The Legal News.

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THE DOMINION CONTROVERTED ELECTIONS ACT.

We give in this issue the judgment of the Judicial Committee of the Privy Council on the application for leave to appeal in the case of *Valin* v. *Langlois*, already noticed at p. 9. The remarks of their Lordships are of interest, as showing that the merits of the question were considered on the preliminary application for leave to appeal; but they do not reflect much additional light upon the subject. The question, of course, was only partially argued before the Committee, and it was not necessary for them to look into the merits further than to satisfy themselves that no serious objection could be urged against the judgment of the Supreme Court of Canada. In dealing with the main question, they begin by stating a principle which, though almost self-evident, is a useful one to be kept in view by Judges and Magistrates of every degree before whom questions of the constitutionality of Acts are so frequently raised. "It is not to be presumed," say their Lordships, "that the legislature of "the Dominion has exceeded its powers, unless "upon grounds really of a serious character." The same may be said of the legislatures of the Provinces. The presumption is in favor of the validity of their Acts, and the burden of demonstrating their invalidity rests upon those who seek to overthrow them.

NAVIGABLE RIVER.

Another decision of the Judicial Committee of the Privy Council, in a case from this Province, is that rendered on the 22nd November last, affirming the judgment of the Queen's Bench in *Bell* v. *Corporation of Quebec*. The action was brought for damages, and to obtain the demolition of a bridge, constructed by the Corporation of Quebec, across the Little River St. Charles, a tributary of the St. Lawrence, on the ground that the bridge obstructed the navigation of the river, and thereby caused damage to the appellant, Bell, as the owner of riparian land. The bridge formed part of the works constructed by the Corporation to carry water to Quebec for the use of the inhabitants. The case turned chiefly on questions of fact; but the law governing the subject is stated by their Lordships as follows:—The test of the navigability of a river is the possibility of its use for transport in some practical and profitable way; and therefore a river which is navigable for small boats, but up which barges can only be brought with risk and difficulty at exceptional states of the tide, cannot be considered as navigable. The French law of the Province makes a distinction between rights of immediate access from a man's property to a highway, and the right to complain of a mere obstruction in it; and therefore a riparian proprietor upon a navigable river cannot maintain an action in respect of an obstruction of the navigation without proof of actual and special damage, provided that his right of access to the waterway is not interfered with thereby. Bell failed to establish special damage, and his action was dismissed in all the Courts.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, December 17, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

STEWART es qual. (deft. below), Appellant, and FARMER (plff. below), Respondent.

Assignee under Insolvent Act of 1875, *may be sued as such in an ordinary action of damages where he has sold as belonging to the insolvent, property not belonging to the insolvent.*

The principal question raised in this case was whether an assignee can be sued in warranty in an ordinary action, or whether the other party is obliged to have recourse to the Insolvent Court, and make a petition there.

Stewart, as assignee to Payette, an insolvent, sold to the respondent certain real estate as belonging to Payette, and received the price. At the time of the sale one Tessier owned part of the land sold, and he had obtained a judgment for $134.70 damages against the insolvent,

for the appropriation of the same. This judgment was made executory against the respondent, by reason of the sale and conveyance of the property to him by the assignee of Payette. Farmer, the respondent, then called in Stewart to guarantee him as to the above sum. Stewart did not plead, and judgment went against him for the amount.

He now appealed, urging that under section 125 of the Insolvent Act of 1875, he was subject to the summary jurisdiction of the Insolvent Court, but that he could not be sued in his capacity of assignee in an ordinary action.

