CONTROVERTED ELECTION OF THE COUNTY OF CHARLEVOIX.

OSÉE BRASSARD, *et al*,

Appellants

(Petitioners in Court below.)

AND

HON. L. H. LANGEVIN,

Respondent.

*

Held:—That the election of a member for the House of Commons guilty of clerical undue influence by his Agents is void.

That sermon and threats by certain parish priests of the County of Charlevoix, amounted in this case to acts of undue influence, and are in contravention with the 95th Section of the Dominion Elections Act, 1874.

PER RITCHIE, J.—A clergyman has no right, in the pulpit or out, by threatening any damage, temporal or spiritual, to restrain the liberty of a voter so as to compel him into voting or abstaining from voting otherwise than as he freely wills.

This was an appeal from a judgment rendered by Mr. Justice Routhier at Malbaie, in the District of Saguenay,

*PRESENT:—The Chief Justice, and Ritchie, Strong, Taschereau, Fournier and Henry, J.J.

Province of Quebec, dismissing the election petition of O. Brassard *et al.*, against the return of Hon. Hector L. Langevin, as member of the House of Commons for the Electoral District of Charlevoix.

The petition was brought under the Dominion Controverted Elections Act, 1874. The petitioners contested the election on the grounds of bribery, treating, *undue influence*, and of the employment, as agent and canvasser, of a scheduled briber.

On the argument in appeal the principal ground urged was, that certain priests of the County of Charlevoix had exercised, in and out of the pulpit, undue influence.

The principal questions to be decided were, whether certain sermons and threats made by parish priests in the Province of Quebec, to their parishioners during an election were to be interpreted as acts of undue influence within the meaning of the 95th section of the Dominion Controverted Elections Act of 1874 (*a*), and if so whether in this case the priests were to be considered as acting as agents for the Respondent.

By the evidence it appears that Hon. Mr. Langevin consented to become a candidate after one Onésime Gauthier had, at Respondent's request, secured for him the support of the clergy of the country; that he sub-

(*a*.) Section 95 of Election Act, 1874, is as follows:—

"95. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of any force, violence or restraint, or inflicts or threatens the infliction, by himself, or by or through any other person, of any injury, damage, harm or loss, or in any manner practices intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who, by abduction, duress or any fraudulent device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, induces or prevails upon any voter to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence."

sequently met and visited the *curés*, and at public meetings declared that the members of the clergy were favourable to him. It was also proved that one priest, Rev. Mr. Gosselin, had publicly declared at Eboulements, in presence of Respondent, that "the clergy of the county had unanimously chosen Mr. Langevin, and had promised to support him."

The election took place in January, 1876. The two candidates were the Respondent and Mr. P. A. Tremblay. The pastoral letter of the bishops, extracts from which will be found in the following pages, was read previous to the election from the various pulpits of the parish churches, and sermons, in which references were made to the election in question, were delivered on the Sunday previous to the polling day by Rev. Mr. Sirois, curé of Baie St. Paul; by Rev. Mr. Langlais, curé of St. Hilarrion; by Rev. Mr. Fafard, curé of St. Urbain; by Rev. Mr. Roy, curé of St. Irénée; by Rev. W. E. Tremblay, curé of St. Fidèle; by Rev. Mr. Cinq-Mars, curé of St. Siméon; and by Rev. Mr. Doucet, curé of St. Etienne de la Malbaie.

The petition contained the two following counts in reference to undue influence:—

"7. Your Petitioners further say: That at the said ele on, before, during and after the same, the said Honorable Hector Louis Langevin by himself as well as by his agents and other persons acting for him and on his behalf, with and without his knowledge and consent, was guilty of the offence of undue influence and made use of spiritual and temporal intimidation, and that therefore the election and return of the said Honorable Hector Louis Langevin were and are absolutely null and void.

"10. Your Petitioners state that at, before, during

and after said election, a general system of bribery, of treating, of undue influence, of intimidation by spiritual and temporal threats, of personation, of inducing persons to commit personation, of hiring vehicles to convey voters to and from the polls, of payment of travelling expenses of electors in going to or returning from said election, all kinds of corrupt and illegal practices, was exercised in the interest of the candidature of the said Honorable Hector Louis Langevin, and that the said general system of corrupt practices was intended to and did in fact unduly influence a great number of electors to vote against the said Pierre Alexis Tremblay and in favour of the said Honorable Hector Louis Langevin, or to prevent them from voting, and that in consequence of the said general system of corrupt practices, the electors of the said electoral district were deprived of freedom of action, and that the said election instead of being the result of the free exercise of the will of the people, was but the result of illegal practices employed in favour of the candidature of the said Hector Louis Langevin, and, therefore, the said election and the return of the said Honorable Hector Louis Langevin were and are absolutely null and void."

After the filing of the Petition a motion was made on behalf of the Respondent, for particulars, in the following words :—

" 3rd. As to paragraph seven, the names, surnames and addresses of all persons guilty of undue influence, spiritual and temporal intimidation, and when and where such undue influence, spiritual and temporal intimidation was exercised, or when and where it was attempted to exercise the same and on what persons, with the names, surnames and addresses of the persons

upon whom such undue influence was exercised, or upon whom it was attempted to exercise the same ; in the second place, upon what class of persons such undue influence was exercised, or it was wished or attempted to exercise such undue influence, with as exact a description as possible of the class of persons, and showing in relation to each act the nature and character of the undue influence, and whether undue influence purely and simply or spiritual intimidation or temporal intimidation is in question.

6th. As to paragraph ten, each act which has not been already stated as a particular in relation to the preceding paragraphs, and which the Petitioners propose to prove in order to show a general system of bribery ; a general system of acts called treating ; a general system of acts called undue influence ; a general system of temporal intimidation ; a general system of spiritual intimidation ; a general system of personation ; a general system of subornation ; a general system of corrupt practices, with the names and addresses of the persons who practice the same or upon whom they were practiced, and when such acts were practiced, distinguishing whether an allusion is made to an individual or to a class of persons, and in such latter case to furnish as exact a description as possible of the class of persons upon whom such acts were practiced, with the place and date of each of the said acts."

The parties having been heard on the motion of the Defendant for particulars, the Court granted the said motion with costs, and the Petitioners were in consequence enjoined to deposit in the office of the Court and to supply the Defendant, on or before the first July next, with the particulars demanded.

The Petitioners then produced the following particulars:—

"4. The Reverend François Cinq-Mars, curé of St. Siméon, some days before the voting at St. Siméon, in the pulpit and out of the pulpit, stated to all the Roman Catholic electors of the said parish, and among others to Narcisse Bouchard, Johnny Desbiens, Abraham Tremblay, Michel Jusbeau, farmers; Michel Tremblay, beadle, and Séraphin Guérin, trader, that it was a case of conscience, a mortal sin, a heavy sin, to vote for the opponent of the Defendant.

"5. The Reverend Joseph Sirois, curé of Baie St. Paul, on the sixteenth of January last, and on the preceding and following days, as well in the pulpit as out of it, threatened with spiritual and temporal penalties, all the Roman Catholic electors of Baie St. Paul, and amongst others," [certain persons whose names are given.]

