à la dite élection, et ce, dans le but de les intimider et d'influencer indument leur vote à la dite élection.

18ième. particularité : " Au dit lieu de St. Barthélemy, pendant la dite élection, immédiatement avant et en vue d'icelle et avant la votation, les dits Révérends Messires Archambault et Brien, ont dit à plusieurs Catholiques Romains, leurs paroissiens, qu'ils ne les confessaient, les absoudraient et les admettraient à faire leurs Pâques qu'à condition qu'ils abandonnassent le dit parti libéral politique, et le candidat opposé au Défendeur, pour voter en faveur de ce dernier, ou qu'ils s'abstinsent de voter à la dite élection ; et que, sans cela, ils refusaient et ne pouvaient les confesser, absoudre et admettre à faire leurs Pâques, entr'autres Gilbert Comtois, Pierre Dumontier, Edouard Béland, Adolphe Lajoie, Jérémie Plante et Joseph Dumontier, tous électeurs habiles à voter à la dite élection, et ce, dans le but de les intimider et d'influencer indument leur vote à la dite élection."

Now, though it was desirable, in order to avoid any sort of misapprehension, that the precise charges brought forward by the Petitioners should be stated in the terms they themselves have chosen, and in their own language, I think it may abbreviate, without in any degree changing or impairing the real extent or significance of these charges, if I give, at once, the substance of them. First, it may be said of them all indiscriminately that they are levelled at persons who are alleged to have been acting for another : that is to say, as agents of the Respondent in that election. Then they are brought against persons of the clerical order. Then they profess to state or describe what those persons did. The mere reading of these charges will have sufficed to show that some of them are of a very general character indeed. Some of them, in fact, a very great part of them, assert and charge things that undoubtedly could not constitute " undue influence " in the sense of the law ; for there certainly is, as we shall presently have an opportunity of elucidating, such a thing as legitimate influence, as well as such a thing as " undue influence, " whether exercised by clergymen or by others. Some of them, again, charge specific acts, which would as undoubtedly come under the prohibition of the Statute. We shall have first of all then, to deal with the question of agency ; then, we shall have to deal with acts ; the extent of proof of the acts that are alleged against these agents, and the legal character of those acts as affecting, not only the election, but also the candidate personally. As

to the fact of agency itself, it must be gathered from the circumstances and conduct of the parties. As to the law on the subject, everyone is agreed at the present day that the agency in such a case is not the common law agency at all. In the Taunton case, Mr. Justice Grove said, after pointing out the difficulty of an exact definition of what it was, and the failure of two or three attempts already made in the Norwich case, in the Westbury case, and in the Tamworth case, to define the relation: "All agree that the relation is not the common law one of principal and agent, but that the candidate may be responsible for the acts of one acting 'on his behalf, though the acts be beyond the scope of the authority given, or, indeed, in violation of express injunction." And in the Boston case the same judge said: "The law has decided that a candidate at an election is responsible for the acts of agents who are not, and would not necessarily be agents under the common law of agency. At common law, a person is only responsible for such acts of his agents as are within the scope of the authority which he has given to those agents. For instance, if I authorise a man to buy a horse for me, I am responsible for his conduct about the purchase of that horse; but if that man whom I tell to buy a horse for me, goes and sells a farm of mine, I am not responsible for the act. That is putting it in a very simple form; but with regard to election law, the matter goes a great deal farther, because a number of persons are employed for the purpose of promoting an election, who are not only not authorized to do corrupt acts, but who are expressly enjoined to abstain from doing them, nevertheless the law says that if a man chooses to allow a number of people to go about canvassing for him, generally to support his candidature, to issue placards, to form a committee for his election, and to do things of that sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election, and then turn his back, or sit quietly by, and let them corrupt the constituency. Therefore the law carries the responsibility of a member of parliament for the acts of the agents who are instrumental, with his assent, in promoting his

"election, a good deal further than the mere common law of agency."