Sir A. A. DORION, C. J., said that the terms of section 125 were no doubt very broad: "Every assignee shall be subject to the summary jurisdiction of the Court or Judge in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and all remedies sought or demanded for enforcing any claim for a debt, &c., may be obtained by an order of the Judge on summary petition in vacation, &c., and not by any suit, attachment, opposition, seizure or other proceeding of any kind whatever." The appellant contended that in view of this section he could not be impleaded in any case whatever, and that the only remedy was to go before the Judge in insolvency, and petition against him. He cited the case of *Hutchins* v. *Cohen*, 15 L. C. J. 235, in which the late Judge Beaudry held that an assignee cannot be sued *en garantie* in respect of a matter for which the insolvent was liable to guarantee the plaintiffs *en garantie*. But there the action arose from a contract made by the insolvent himself before he had become insolvent, and not from an act of the assignee himself. In this case the liability was not a liability of the insolvent: it was not a claim that could be proved against his estate under section 80: it was not a debt of the insolvent existing at the time of the insolvency. It was impossible for the judge sitting in insolvency to entertain an action *en garantie*; he could not order the assignee to take up the *fait et cause*. Therefore, if the respondent could not sue the assignee before the ordinary tribunals he would have no remedy at all. The principle which must be applied was this: that where the judge sitting in insolvency is competent to give relief, then the ordinary tribunals will refuse to act; but when it is shown that the judge sitting in insolvency is not competent to give relief, then the ordinary remedy is allowed. In this case the Court was of opinion that there was no other remedy. The respondent was, therefore, entitled to call upon the assignee to guarantee him, and the judgment maintaining the action was correct, and must be confirmed.

Abbott, Tait, Wotherspoon & Abbott, for appellant.

Doutre & Doutre, for respondent.

MONTREAL, December 20, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LA COMPAGNIE DU CHEMIN DE FER DES LAURENTIDES (plff. below), Appellant, and LA CORPORATION DE LA PAROISSE DE ST. LIN (deft. below), Respondent.

Alternative obligation to pay in bonds or money—Conclusions for money condemnation only—Demurrer.

The Company appellant instituted an action in the Court below for the recovery of $30,000, amount of subscription by the Company respondent in the capital stock of appellant.

It was alleged that under two by-laws made by the Corporation of St. Lin, the Mayor of the Parish was authorized to subscribe the sum of $30,000, and the Corporation of St. Lin reserved the right of paying the amount in money or in its debentures at par; that demand had been made on respondents to hand over debentures, but the request was refused; and conclusions were taken for a condemnation to pay the amount in money, without giving the alternative of paying in debentures.

To this action the Corporation of St. Lin demurred on several grounds, and the demurrer was maintained by the Superior Court, Torrance, J., particularly on the third and fourth grounds of demurrer, which were as follows:—

"3. Parce que les dites actions ne pouvaient être souscrites qu'en conformité aux dits règlements et avec le bénéfice de l'alternative d'en faire le paiement en argent ou en débentures au choix de la défenderesse.

"4. Parce que d'après même les allégations contenues en la déclaration ces actions étant payables, soit en argent, soit en débentures, prises au pair, au choix de la défenderesse,

cette alternative ne peut être enlevée à cette dernière ni à ses contribuables."

RAMSAY, J., (*diss.*) I must dissent from the judgment about to be rendered in this case. The action is for the amount of a subscription to a railway by the party respondent. This action is met by a demurrer to the effect that the obligation of the respondent was to give cash or debentures, and that the action only asks for cash. We all know the doctrine as to alternative obligations on which respondents rely, but that refers to two things (*choses*), and not to a determinate thing or money. Money is the alternative of every obligation, and it is always competent for a plaintiff to say, even when there is no stipulation, You promised to give me a certain thing—you have not done it—pay me the equivalent in money. I should therefore reverse the decision of the Court below.

MONK, J., concurred in the dissent. In the declaration it was alleged that the defendants had not signed the bonds within a competent time: "Que nonobstant la dite notification, la corporation défenderesse a toujours refusé de payer le montant de ses dites actions, *et n'a pas même signé ses dites débentures en temps opportun, afin de pourvoir les livrer.*" On the face of the declaration was shown a want of diligence, and there was an assertion that the respondents were not now in a position to issue the bonds. Under these circumstances his Honor was of opinion that the Court should have ordered proof *avant faire droit*, or should have dismissed the demurrer.