"6. The Reverend Ambroise Fafard, curé of St. Urbain, in January last, in the pulpit and out of it, at St. Urbain, threatened with the refusal and deprivation of the ordinary assistance that he was accustomed to give them, as well as with the deprivation of situations, employments and other advantages, all the Roman Catholic electors of the said parish of St. Urbain, and among others," [certain persons whose names are given.]

"7. The Reverend Ignace Langlais, curé of St. Hilarion, on the sixteenth of January last, and on the preceding and following days, at St. Hilarion, in the pulpit and out of it, intimidated by threats of spiritual penalties, if they voted for the Defendant's opponent, all the Roman Catholic electors of the said parish, and among others," [certain persons whose names are given.]

"8. The Reverend L. E. Lauriault, curé of Petite

Rivière St. François, in the said parish, on the 16th of January last, and on the preceding and following days, in the pulpit and out of it, intimidated by threats of spiritual penalties, if they voted for the Defendant's opponent, all the Roman Catholic electors of the said parish, and among others," [certain persons whose names are given.]

9. The Reverend W. Tremblay, curé of St. Fidèle, on the 16th of January last, and on the preceding and following days, at St. Fidèle, in the pulpit and out of it, intimidated by threats of spiritual penalties, if they voted for the Defendant's opponent, all the Roman Catholic electors of the said parish, and among others, Abel Maltais, Exé Gagnon, Emilien Bouchard, farmers, and Johnny Tremblay, trader.

" 10. The Reverend N. Doucet, curé of St. Etienne of Malbaie, out of the pulpit, stated to the Roman Catholic electors of the said parish, and among others, to Denis Harvey, Vital Harvey, Narcisse Harvey, farmers, Xavier Warren, hotel keeper (to himself and his wife), to Cyrille Guérin, senior, and Henri Guérin, farmers, that they would expose themselves to damnation by voting for Defendant's opponent.

" 11. The Reverend Mr. E. Roy, curé of St. Irenée, on the sixteenth of January last, and on the preceding and following days, in the pulpit and out of it, stated to the Roman Catholic electors of the said parish, and among others to Germain Lajoie, blacksmith, Jean Gauthier, Ferdinand Tremblay, Gilbert Bouchard, Octave Girard and Marc Bouchard, all farmers, that it was a case of conscience to vote for the Defendant's opponent.

Issue being joined, parties proceeded to *enquête*.

The evidence being very voluminous, and being re-

ferred to at length in the argument of counsel and the judgments of Justices Ritchie and Taschereau, it is deemed sufficient in this statement to insert the following extracts taken from the *exhibits* chiefly relied upon by the parties :—

"1. *Extracts from pastoral letter of the Bishops of the Ecclesiastical Province, 22nd September*, 1875.

" * * * * Each priest, on receiving from his Bishop the mission to preach and administer spiritual help to a certain number of the faithful, has, likewise, a rigorous right to the respect, love and obedience of those whose spiritual interests are confided to his pastoral solicitude.

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"This subordination does not prevent these societies from being distinct, because of their respective ends, and independent each in its proper sphere. But the moment a question touches faith, morals, or the divine constitution of the Church, her independence, or what is necessary for the fulfilment of her spiritual mission, she is the sole judge; for the Church alone Jesus Christ has said: "All power is given to me in heaven and on earth...As the Father hath sent me, I also send you... Going therefore teach ye all nations...He that heareth you, heareth me; and he that despiseth you, despiseth me. And he that despiseth me, despiseth him that sent me...He who will not hear the Church, let him be to thee as the heathen and publican, that is to say as unworthy to be called her child." (Matt. XXVIII., 18, 19; Luke X. 16; John XX. 21; Matt. XVII. 17.)

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"The Church is not only independent of civil society, but is superior to it by her origin, by her comprehensiveness and by her end.

"Undoubtedly, civil society originates in the will of God, who has ordained that men should live in society; but the forms of civil society vary with times and places; the Church was born on Calvary of the blood of a God, from His lips She has directly received her immutable constitution, and no power on earth can alter the form thereof.

* * * * * *

"*The part of the Clergy in Politics.*"

"Men bent upon deceiving you, Our Dearly Beloved Brethren, incessantly repeat that religion has nothing to do with politics; that no attention should be paid to religious principles in the discussion of public affairs; that the clergy has duties to fulfil, but in the Church and the sacristy; and that in politics the people should practice moral independence!

"Monstrous errors, O. D. B. B, and woe to the country wherein they should take root! By excluding the clergy they exclude the Church, and by throwing the Church aside they deprive themselves of all the salutary and immutable principles she contains, God, morals, justice, truth; and when they have destroyed everything else, nothing is left them but force to rely upon!

"Whoever has his salvation at heart should regulate his actions according to the divine law, of which religion is the expression and the guardian. Who does not understand how justice and rectitude would everywhere prevail, did rulers and people never lose sight of this divine law, which is equity itself, nor of the formidable judgment they shall have, one day, to undergo before Him whose look and strong arm nobody can escape. The people have, therefore, no greater enemies than those men who want to banish religion from politics, for under the pretence of freeing the people

from what they call *priest tyranny, priest's undue influence*, they are preparing, for the same people, the heaviest chains, and the most difficult to throw off: they put might above right, and they take from the civil power the only moral restraint which can stop it from degenerating into despotism and tyranny!

"They want to relegate the priest into the sacristy?

"Why? Because, forsooth, he has derived from his studies healthy and true notions on the rights and duties of every one of the faithful confided to his care? Because he sacrifices his means, his time, his health, even his life, for the welfare of his fellow beings?

"Is he not a citizen as much as others? What, the first comer may write, speak and act! sometimes are seen flocking towards a country or a parish, strangers, who come thither to fasten upon the people their political opinions; the priest alone can neither speak nor write! It will be permitted to whomsoever it pleases to come into a parish and hawk about all sorts of principles; and the priest who lives in the midst of his parishioners, like a father in the midst of his children, shall have no right to speak, no right to protest against the enormities which are uttered!

"Some who to-day cry out very loud that the priest has nothing to do with politics, but yesterday found this influence salutary; some who to-day deny the competency of the clergy in these questions, but lately extolled the sureness of principles which gives to a man the study of Christian morals! Whence this change, if not that they feel to act against themselves the same influence which they once called salutary and just, and which they are now conscious no more to deserve!

"Undoubtedly, O. D. B. B., the exercise of all the rights of a citizen, by a priest, is not always opportune;

it may even have its inconveniences and its dangers; but it must not be forgotten that it belongs to the Church alone to give to her ministers the instructions she thinks fit, and to reprehend those who depart therefrom, and the Bishops of this Province have not failed in their duty on this point.

"So far we have looked upon the priest as a citizen, and speaking politics in his own and private name, as any other member of civil society.

"Are there questions in which the Bishop and the priest may, and even sometimes should, interfere in the name of religion?