But it is not necessary to go into authorities on this subject. Everyone who takes part in an election in good faith, to favor and promote the election of a candidate, becomes *ipso facto* the agent of such candidate. This was the ruling of Judge Taschereau in our Supreme Court in the election case of *Brassard v. Langevin*,* and its soundness is beyond question. We attach great importance to the words "*in good faith*" in the definition by the learned judge, because without it a candidate would be liable to be unseated by the acts of an enemy who might pretend to be his agent; but with this single limitation that we must have evidence to clearly repel any idea of adverse interest in the person acting, we accept the definition without the slightest hesitation, and apply it to the present case. We have next to look, then, at the evidence of agency in these several persons or in any of them. We consider that the evidence on this subject is perfectly decisive. We will refer first to the charge against the Rev. Curé Champeau in relation to this question of agency, because it was the first presented to us in the course of the argument. The reverend gentleman tells his own story, and of course it cannot be doubted. He takes the position of a perfectly honest man, who is unconscious of having done any wrong whatever. He openly proclaims his principles, and his right to support them. All this is well enough, and nobody questions his right, or the right of any or all of the members of his order to profess and practice, within the limits of the law, the principles they have honestly adopted and honestly stick to; but we are only on the question of agency as yet; and I was merely observing, as regards this question of agency, that the Rev. Mr. Champeau, with his undoubted honesty, and the courage of his opinions, tells us something on this question of agency that appears of a very decisive description. The respondent brought him a letter from the Rev. Mr. Loranger. The letter is not to be had; but the contents are not uncertain. It announced the candidature of Mr. Robillard—a subject that had evidently been before that discussed between the Rev. Mr. Champeau and the Rev. Mr. Loranger. Mr. Champeau read the letter; the

* 2 Can. Sup. Ct. Rep. 319.

witness Charles Mousseau says he read it not aloud but to himself, and read it twice, and after having done so, the candidate seemed to wish to get it back; but the curé said, I will keep it, and make some observations next Sunday: (*"Je la garde, et je commenterai dimanche prochain."*) Now we take it to be quite impossible for any fair-minded person to misapprehend the real character of all this. Here was a candidate bearing a letter about his own candidature, written by Mr. Loranger, and addressed to Mr. Champeau. The letter reads it, and makes an answer showing that the bearer perfectly understood the contents of the letter, otherwise the answer would have had no significance. It is the case, plainly, of a candidate taking a letter from one gentleman who was in his interest to another who was likewise in his interest; and the letter suggested something to which that other assented, not only assented at the time by so expressing himself, but confirmed and assented afterwards by his subsequent acts, to which I do not now more particularly refer; but we say, that the only view we can take of the thing without doing violence to our reason and judgment, exercised in a fair and common sense manner, is that from that moment, Mr. Loranger and Mr. Champeau appear to have been, in the eye of the law, agents for that election of the party now respondent here; and we cannot doubt it even from what passed at the time the letter was delivered; and still less can we doubt it in the face of the evidence of Pierre Beliveau, who says in the most distinct manner that he heard from the Respondent's own mouth the admission that he had the support of Mr. Champeau and Mr. Loranger, besides other clergymen and laymen whom he named; adding that with such support as that he was certain to win. Without going any further, then, in search of evidence of agency, but confining ourselves to the cases of Mr. Champeau and Mr. Loranger, we hold that up to this moment we have clear proof of the character in which both of those reverend gentlemen acted in that election. We do not go on at once as to the proof of agency in any of the other gentlemen named, because, perhaps, it may not be necessary to do so for the present; and we prefer to confine ourselves now to the case of Mr. Champeau, whose agency is clearly proved. We now come (the question of agency

being settled, at least, as far as two of the persons charged are concerned), to the acts themselves. I have said already that some of these charges are general, some specific, and some have not the legal requirements of "undue influence."

[Continued on Page 10.]

RECENT ENGLISH DECISIONS.

Vendor and Purchaser—Interest on Purchase Money.—A purchaser who, before completion of the purchase, exercises acts of ownership over the land agreed to be purchased, must pay interest on the purchase-money pending delay in the completion of the contract, although the delay be caused by the vendor, and the land is untenanted, so that he receives no rents nor profits from it.—*Ballard v. Schutt*, L. R. 15 Ch. D. 122.

Copyright in Engraving—Chromo printed wool-work pattern—Protection of design.—A chromo printed Berlin wool-work pattern is not a piratical copy of an engraving from the same design. An advertisement by the owner of the copyright of an engraving, and not of the design, warning print sellers against selling any copies of the subject of the engraving, is a trade libel upon the producer of a Berlin wool-work pattern of the subject, and if damage resulted, would be actionable. *Dicks v. Brooks*, English Ct. of Appeal, Nov. 5, 1880.

Lunatic—Capacity to make a Lease.—A lessor, at the time when he made a lease of a farm, labored under the delusion that it was impregnated with sulphur. On an issue, directed as to the capacity of the lessor to make the lease, rational letters by the lessor relating to the lease were put in evidence. The judge did not tell the jury that the letters did not displace the effect of the delusion, but directed them that it was a practical question whether the lessor was so insane as to be incompetent to dispose of his property, though believed to be full of sulphur. The jury found that the lease was valid. *Held*, no error. *Jenkins v. Morris*, L. R. 14 Ch. D. 674.

The case of *Debenham v. Mellor*, in which the wife's right to pledge her husband's credit for purchases made by her was discussed (3 Legal News, p. 268), has been taken to the House of Lords, where the judgment has been affirmed.