Sir A. A. DORION, C.J., said the parish of St. Lin subscribed for stock in the Railway with the condition that the amount might be paid in money or debentures. Was this an alternative obligation? If it was, the action must allow the alternative to the defendant. Pothier, oblig., No. 248, says: "Du principe par nous établi que les choses comprises dans une obligation alternative sont toutes dues sans néanmoins qu'aucune soit dûe déterminément, il suit, 1o. que, pour que la demande du créancier soit régulière, il doit demander les deux choses, non pas à la vérité conjointement mais sous l'alternative sous laquelle elles lui sont dues. S'il demandait seulement une de ces choses sa demande ne serait pas régulière, parce qu'aucune des deux ne lui est dûe déterminément, mais les deux lui sont dûes sous une alternative." Here the money only was asked, while the parish had a right to pay in bonds. The majority of the Court, therefore, thought there was no error in the judgment. There was another reason for confirming. In effect, the appeal was for the costs of the action, for the appellant had not lost any right by the judgment.

Judgment confirmed.

Lacoste & Globensky for appellant.
Béique & Choquet for respondent.

TRENHOLME (deft. below), Appellant, and McLENNAN (plff. below), Respondent.

Parol evidence—1235 *C.C.P.*

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., maintaining an action for the sum of $695.62. The respondent, a provision broker, had been instructed by the appellant to purchase on his account 500 tierces of lard in the Chicago market. Respondent purchased the lard 26th April, 1876, at $13.27½ per 100 lbs.; but as the market rapidly declined, and he held no margin, he sold the lard the following day at a loss of $480. After the sale, he sent out his son to the appellant, who lived on his farm at Blue Bonnets, several miles in the country, with a request for $1000 for margin. No margin was paid, and subsequently on the 28th, the respondent rendered his account for the loss, with commission, &c., amounting to $695.62. Judgment went in his favor in the Court below, on the ground that appellant, after being notified of the loss, had promised to pay.

In appeal,

CROSS, J., said the authorization to purchase the lard was admitted; but the difficulty did not arise on the question of agency, but on the contract for the purchase of the goods, which could not be established without a writing; C. C. 1235. As McLennan was claiming damages from Trenholme, the proof of agency was not enough; he should have a writing from the seller to prove that he had purchased the goods. There was nothing binding any seller in Chicago to the purchaser here; there was nothing but a telegram, which was not a writing at all. It would give a broker enormous power, to permit him to fasten a responsibility on a person by verbal testimony. Such power might not be honestly exercised, and for this reason the

Legislature, in Art. 1235 of the Civil Code, which was a reproduction of the Statute of Frauds, had prohibited this kind of proof. On the ground that respondent had failed to prove the purchase by legal evidence, the judgment must be reversed.

RAMSAY, J., remarked that the case was one of great difficulty, and illustrated the inconvenience of our two systems of evidence, one the rule of commencement of proof in writing, and the other the Statute of Frauds. The pretention of the respondent here was that there was a commencement of proof in writing. Trenholme admits that he did give instructions to McLennan to buy lard. But how was the order carried out? A telegram was sent to Chicago, to Taylor & Co., for whom McLennan was doing business, to purchase the lard on Trenholme's account. The son of McLennan was examined to complete the proof, and he gave a relation of the transaction which showed that respondent was not in good faith. This young man, after the lard was sold, went out to Trenholme's place and asked for a margin of $1,000. Trenholme gave an answer, that he was going into town and would see about it. The promise to pay was not proved, and appellant could not be held liable.

The unanimous judgment of the Court was as follows:

"Considering that the respondent, plaintiff in the Court below, hath failed to adduce in this cause any legal proof of the purchase for or on account of the appellant, of 500 tierces of June lard, as mentioned in his declaration in this action, or that the same was resold for, on account, or at the risk of the appellant;

"Considering, therefore, that there is error in the judgment rendered in this cause by the Superior Court, at Montreal, on the 30th day of March, 1878, the Court of our Lady the Queen now here doth cancel, annul, set aside, and reverse the said judgment of the Superior Court, and proceeding to render the judgment which the said Superior Court ought to have rendered, doth dismiss the said action of the respondent with costs, as well in this Court as in the Court below."

Judgment reversed.

E. C. Monk, for appellant.

Macmaster, Hall & Greenshields, for respondent.

DEFOY (representing plff.), appellant, and FORTE (deft. below), respondent.

Inscription en faux—Appeal by the Notary from judgment declaring deed to be faux.

This action was brought in the Court below by one Longtin on an obligation for $100, purporting to be made before Defoy, notary (now appellant). The defendant inscribed *en faux*, denying that he had ever made the obligation in question, or received the money mentioned as the consideration of it.