"Without hesitation we answer: Yes, there are political questions in which the clergy may, and even should, interfere in the name of religion. The rule of this right and of this duty is to be found in the distinction we have already pointed out between Church and State. Some political questions, in fact, touch the spiritual interests of souls, either because they may affect the liberty, the independence, or the existence of the Church, even in a temporal point of view.

"A candidate may present himself whose platform is hostile to the Church, or whose antecedents are such that his candidature is a menace for these same interests.

"A political party may likewise be judged dangerous, not only by its platform and by its antecedents, but also by the particular platforms and antecedents of its chiefs, its principal members, and its press; if this party does not disown them and definitely separate therefrom, when, having been warned, they persist in their error.

"Can a Catholic, in these cases, without denying his faith, without proving himself hostile to the Church of which he is a member; can a Catholic, we repeat, refuse to the Church the right to defend herself, or

rather to defend the spiritual interest of the souls confided to her? But the Church speaks, acts, and combats by her clergy, and to deny those rights to the clergy is to deny them to the Church.

"The priest and the Bishop may then, in all justice, and shall, in conscience, raise their voice, point out the danger, and authoritatively, declare that to vote on such a side is a sin, that to do such an act makes liable to the censures of the Church. They may and should speak, not only to the electors and candidates, but even to the constituted authorities, for the duty of every man who wishes to save his soul is marked out by the divine law, and the Church, like a good mother, owes to her children of every rank, love, and consequently spiritual vigilance. Therefore, to enlighten the conscience of the faithful, on all these questions which concern their salvation, is not converting the pulpit of truth into a political tribune.

"Doubtless, O. D. B. B., such questions do not arise every day, but that this right exists, no Catholic can deny.

"The nature of the question makes it evident that, to the Church alone, it belongs to determine, under what circumstances, she should raise her voice in favor of Christian faith and morals.

"It may be objected that the priest is liable, like every other man, to exceed the limits assigned him, and that then the State has the right to recall him to the path of duty.

"To this we answer: Firstly, that it is offering a gratuitous insult to the whole Catholic Church, to suppose that in her hierarchy no remedy can be found to the injustice, or to the error of one of her ministers: in effect, the Church has her regularly constituted tribu-

nals, and whoever thinks he has grounds of complaint against a minister of the Church, should arraign him, not before the civil, but before the ecclesiastical tribunal, alone competent to judge the doctrine and the acts of the priest. Therefore, Pius IX in his Bull *Apostolicæ Sedis*, October, 1869, declared struck with a major excommunication such as, directly or indirectly, oblige lay judges to arraign ecclesiastical persons before their tribunal, against the dispositions of canon law.

* * * *

"Secondly: When the State shall invade the rights of the Church, trample under foot its privileges the most sacred, as this happens to-day in Italy, in Germany and in Switzerland, were it not the height of derision to give to this same State the right to gag its victim?

"Thirdly: If they lay down the principle that a power no longer exists, because some one may abuse it, all civil powers must be denied, for all such as are invested therewith are fallible men."

EXTRACTS *from circular letter to the Clergy, accompanying pastoral letter of 22nd September*, 1875.

"These adversaries of religion, who however, pretend to the name of Catholics, are the same everywhere; they flatter those among her ministers whom they hope to gain to their cause; they insult, they outrage the priests who denounce or fight their perverse designs. They accuse them of exercising an *undue influence*, of turning the pulpit of truth into a political tribune; they dare sometimes to drag them before the civil courts to give an account of certain functions of their ministry; they will, perhaps, endeavor even to force them to grant a Christian burial in spite of ecclesiastical authority.

"In view of such threatenings, several among you, gentlemen, have asked us to trace for them a line of conduct. It is clearly pointed out in the canonical rules.

"1. A priest, accused of having exercised an *undue influence* in an election, for having fulfilled some priestly office, or given advice as preacher, confessor or pastor, and being summoned before a court, should respectfully but firmly challenge the competency of the civil court, and plead an appeal to an ecclesiastical court.

"2. A priest who, having exactly followed the decrees of the Provincial Councils and the Orders of his Bishop, would, nevertheless, be condemned by a civil court for *undue influence*, should suffer patiently that prosecution for the sake of the holy Church."

ANALYSIS *of a Sermon by Mr. Sirois, Priest and Curé of St. Paul's Bay.*

"Notice proceeding from the pastoral letter (*mandement*) of our Lords the Bishops, to be given to my parishoners on the Sabbath before the voting, the 16th day of January, 1876.

"MY BRETHREN,—It is with sorrow and sadness that I see myself under the necessity of making you acquainted with the grief I experience at this moment, with respect to certain light and disrespectful expressions which several of you are allowing yourselves to utter against our Bishops, their pastoral letter (*mandement*) and against the clergy. It seems that I ought not, in these days of excitement, to lift up my voice to give these Christians to understand how wrong they are in speaking in that manner, and that I am astonished to see them criticize to-day those whom they respected yesterday.

"While thanking you for the kind reception which you have given me, I cannot refrain from expressing to you how grieved I am with the unchristian manner with which some people are speaking ill of the priests in our days. How can we explain the improper and unjust criticisms which in these days several of you are making against the Pope, the bishops and the priests? Ah! brethren, I understand it; you have listened to the speeches of certain men who have come from afar to put you on your guard against the clergy, to utter a thousand falsehoods and a thousand calumnies.

"Beware! brethren, they are false prophets, ravening wolves who come to raise a disturbance in the flock, who come to tell you that the Pope, the bishops and the Clergy have nothing to do with politics. Beware of their perverse teachings! they want to seclude the Priests in the church and the vestry in order to succeed better in their unchristian work, which is to scatter and divide the flock of Jesus Christ.

"These false prophets will tell you that the priests go too far in the time of elections, because they are afraid of losing their rights and their tithes. Yes, brethren, we can never go too far in defending the rights of truth.

* * * *

"Allow me, brethren, to show you the inconsistency of the expression of some of you, with their general conduct. Are they sick? Is one of their animals sick? Have they any difficulty?—they come immediately to ask the priest for remedies and advice. They have a full confidence then; and how is it that in the time of an election these very same Christians speak ill of the priests, refuse them the right and competency

to enlighten and counsel them in a matter of the highest importance, such as the importance of giving a vote. Know ye well that one day God shall ask you to give an account of it before His formidable tribunal. Is it not true that on your death-bed you would reproach yourselves bitterly if your conscience should upbraid you for having contributed, by your vote, to the election of men who wish to separate the Church from the State, and who are working to destroy the confidence which you are to have in the priest?