The Superior Court, Sicotte, J., maintained the inscription, and dismissed the action. The appeal was brought by the notary, claiming to be *cessionnaire* of the plaintiff.

Sir A. A. DORION, C.J., considered that it was a question of proof on the inscription *en faux*. The deed was very badly written, and the handwriting was changed three or four times. The witness denied that he had ever signed the paper.

RAMSAY, J. I have very considerable doubt as to the regularity of the proceedings in appeal by the *cessionnaire*. He appears as a witness deposing to the fact that he has no interest in the suit. He then becomes *cessionnaire* of the debt, and prosecutes the appeal to protect his character. We have thus a witness becoming appellant and seeking to maintain his pretentions with his own evidence. But getting over that difficulty we come to the merits, and there it seems to me the weight of evidence is in favor of the judgment. A very slovenly deed is produced, offering by its appearance very little guarantee of its authenticity. It is admittedly incorrect in several particulars, and the instrumenting witness swears positively that he never was present, and that he never signed as witness. On the other hand, the notary's daughter, whose writing appears in the minute, swears as positively the witness was present and signed. Leaving aside the notary's evidence, there is really no other evidence in the case but that of the daughter and the instrumenting witness. Which are we to believe? I think the man specially chosen to witness the deed is the higher testimony. It has been attempted, but ineffectually I think, to destroy his character. I would therefore confirm the judgment appealed from.

MONK, TESSIER, and CROSS, JJ., all remarked

that the evidence presented considerable difficulty, the contradictions being very positive.

Judgment confirmed.

Doutre & Doutre for Appellant.
Trudel, Taillon & Vanasse for Respondent.

SUPERIOR COURT.

MONTREAL, January 26, 1880.

HUGHES v. REES.

Inscription for enquête by defendant foreclosed from pleading.

The defendant, after being foreclosed from pleading, inscribed for *enquête ex parte*.

The plaintiff moved to reject the inscription, on the ground that he alone, as *dominus litis*, could inscribe.

TORRANCE, J. In a contested case either party may inscribe for *enquête*;—C.C.P. 234. By C.C.P. 317, the plaintiff, after obtaining a foreclosure against the defendant, may inscribe for *enquête ex parte*. No such right is given to the defendant who has allowed the plaintiff to proceed *ex parte* by failing to plead. I have never known of such a proceeding by a defendant, and none of my brother Judges have known of it. The motion of the plaintiff is, therefore, granted, and the inscription by defendant rejected.

W. H. Kerr, Q.C., for plaintiff.
W. W. Robertson for defendant.

CIRCUIT COURT.

MONTREAL, December, 1879.

LIGHTHALL v. JACKSON.

Attorney—Right to fee for writing a letter demanding payment of debt.

The defendant was indebted to the plaintiff in a sum under $25, and payment of the debt had frequently been demanded. Finally, the account was placed in the hands of Mr. Butler, advocate, who addressed to the defendant the usual letter, intimating that legal proceedings would be taken for the recovery of the debt, unless the amount thereof, and $1.35, costs of letter, be forthwith paid.

The defendant then tendered the debt, without costs of letter, which was refused.

Suit being entered, the tender was pleaded by defendant, and admitted by plaintiff, who claimed that the defendant should also have tendered the fee for the letter.

RAINVILLE, J., maintained the action, holding that payment having been demanded of defendant before the lawyer's letter was written, the defendant should have tendered the costs of the letter in addition to the debt.

Judgment for plaintiff.

T. P. Butler for plaintiff.
W. S. Walker for defendant.

NOTE.—As a note to the above report, the correctness of which we have taken pains to verify by communication with the learned Judge and with the counsel on each side, it is proper to give the following extract from a letter received by the editor:—

"Sous le titre "Lawyer's Letters," vous rapportez une décision de Son Honneur le Juge Rainville, jugeant que l'avocat avait droit à $1.35 d'honoraires pour une lettre écrite à un débiteur, lorsque le demandeur lui avait déjà demandé le paiement de sa dette. Vous ajoutez que le Juge Rainville a consulté ses collègues avant de rendre son jugement. Permettez-moi de vous informer que Son Honneur le Juge Mackay, a rendu une décision contraire le 15 janvier 1880, dans une cause de *Gervais* v. *Denis*. (St. Pierre & Scallon, pour le demandeur, et Martineau & St. Jean pour le défendeur.) L'Honorable Juge, tout en le regrettant, a décidé que l'avocat ne pouvait pas se faire payer une lettre, attendu que le tarif ne lui donne pas ce droit. Si vous croyez pouvoir vous servir de ce renseignement en avertissant les confrères, que tous les juges de la Cour Supérieure de Montréal ne partagent pas la même opinion sur cette question, je serai très-heureux de vous avoir communiqué la présente espèce. Veuillez me croire, votre dévoué serviteur,

PAUL G. MARTINEAU."

CIRCUIT COURT.

[In Chambers.]

MONTREAL, January 23, 1880.

CRUICKSHANK es qual. v. LAVOIE.

Security for Costs—Notice.

TORRANCE, J., held that notice of application for security for costs from non-resident plaintiff must be given within four days after return of writ. *Rousseau* v. *Trudeau* et al., 13 L.C.J.

138, and *Newark Patent Leather Co.* v. *Wolff*, 14 L.C.J. 18, followed. (See *Batten* v. *Close*, 1 Rev. Crit. 247).

Robidoux for plaintiff.

Adam & Duhamel for defendant.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

December 13, 1879.

Present—Lord SELBORNE, Sir JAMES W. COLVILE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, and Sir R. P. COLLIER.

VALIN v. LANGLOIS.

Dominion Controverted Elections Act of 1874—*Application for leave to appeal from judgment of Supreme Court of Canada.*

The following is the judgment of the Privy Council referred to at p. 9 of this volume:—

Their Lordships have carefully considered the able argument which they have heard from Mr. Benjamin, and they feel glad that so full an argument has been offered to them, because there can be no doubt that the matter is one of great importance. The petition is to obtain leave to appeal from two concurrent judgments of the Court of first instance and of the Court of Appeal, affirming the competency and validity of an Act of the Dominion Legislature of Canada. Nothing can be of more importance certainly than a question of that nature, and the subject matter also, being the mode of determining election petitions in cases of controverted elections to seats in the Parliament of Canada, is beyond all doubt of the greatest general importance. It, therefore, would have been very unsatisfactory to their Lordships to be obliged to dispose of such an application without at least having the grounds of it very fully presented to them. That has been done, and I think I may venture to say for their Lordships generally that they very much doubt whether, if there had been an appeal and counsel present on both sides, the grounds on which an appeal would have been supported, or might have been supported, could have been better presented to their Lordships than they have been on the present occasion by Mr. Benjamin.

In that state of the case their Lordships must remember on what principles an application of this sort should be granted or refused. It has been rendered necessary by the legislation which has taken place in the colony, to make a special application to the Crown in such a case for leave to appeal, and their Lordships have decided on a former occasion that a special application of that kind should not be lightly or very easily granted; that it is necessary to show both that the matter is one of importance, and also that there is really a substantial question to be determined. It has been already said that their Lordships have no doubt about the importance of this question, but the consideration of its importance and the nature of the question tell both ways. On the one hand, those considerations would undoubtedly make it right to permit an appeal if it were shown to their Lordships *prima facie*, at all events, that there was a serious and a substantial question requiring to be determined. On the other hand, the same considerations make it unfit and inexpedient to throw doubt upon a great question of constitutional law, and upon a decision of the Court of Appeal there, unless their Lordships are satisfied that there is *prima facie* a serious and substantial question requiring to be determined. Their Lordships are not satisfied in this case that there is any such question, inasmuch as they entertain no doubt that the decisions of the lower Courts were correct. It is not to be presumed that the Legislature of the Dominion has exceeded its powers, unless upon grounds really of a serious character. In the present case their Lordships find that the subject matter of this controversy —that is, the determination of the way in which questions of this nature are to be decided as to the validity of the return of members to the Canadian Parliament—is beyond all doubt placed within the legislative power of the Dominion Parliament by the 41st section of the Act of 1867, to which reference has been made. Upon that point no controversy is raised. The controversy is solely whether the power which that Parliament possesses of making provision for the mode of determining such questions has been competently or incompetently exercised. The only ground on which it is alleged to have been incompetently exercised is that by the 91st and 92nd clauses of the Act of 1867, which distribute legislative powers between the Provincial and the Domin-