* * * *

"For you, brethren, bind yourselves to the Holy Church, to the salutary teachings which she gives you through the voice of her pastors, if you wish to escape the woes which the false prophets of our day prepare for us. Yea, listen to those to whom it has been said: 'Go ye and teach all nations.' As long as you will remain docile to them, fear not to err. Be deeply impressed with the truths set forth in the last pastoral letter (*mandement*) of our Bishops, on the Constitution of the Church, on Catholic Liberalism, and on the office which the clergy is to fulfil in the time of elections. Your chief pastors have not made this pastoral (*mandement*) for the United States, but for the Province of Quebec; they do not wish to warn you against phantoms, but, indeed, against Liberalism and its partizans; then, do not listen to those who tell you that there is no Liberalism in our country, that the pastoral (*mandement*) condemning and denouncing it has no right to be issued because those who are the authors of it (Liberalism) do not exist in our country. You shall see men having outward appearances of piety and religion allow themselves to be fascinated without suspecting it, by the deceitful words of the serpent

Catholic Liberal. You know in what manner the serpent found his way into the terrestrial paradise, with what cunning he succeeded in convincing Eve that she should not die, nor Adam either, by eating of the forbidden fruit. You all know what took place; the serpent was the cause of the misfortunes that are weighing upon us. In the same manner Catholic Liberalism wishes to find its way into the paradise of the Church to lead her children to fall. Be firm, my brethren, our Bishops tells us that it is no longer permitted to be conscientiously a Catholic Liberal; be careful never to taste the fruit of the tree Catholic Liberal. * * *

"Respect, my brethren, the holy hierarchy of the Church, that is, the Pope, our Bishops and your pastor. As long as I shall remain in communion with my Bishop, as long as I shall preach to you the sound doctrine, you are to obey and hear me. I am here your legitimate pastor, and consequently to enlighten, instruct and counsel you; if you despise my word, you despise the word of your Bishop, then of the Pope, and even thereby the word of our Lord who hath sent us. You will perhaps say: 'You go too far; you have your own political party, and, therefore, you cannot force us to follow your opinion.' My brethren, if you believe the declarations of the first comer, whom you do not know, will you believe me if I declare to you that I have no political party? Yea, believe me, I have no party but that of good principles, I have no politics but those of teaching and defending them. * * * *

"Do you see, my brethren, how the priest is respected by certain persons? They are not afraid to compromise him by publishing private letters. Do you not see that the design of Catholic Liberalism is, indeed, to labour to

break the bond which unites the members of the Holy Church. * * * * * * *

"Once more, then, brethren, beware of these false prophets who wish to bring disunion between you and your legitimate pastors! Do not listen to their falsehoods and their calumnies. Obey the Vicar of Jesus Christ condemning Catholic Liberalism. Obedience to our Bishops who have pointed out to us its tenderness, obedience to your pastor who tells you to vote according to your conscience, enlightened by the pastoral letter (*mandement*) of our Lords the Bishops of the Province of Quebec."

ANALYSIS OF REV. MR. LANGLAIS' SERMON.

"ST. HILARION, April, 1876."

"To My Lord, the Archbishop of Quebec:—

"We, the undersigned, parishioners of St. Hilarion, solemnly declare that our priest did not say on the 16th day of January last.

"1. That the parishioners of St. Hilarion were crooked heads; but that there are among us some crooked heads, who, instead of submitting themselves to the decisions of the Church and obeying the letter of our bishops, make a pastime of keeping and increasing discord in the parish.

"2. He did not speak of the Conservative party, but said that we could not conscientiously vote for a Liberal candidate when he is known to be such.

"3. He did not say, in a general manner, that those who should vote for a Liberal candidate would sin mortally; but, that to vote for a Liberal candidate through contempt of the decisions of the Church, constituted a serious fault.

"4. It is absolutely false that he said that there are people, in the parish, who call themselves Catholics,

and who are Garibaldians, and make war against the Pope. Here is as much as we can remember of what he has said: 'You are to be called, this week, to choose a man to represent your interests in Parliament. I will, tell you to vote according to your conscience, enlightened by your superiors.' Do not forget that the bishops of the Province assure you that Liberalism is 'like the serpent which crept into the terrestrial paradise to tempt and lead the human race to fall.'

"According to our bishops, the Liberals are deceitful men; then you must not follow them if you do not wish to be deceived. Liberalism is condemned by our Holy Father, the Pope The Church condemns only what is evil; now Liberalism is condemned, then Liberalism is bad, and, therefore, you ought not to give your vote to a Liberal, your bishops declare it openly."

"Moreover, your first pastors tell you that 'the priest and the bishop can justly and must conscientiously lift up their voice to point out the danger, and declare authoritatively that to vote in a certain way is sin.'

"Now, if sometimes it is sinful to vote in a certain way rather than in another way, it cannot be, assuredly, when you are voting according to the wise counsels of all the bishops of the Province; and if it is not in that way, it must be in the opposite. However, I must tell you that if you are voting for a Liberal candidate, not believing him to be so, because your conscience tells you that he is the man that will best represent your interests in Parliament, in such a case you do not sin. But if you know that he is a Liberal, you cannot conscientiously give him your vote; you are sinning by favoring a man who supports principles condemned by the Church, and you assume the responsibility of the evil which that candidate may do in the application of the dangerous principles which he professes.

"And mark, brethren, it is not sufficient for a candidate to be a Catholic in order to deserve your votes; because it is not precisely the man whom you are to consider, but the political principles as well as the principles of the Government which he supports.

"Victor Emmanuel is a Catholic, Garibaldi is a Catholic, and yet this does not prevent them from rebelling against the Church and from making war against our Holy Father the Pope, and from keeping him a prisoner in his castle. In the same manner, the Liberals make war against the Church, for Jesus says: 'He that is not with me is against me.'

"Now the Liberals are against the Church, since she condemns them; therefore they make war against the Church, since they refuse to yield to her teachings.

"Remember, my dear children, that you shall have to render to God an account of the vote you will cast this week. Tell me on what side would you prefer to be at the hour of your death? Is it on the side of the Church, of your Sovereign Pontiff and your Bishops? or on the side of Victor Emmanuel and Garibaldi? Consider, and decide like men and not like children.

"The act which you are going to perform has, perhaps, more importance than you could imagine.

"What is important, then, is to have your conscience enlightened by those whom you believe capable of advising you well, and to follow your conscience, thus enlightened, as far as you can. By doing this, God will not reproach you, and, consequently, I shall not do so myself.

26th January, 1877.

Mr. *J. Bethune*, Q.C., of the Ontario Bar, and Mr. *F. Langelier*, of the Quebec Bar, for Appellants;

It may be said with perfect truth no more important

consideration can be presented to a Court of Justice than that which is involved in this case, viz.: the freedom of election. The principle upon which Mr. Justice Routhier has determined the case was to think himself incompetent, and that the law of the Church is superior to the law of the land. That being the case, whatever may be the result, the petitioners are entitled to have a judicial opinion on this point. Now, no such immunity as put forward in the Respondent's factum exists in the Province of Quebec. In support of this immunity, is cited the fourth article of the Treaty of 1763, by which "His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; and will, consequently, give the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish Church, *as far as the laws of Great Britain permit.*" These last words indicate a limitation. It was so decided by the Bonaventure case lately in Quebec.