ion Legislatures, the Dominion Parliament is excluded from the power of legislating on any matters coming within those classes of subjects which are assigned exclusively to the Legislatures of the Provinces. One of those classes of subjects is defined in these words, by the 14th sub-section of the 92nd clause:—"The administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts." The argument, and the sole argument, which has been offered to their Lordships to induce them to come to the conclusion that there is here a serious question to be determined is that the Act of 1874, the validity of which is challenged, contravenes that particular provision of the 92nd section which exclusively assigns to the Provincial Legislatures the power of legislating for the administration of justice in the Provinces, including the constitution, maintenance and organization of Provincial Courts of civil and criminal jurisdiction, and including procedure in civil, not in criminal, matters in those Courts. Now, if their Lordships had for the first time, and without any assistance from anything which had taken place in the colony, to apply their minds to that matter, and even if the 41st section were not in the Act, it would not be quite plain to them that the transfer of the jurisdiction to determine upon the right to seats in the Canadian Legislature—a thing which had been always done, not by Courts of Justice, but otherwise—would come within the natural import of those general words: "The administration of justice in the Province, and the constitution, maintenance and organization of Provincial Courts, and procedure in civil matters in those Courts." But one thing is clear, that those words do not point expressly, or by any necessary implication, to the particular subject of election petitions; and when we find in the same Act another clause which deals expressly with those petitions, there is not the smallest difficulty in taking the two clauses together, and in placing upon them both a consistent construction. That other clause, the 41st, expressly says that the old mode of determining this class of questions was to continue until the Parliament of Canada should otherwise provide. It was, therefore, the Parliament of Canada which was otherwise to provide. It did otherwise provide by the Act of 1873, which Act it afterwards altered, and then passed the Act now in question. So far, it would appear to their Lordships very difficult to suggest any ground upon which the competency of the Parliament of Canada so to legislate could be called in question. But the ground which is suggested is this: that it has seemed fit to the Parliament of Canada to confer the jurisdiction necessary for the trial of election petitions upon Courts of ordinary jurisdiction in the Provinces; and it is said that although the Parliament of Canada might have provided in any other manner for these trials, and might have created any new Court for this purpose, it could not commit the exercise of such a new jurisdiction to any existing Provincial Court. After all their Lordships have heard from Mr. Benjamin, they are at a loss to follow that argument, even supposing that this were not in truth and in substance the creation of a new Court. If the subject matter is within the jurisdiction of the Dominion Parliament, it is not within the jurisdiction of the Provincial Parliament, and that which is excluded by the 91st section from the jurisdiction of the Dominion Parliament is not anything else than matters coming within the class of subjects assigned exclusively to the Legislatures of the Provinces. The only material class of subjects relates to the administration of justice in the Provinces, which, read with the 41st section, cannot be reasonably taken to have anything to do with election petitions. There is, therefore, nothing here to raise a doubt about the power of the Dominion Parliament to impose new duties upon the existing Provincial Courts, or to give them new powers as to matters which do not come within the classes of subjects assigned exclusively to the Legislatures of the Provinces. But, in addition to that, it appears that by the Act of 1873, which, even by those judges who are said to have disputed the competency of the Act of 1874, is admitted to have been competent to the Dominion Parliament, what appears to their Lordships to be exactly the same thing in substance, and not so very different even in form, was done. It was intended that when a Court of Appeal should be constituted for the Dominion, a judge of that Court of Appeal should be the judge in the first instance of election petitions, and three