How far these pretensions are well founded will be ascertained by referring to Statutes at Large, (1) by which the free exercise of the religion of the Church of Rome was granted, subject to king's supremacy, declared and established by an Act made in the first year of the reign of Queen Elizabeth. By the form of oath, subjects were obliged to renounce all foreign allegiance even in matters of faith, and, consequently, a new oath was framed. The Quebec Act of 1791 was passed to show the desire to make our constitution similar in principle to that of England. Moreover, the first lines of the B.N.A. Act shew that desire; they are as follows: "Whereas the Provinces of Canada, Nova Scotia and

(1) Vol. 8, p. 406; sec. 5 of c. 83, 14 Geo. III.

New Brunswick have expressed a desire to be federally united into one Dominion under the crown of the United Kingdom of Great Britain and Ireland, with a *constitution similar* in principle to that of the United Kingdom." Now, the effect of these Acts must make the Province of Quebec subject to the English Constitutional system.

In the early cases in Ontario, the point came up how far the Common Law of Parliament was available and in force in this country. In *The Queen* vs. *Gamble et al.* (1) the law is laid down on that point.

By the "Rectories' Act," (2) which is continued by the 129th section of the B.N.A. Act, and which is applicable to both provinces, a direct subordination of the laws of the church to the laws of Canada is enacted. It may be said that it only dealt with the secularization of the clergy reserves, yet it is wider than that, for it is stated that they "*all denominations*" shall be free, subject to the control just mentioned. This Act has not been repealed.

Undue influence has always been a subject of statutory enactment. It is admirably treated in Warren's book on Elections, (3). Freedom of election lies at the basis of our constitutional rights.

What are the facts in this case? In Quebec and specially in Charlevoix the electors are Catholics. Before the election a document signed by all the bishops was read in all the churches of the County. It is important to see what this document, a pastoral letter, contains to connect it with what was said in the pulpit afterwards. It is declared the Church is not only independent of civil society but is superior to it.

(1) 9 U.C.R., p. 546; (2) Con. St. of C., ch. 74, p. 857; (3) Edt. 1857, p. 409 to p. 419.

Now nearly all the *curés* have construed that in such a way as to believe they had the right to tell their parishioners how to vote, and to apply all that is said on Catholic Liberalism to the Liberal candidate, Mr. Tremblay. The pastoral claims for the priest all the rights of a citizen, but, moreover, it declares that the priest is not subject to the control of the tribunals of the land, and yet *authoritatively declares that to vote on such a side is a sin, that to do such an act makes liable to the censures of the Church.* What stronger language can be used? We do not deny the priest his right as a citizen, but we protest against his assuming the right of making a voter liable to the censures of the Church. In the evidence a great deal has been said about Garibaldi and Victor Emmanuel. It will be seen how the sermons were in accordance with the pastoral. Allusion is there made to what happens to-day in Italy, and Victor Emmanuel is known as having taken away the Pope's temporal power.

Besides this pastoral, a circular letter was sent to the clergy, and as petitioners argue that there was a union of priests to promote Respondent's candidature we refer to the following lines: "Before every thing else, we must insist upon the union which should prevail among all the members of the sacerdotal order." The intention it is evident was not to deal only with matters of faith but also to act in matters of election. If so, we contend that if there is a conflict between these immunities and civil rights, the immunities must be subordinate.

[Here the learned Counsel referred to the circumstances under which the Respondent became a candidate.]

Now I shall take up the evidence which brings the clergy within the pale of the law.

1st. Analysis of a sermon by Mr. Sirois, of Baie St. Paul, delivered on 16th day of January, 1876, Sunday previous to the polling day. It is to be remarked that this document was prepared to answer a charge brought against the curé before his Archbishop, and that we can believe it was more colored when pronounced. Yet it is such a sermon as to be destructive of the freedom of the *habitants* who heard it. In it there is a declaration that they are bound to obey the priest. Now are these simple *habitants* free agents with such a declaration? We are told that the Protestant clergy might say such words. But there is this difference between Protestants and Catholics. Protestants are not bound to this doctrine of obedience. Undue influence is a question of degree. What may be undue influence to one class of people may not be to another. There are cases of undue influence with reference to property, viz: Huguessin *vs.* Basely, (1) and case of Holmes the Spiritualist. Undue influence begins the moment the party ceases to be a free agent. As to the evidence which has reference to this sermon, see depositions of Xavier Larouche, Frs. Turgeon, A. Girard, Oct. Simard, Z. Perron, Florent Coté, Pierre Danielson, Boniface Larouche, J. B. Bolduc, L. Pilote, Maurice Bouchard, Etienne Pàquet, and Emile Jacot.

The evidenee on the other side is what I may call negative evidence; but still the Respondent's witnesses went too far, for they said that in the sermon there was no reference to elections. Now, the analysis of the sermon, which they signed, proves the contrary.

The learned Judge who tried the case has found, as a matter of fact, that four or five persons have been influenced by the sermons; but he has declared that

(1) White & Tudor, Leading cases.

it was not a ground for setting aside the election. Under the Dominion Act the law requires but two things. 1st. That an Act of undue influence has been proved, and 2nd. That agency has been proved. Now it would seem that the learned Judge had in his mind the law as introduced in Ontario, which declares that if the acts complained of were not sufficient to disturb the election, they will not affect it. The Dominion is the old law as interpreted in O'Malley and Hardcastle. (1)

The next sermon is that of the Rev. Mr. Langlais, *curé* of St. Hilarion. [See analysis of the sermon and evidence relating to it.]

The next sermon is that of Rev. M. Fafard. Two witnesses, Pitre Gilbert and Dominique Duchesne, have related the sermon preached by the Rev. Mr. Fafard on the 16th of January. Their testimony agrees perfectly with the solemn declaration sent, shortly after the election, to His Grace the Archbishop of Quebec, and proved by the witnesses for the defence. This declaration forms part of the record.

As to Rev. Mr. Roy's sermon, cure of St. Irénée, I refer to testimony of J. B. Gauthier, Gilbert Bouchard, Ferd. Tremblay, L. O. Gauthier, and Geo. Tremblay.

It was with reference to Rev. Mr. Tremblay's sermon, *curé* of St. Fidéle, when Abel Maltais was examined, that the immunity of the clergy was raised. The objection reads as follows.—"Objected to by the Defendant: 1st. Because the Petitioners have no right to bring evidence before this tribunal of any fact or act done by the Rev. Mr. Tremblay in his capacity of priest or curé of the Parish of St. Fidéle, in the pulpit of the church of St. Fidéle, and in the exercise of the functions of his ministry; 2nd. Because this tribunal is incom-

(1) Vol. 1, p.p. 52, 173, 240.

petent to pass a judgment on the conduct of an ecclesiastic in the exercise of the functions of his ministry, inasmuch as an ecclesiastic is only responsible for his conduct to his ecclesiastical superior and to the ecclesiastical tribunals; 3rd. Because no ecclesiastic can be summoned before a civil tribunal, either as plaintiff or as defendant, or as a witness, without his having previously obtained leave from his ecclesiastical superior, and that such leave has not been produced in the case; 4th. Because, in fact, Rev. Mr. Tremblay has already been summoned before his ecclesiastical superior to answer the same charges made in this case and for the words he spoke in the pulpit, and of which it is wished to give evidence in this cause." The witnesses examined on this sermon are J. Tremblay, (p. 21) who established the fact that the *curé* said *there was no difference between Catholic Liberalism and Political Liberalism;* Abel Maltais, E. Bouchard and D. Dassylva, of those admitted to have been influenced; Alexis Gagnon, D. Gauthier and T. Brassard. The importance of some of this evidence is to judge of the intelligence of the people, and having got that, you are then able to judge of the influence exercised and to find if it was undue and to what degree. It is always difficult to get direct evidence; one man remembers one thing and another man another thing, and the mischief is increased by being perpetuated by each channel through which is is repeated.