judges of the same Court should have power to sit in appeal from any judgment of a single judge. But it was necessary also to provide for the interval between the passing of the Act and the constitution of such a Court of Appeal, and that Act of 1873 provided that in the meantime the judges of existing Provincial Courts should exercise under regulations contained in it the same jurisdiction. It did not, indeed, say the Courts—it said the judges of the Courts, and that is really in their Lordships' view the sole difference for this purpose between the Act of 1873 and the Act of 1874. The Act of 1874 in substance does the same thing, except that in the definition clauses it uses this language :—"The expression 'the Court,' as respects elections in the several Provinces hereinafter mentioned respectively, shall mean the Courts hereinafter mentioned, or any of the judges thereof"; and then it mentions by their known names the existing Courts of the different Provinces. When their Lordships go on to look at the provisions which follow in the Act, it is clear not only that a new jurisdiction is provided for, but even the power to take evidence. It is said that a single judge in rotation, and not the entire Court, is to exercise this jurisdiction, and in the forty-eighth section :—"That on the trial of an election petition, and in other proceedings under this Act, the judge shall, subject to the provisions of this Act, have the same powers of jurisdiction and authority as a judge of one of the Superior Courts of Law or Equity for the Province in which such election is held, sitting in term or proceeding at the trial of an ordinary civil suit, and the Court held by him in such trial shall be a Court of Record." Words could not be more plain than those to create this as a new Court of Record, and not the old Court, with some superadded jurisdiction to be exercised, as if it had been part of its old jurisdiction ; and all that is said as to the employment of the same officers, or of any other machinery of the Court for certain purposes defined by reference to the existing procedure of the Courts, shows that the Dominion Legislature was throughout dealing with this as a new jurisdiction created by itself, although in many respects adopting, as it was convenient that it should adopt, existing machinery. Therefore, their Lordships see nothing but a nominal, a verbal, and an unsubstantial distinction between this latter Act as to its principle and those provisions of the former Act, which all the judges of all the Courts in Canada, apparently without difficulty, held to be lawful and constitutional. Their Lordships are told that some of the judges of the Courts of first instance have thought there was more of substance in the distinction than there appears to their Lordships to be, and have declined to exercise this jurisdiction. It has been said that five judges have been of that opinion. On the other hand, two judges of the first instance, I think both in the Province of Quebec, the Chief Justice in the present case, and in another case Mr. Justice Caron, a judge whose experience on the Canadian Bench has been long,* and whose reputation is high, have been of opinion that this law was perfectly within the competency of the Dominion Legislature, and they could see nothing in the distinction taken between the present law as to its principle and the former ; and now the question has gone to the Court of Appeal, the Supreme Court of Canada, who, constituted as a full Court of four judges, have unanimously been of that opinion, and nothing has been stated to their Lordships, even from those sources of information with which Mr. Benjamin has been supplied, and which he has very properly communicated to their Lordships —nothing has been stated to lead their Lordships at all to apprehend that there is any real probability that any judge of the inferior Courts will hereafter dispute their obligation to follow the ruling of the Supreme Court, unless, and until, it shall be reversed by Her Majesty in Council. Nothing has been said from which their Lordships can infer that any Provincial Legislature is likely to offer any opposition to such a ruling on this question as has taken place by the Court of Appeal, unless, as has been said, it should at any future time be reversed by Her Majesty in Council. Under these circumstances their Lordships are not persuaded that there is any reason to apprehend difficulty or disturbance from leaving untouched the decision of the Court of Appeal. Their Lordships are not convinced that there is any reason to expect that any of the Judges of the Court below will act otherwise than in due subordination to the appellate jurisdiction, or refuse to follow the law as laid down by it. If, indeed, the able arguments which have been offered had produced in the mind of any of their Lordships any doubt of the soundness of the decision of the Court of Appeals, their Lordships would have felt it their duty to advise Her Majesty to grant the leave which is now asked for, but on the contrary the result of the whole argument has been to leave their Lordships under the impression that there is here no substantial question at all to be determined, and that it would be much more likely to unsettle the minds of Her Majesty's subjects in the Dominion, and to disturb in an inconvenient manner the legislative and other proceedings there, if they were to grant the prayer of this petition, and so throw a doubt on the validity of the decision of the Court of Appeal below, than if they were to advise Her Majesty to refuse it. Under these circumstances their Lordships feel it their duty humbly to advise Her Majesty that this leave to appeal should not be granted, and that the petition should be dismissed.

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* *Quære*, whether their lordships are not mistaking the present Mr. Justice Caron for the late Mr. Justice Caron, Lieut.-Governor of the Province.—Ed.