The next case of clerical undue influence we have to deal with is that of Rev. Mr. Cinq-Mars. The first witness I will refer to is the Rev. Mr. Cinq-Mars, who is the only *curé* examined in this case, and that by the Respondent. His evidence is important; he proves the pastoral letter. It seems he was brought up as a witness to contradict Johnny Desbien's evidence as to

who was present when the *curé* spoke to him of the election.

We get the declaration that disobedience to the pastoral letter is a grievous sin. The words, "I then explained that *sub grave* meant under pain of grievous sin," is a most positive declaration on this point. We have a distinct avowal of the purposes for which he made that statement, viz.: to condemn Mr. Tremblay's party. While on this part of the witness' deposition, I will remark the following answer with respect to the question of agency: "State whether the following passages contain the truth as to the action of the clergy, &c., * * * '2nd. In the first place let us say distinctly that the clergy of Charlevoix are not ashamed of having accepted the candidature of Honorable H. Langevin, and of having done the best in his favor, while restricting themselves within the limits of the Provincial councils, the pastoral letters and the civil laws.' Answer: "I admit the truth of what is stated in the 2nd extract."

The proper deduction from Curé Cinq-Mars testimony is that he told his parishioners that, inasmuch as Mr. Tremblay professed Liberalism it would be a grievous sin to vote for Mr. Tremblay.

[The learned Counsel then commented on Judge Routhier's judgment and argued against the arguments put forward by him in favor of the personal immunity of the clergy in the Province of Quebec.]

It is manifest from this judgment that he considers there exists on the part of the clergy some personal immunity. An attempt is also made to declare them not liable to be summoned before a Court. I take it there is no such immunity which prevents them from being summoned. There are some well-known privi-

leges, such as the Advocate's privilege, as to what has taken place between him and his client.

But in this case no privilege was sought for by these gentlemen, it is the Defendant who deliberately raises the objection. In the Bonaventure case, in Province of Quebec, lately decided, that point was disposed of, and all three Judges came to the conclusion that the privilege did not exist. In Ontario it does not exist. Surely the Catholic doctrine on this point must be universal as well as on other points. The learned Judge refers to the celebrated case he decided at Sorel, "*Derouin* v. *Archambault*," (1) in which he invoked the privilege of ecclesiastical immunity in order to declare himself incompetent. This decision was unanimously reversed by the Court of Review at Montreal. Reference is made that no accusation was served on them in virtue of section 104, 37 Vic., chap. 9. They are not liable under the Act of 1876. This Act cannot have a retroactive effect, and this is not asked. What the learned Judge means, is to set up judicially this personal immunity. He puts the question, that if any person may come to the church door and speak, why not the clergyman? The fallacy is that they do not stand on the same footing. The one is speaking *ex-cathedra*, he is laying it down as part of their faith. Now if you find the clergy all arrayed on one side, stating that a party is condemned as a matter of faith, and to put you under pain of sin or grievous sin, can it be said fairly they occupy the same position as others? The Legislature intended to give each man his franchise, and the law, as enacted, was found necessary to give him freedom. If the clergy had gone outside of the church and had addressed the electors as citizens, it might be said

(1) 5 Revue Legale p. 308.

they were right. But when they bring to bear to support their candidate, the power of the Church, with its censures and penalties, I maintain there can be no freedom. In such cases the priest brings himself within the pail of the law. The learned Judge then goes on to say that the intention of the Legislature in adopting this law was not to limit and restrain the liberty of ecclesiastical preaching. The law is not new, it was in the Statute of Canada, 1860, p. 47, and this was framed on the English Act of 1854. The judicial interpretation given to this law in the Galway case was to extend it to priestly influence. Is it not fair to believe that the Dominion Parliament intended it to apply to this influence. There are numerous cases in Great Britain decided in accordance with this view. I will refer to the Mayo case, Dublin case, Galway case, Longford case, and Tipperary case. (1)

The interpretation of the Dominion Act should be according to the precedents and conclusions arrived at. There is no reason why the influence of the priest should be greater in Ireland than in the Province of Quebec. On the contrary, here the priest has not only a spiritual power but he has a temporal power, that of enforcing the payment of the tithes to which he is entitled by the law of the land.

All religious tests have been abolished, and no test is required from the candidates. A Free Thinker can be a candidate. Now, if the pastoral and circular in this case, together with the judgment rendered by the Court below, be carried into effect, would it not be imposing a test which Parliament has not thought proper to impose, as far as Lower Canada is concerned? The question is, after all, which policy is to be supreme,

(1) 11 vol. of O'Malley and Hardcastle.

the Church or Parliament ? Now, if a Church exists in Lower Canada, either as a State Church or as a voluntary association, it is by virtue of the law of the land ; is it reasonable, then, for the clergy to make war on Civil Law, which allows them to collect tithes, The measure of freedom should be the same for Catholics as for Protestants. There is no freedom if they are allowed to denounce the voters from the pulpit. Nor is it right to the Protestant element in the Dominion that the *habitants* should not be free. If you impose the restraint of the priest on the electorate, what would be the result. The candidate would have to go, hat in hand, to these gentlemen, and, when elected, they would be members representing the powers of the Church.

As to necessity of specific threats, it is a question of power, and a general threat is as great power as a specific threat. The particular form of words used makes no difference. They are told, you commit a grievous sin if you take a particular course. Refusal of sacraments is only one form of censure.

The circular tells them to be united ; a meeting is held at Baie St. Paul, and they all decide to support the candidature of Respondent. How could this pastoral be discussed, when the elector is told that the priest is speaking the Divine word, and that he is bound to obey the Church ?

As to the question of agency, refer to the summary of the conclusions of the judgment. There is not a word of agency, which proves that the agency was thought so plain that it was unnecessary to comment on it.

From the evidence of the Respondent, it is clear that the priests of the County of Charlevoix were, collectively and singly, his agents.

By law, agency may be inferred from the existence of facts. Take the case of bribery. A candidate tells his agent not to bribe, yet, if he does bribe, the law makes the candidate responsible. The view taken in all cases is, that if you find a candidate and another person making common cause, working together, &c., there is agency, and the reason is that inasmuch as the candidate takes the benefit of this person's acts he must take the responsibility. *See* Limerick case, (1) on this point; Galway case. (2) Implied authority results from any act or word of the candidate which implies that he wants another person to work in order to secure votes to him, or that he knows that person to be so working, and does not disallow his conduct. (3)

I submit undue influence has been established because Judge Routhier admits this fact, and that though, as a matter of fact, it might not have changed the result of the election, as a matter of law, the election should be voided.

Mr. *F. Langelier* :—

As to intimidation by Rev. Mr. Doucet upon Denis Harvey.

Denis Harvey declares that the Rev. Mr. Doucet, *curé* of that parish, said nothing in the pulpit against Mr. Tremblay ; it was in private conversation that he spoke against him.

He has heard reports of sermons preached by the *curés* of the other parishes of the county ; he is alarmed on being told that if *Mr. Tremblay is elected, religion will be abolished before two years have elapsed.* He goes

(1) O'Malley & Hardcastle, P. 262, (2) 2 O'Malley & Hardcastle, P. 53 and 54, Bushby, P. 117 to 121. (3) O. & H., Vol. 1, P. 55, 26, 17, 183 and Vol. 2, P. 73, 74, 102, 103, 136, 137. Rogers on Elections, p. 500, 509, 511, 515. Cornwall Election, 10 L. J. U. C. P. 314. North Wentworth, 11 L. J. N. S. P. 198 and 328.

to his curé expressly to consult him. Mr. Doucet says to him that it is true Mr. Tremblay, his parishioner, is a perfectly honest man, capable of rendering great services to the country, but that he *supports a dangerous party.* "*I will read the pastoral letter of the Bishop's next Sunday,*" he adds: "*after that, those who wish to lose their souls may do so* (*ceux qui voudront se perdre se perdront.*") Denis Harvey declares he understood that these words were directed against Mr. Tremblay, and certainly he could not otherwise understand them.

This fact related by Denis Harvey is very important, not on account of its intrinsic value, but as it establishes how unanimous the *curés* were against Mr. Tremblay. Mr. Doucet is known to be a very moderate man, a priest of exemplary prudence; he never interfered in politics. So much so that in the preceding elections his opinions could not even be surmised. But in this election, the action of the clergy was so decided that he could not resist the movement, and was carried as it were against his will by the force of the current.

[The learned Counsel referred to some further evidence bearing on the question of undue influence, and then commented on the Galway case, showing that that case was in point, and that the law should be interpreted here as it was in the Galway case. He concluded by stating that the corrupt practices with which the Petitioners had charged the Respondent were sufficiently proved to have the election declared void by the Court.]

Mr. *J. Cockburn*, Q. C., of Ontario, and Mr. *C. H. Pelletier*, of Quebec, for Respondent:---

Assuming that the priests of the County of Charlevoix, have preached against Catholic Liberalism, and that it has had some effect on the electors, we contend that by

the Quebec articles of capitulation, by the treaty of Paris, and by the Imperial Act 1791, absolute freedom in the exercise of their religion was granted to the Roman Catholic inhabitants of the Province of Quebec. These privileges and rights have not been taken away by any Imperial or Dominion Act. It cannot be held that the general language used in the 95th section of the Dominion Controverted Election Act, has taken away these rights so as to prevent priests speaking in the pulpit against a candidate who would be *e. g.* in favor of establishing Divorce Courts in the Province. The pastoral letter written long before the election is simply an exposition of the Catholic doctrine on certain subjects. It is the duty of every Catholic priest to preach in accordance with his Bishop's instructions, and the liberty of preaching necessarily forms part of the free exercise of their religion. We submit, therefore, that they had a right to so preach, and that their sermons cannot be treated as spiritual intimidation within the meaning of the Irish cases cited by Appellant's Counsel.

The County of Galway case indeed is quite different from that of Charlevoix.

In the Irish case, the record shows that several bishops and about fifty priests had been constantly in communication with the candidate Captain Nolan; that, in order to induce him to withdraw at a previous election, they had pledged themselves verbally and in writing to support him against any comer; that, later, when the county was once more vacant, this candidate requested them by letters to call meetings; that he was present at meetings where these clergymen used excessively violent language, and that finally he thanked them for it.

In their sermons, the parish-priests here, have been

content with reading the pastoral-letter which the Bishops of the Province had published in the month of September, 1875, not on account of this election, but on account of the principles which should be propounded and defended. Thus, after reading this pastoral-letter, the pastors confined themselves to commenting upon it generally, without applying it to the political parties which divide this country and to the candidates who were before the people in Charlevoix. They explained the doctrine of the Catholic Church with respect to the several subjects touched upon in this pastoral-letter, without attacking or insulting any political party or any candidate.

There is, therefore, no parity between the Galway County election, and that of the County of Charlevoix.

The learned Counsel then referred to the Borough of Galway case decided by the same Judge, (1). also to Brickwood & Croft (2.)

As to the *quantum* of intimidation there can be no comparison as the evidence shows that they were only four cases. The case of Bonaventure is not in point. There threats were used and the sermons were delivered in the presence of the Respondent. Since the ballot, the free exercise of the franchise is full and complete and a person can no longer be influenced to vote for one in preference to another.

As to the question of agency—none has been proved. The Respondent positively denies that the members of the clergy were employed by him. If the priests were acting as agents it was as agents of the Bishop and not of Respondent.

The words imputed to Defendant cannot constitute the priests his agents. If he had said I will come

(1) p. 344, Prlt. Papers, Election Petitions, 1868-69. (2) pp. 120, 212, 216, 218.

forward provided the manufacturers are favorable to my candidature, would that constitute all the manufacturers his agents?

To establish an agency you must prove that the party has agreed to canvass and procure votes. See Brickwood & Croft, (1); O'Malley & Hardcastle, (2); Borough of Galway case, 1874, (3.) Priests doing nothing more than preaching doctrines of their church can not be declared agents of the Respondent. Moreover, in this case it is proved that Mr. Tremblay tried to get the support of the clergy and not having been successful, he surely cannot charge Respondent because they preferred to be favorable to him. The clergy has the civil right as well as other persons of volunteering their united support to a candidate.

When the petitioners attempted to prove the acts with which they charge seven of the parish priests of Charlevoix we made the following objection, which has been repeated for every similar case, viz:—

"Objected to this evidence by the Defendant:

"1. Because the Petitioners cannot prove before this tribunal any fact, any act performed by the Reverend Mr. Wilbrod Tremblay, in the pulpit, in the church of St. Fidèle, in his capacity of priest and parish priest of this parish, and in the exercise of the functions of his office;

"2. Because this tribunal is incompetent to judge an ecclesiastic's conduct in the exercise of the functions of his office, in as much as this ecclesiastic is answerable for his conduct only to his ecclesiastical superior and to the ecclesiastical tribunals;

"3. Because no ecclesiastic can be summoned before a civil tribunal either as plaintiff, either as defendant,

(1) p. 32, s. 2; (2) p. 197; (3) p. 37.

or as a witness, without leave from his ecclesiastical superior, and that such leave is not fyled in this case;

" 4. Because in fact the Rev. Mr. Tremblay has already been summoned before his ecclesiastical superior, to answer the same charges that are made in this case, and explain the words he is accused of having uttered in the pulpit, all which is attempted to be proved before this tribunal."

This objection, which has been reserved on its merits, raises a question of the highest importance in a social and religious point of view; for it leads to the discussion of the relations which should exist between Church and State.

We affirm, as an incontestable and uncontested fact, that the Church is perfectly free in this country. This freedom is not denied by the petitioners, who are Roman Catholics, and who cannot complain should they be judged according to the rules of their church, inasmuch as these rules are recognised by the law of this country.

The Church being free, the civil law cannot fetter its action.

The reasons given to sustain our objections may be summed up as follows :—

This Court has not the right nor the competence to appreciate the evidence produced in this case, with respect to the acts of certain parish priests, because the Catholic doctrine formally denies to civil tribunals the right of judging either the teachings of the Church or its ministers. Should we establish our proposition, viz : that the doctrine of the Church does not admit in civil tribunals the competence to judge its teachings and its ministers; we shall have the right to conclude that the evidence produced before this tribunal is illegal,

and that consequently it must be rejected from the record and considered as null and void. The Catholic Church is a perfect society. In this case, we claim for the Church the right to exercise freely its functions. We want that its legislative, executive and judicial power be not overlooked by civil society. Thus we maintain that the petitioners deny to the Church the possession and exercise of these rights, when they attempt to submit to the State, represented by this Court, the judgment of its legislation, of its doctrine and of its ministers. The proof, under reserve of objection, has been made of certain sermons of the parish priests of Charlevoix, as well as of certain other words spoken by them out of the pulpit. Had the Court the right of examining this evidence, it would have the equal right of appreciating it, judging its meaning. Consequently the Court would have the right of judging the doctrines, the preaching, the teachings, the ministers of the Church ; that is to say, it would declare itself superior ; it would state positively that the Church is not a perfect society, is not independent, inasmuch as the Church would be liable to have its teachings, its doctrine, its ministers judged by officers of another society. Preaching (and upon this runs nearly the whole evidence on Petitioners' behalf) is within the exclusive jurisdiction of the Church, and the State is not a competent judge of its value nor of its teachings.

In the case now under consideration, it is said :

'We do not wish to deprive the clergy of their political rights ; but we ask this tribunal to repress and punish the abuse which the parish priests of Charlevoix have been guilty of during the last election. We admit the priest's rights as a citizen ; but we require that, should he use them, he be placed on the same footing

as other citizens.' The liberty of preaching exists in election times as well as in any other time. The priest, in this circumstance, as ever, is responsible for his conduct only to his ecclesiastical superior. In elections, civil tribunals have not, more than in any other time, the right of judging the teachings of the priest, of the minister of the Catholic Church. The Church alone has the right of judging within what limits, in what circumstances, and under what forms, the right of preaching should be used; otherwise, civil society would encroach on religious society.

In support of our pretension, we quote to the Court 'Guyot, *La somme des conciles.*" (1)

We refer the Court also to Phillipps, who is an authority in these matters.

The pastoral letter of the Bishops of Quebec, dated the 22nd September, 1875, is also very formal when it denies the competence of secular judges in reference to ecclesiastical acts and persons.

This freedom of preaching and of the priest's speech, which we claim in this case, has been several times admitted by our tribunals, and amongst others in a case of Poulin against the Reverend George Tremblay, parish priest of Beauport, unanimously confirmed by the Court of Appeal, Quebec. The learned counsel also cited Tarquini (2).

But should we suppose for a moment that the Court will maintain the legality of this evidence, the Defendant contends that it is insufficient in fact, and does not

(1) Edition of 1818, 2nd volume, page 146, 150; (2) *Principes du droit public de l'Eglise*, pages 12, 43; Audisio *Droit public de l'Eglise*, 1st volume, pages 72 and following, and page 218; Phillips, *Du droit public de l'Eglise*, 2nd volume; *Instituts du droit naturel, privé et public*, by A. B., page 401, 2nd volume, chapter 10; *Le libéralisme, la franc-maçonnerie et l'Eglise Catholique*, by Canon Labis, 2nd edition, pages 230 and following.

in any way justify the charges brought by the Petitioners in their *Particulars* against certain parish priests of Charlevoix.

The Rev. Mr. Cinq-Mars, parish priest of St. Siméon, is charged in the *Particulars* with having, "in and out of the pulpit said to all the Roman Catholic electors of his parish, and amongst others to Narcisse Bouchard, Johnny Desbiens, Abraham Tremblay, Michel Imbeau, farmers, Séraphin Guérin, merchant, and Michel Tremblay, beadle, that to vote for the Defendant's opponent was a case of conscience, a mortal sin, a great sin;" but they have tried to prove only two charges, viz., N. Bouchard and J. Desbiens.

As to N. Bouchard, Rev. Mr. Cinq-Mars, in his deposition, says:—

"I had no intention whatever of influencing Narcisse Bouchard's vote. I even believed that he had no vote. *This conversation took place by mere chance, and was without any importance.*"

Bouchard corroborates this part of Mr. Cinq-Mars' evidence: "What Mr. Cinq-Mars told me did not change in any way my opinion. He told me this very quietly, and he had not the appearance of an election canvasser."

In order that there may be intimidation, *undue influence*, it is required that the act should be committed in view of the elector's vote: "It must be shewn that it was done on account of the vote." (1)

Suppose even we would accept Bouchard's version, this act is without importance, and is one of those which the law does not take notice of—"*de minimis non curat lex.*" (2)

(1) Brickwood and Croft, pages 199 and following; Messrs. Justices Willes and Blackburn, judgments in the Tamworth and Norfolk cases; (2) Brickwood and Croft, page 201.

As to the charge against J. Desbiens, this is what Rev. Mr. Cinq-Mars says: "I swear positively that I did not then say to Johnny Desbiens, that to vote for *Pitre Tremblay would be a mortal sin.* I knew then François Bergeron's opinion; he was for the defendant; but I did not know Johnny Desbiens' opinion, *and I did not ask him for it.*"

As in Narcisse Bouchard's case, this is a conversation which took place by chance, and *without any intention whatever of influencing Desbiens' vote.* The parish-priest did not even take the trouble of enquiring about his opinion.

The charge against Rev. Mr. Doucet is not justified by the evidence.

During the election, he went to the parish priest's house purposely *to speak to him about the election.* The parish priest told him that Mr. Tremblay was an honest man, that there was *nothing wrong in voting for him.* After that, they began to speak about the electoral canvass: "It is strange, said the parish priest, how people will become excited about elections; I, for one, do not become excited, and I remain quiet. On Sunday next, I shall read to them the pastoral letter, and, afterwards, if they wish to be lost, they will be lost." He did not speak to me against Mr. Tremblay's party, adds Harvey.

It is clear that the parish priest intended to speak about the canvass, and not about the votes. By the words "if they wish to be lost, they will be lost," he designated those who became excited, who made trouble, who behaved badly during the election.

There is no evidence against Rev. Mr. Roy. Numerous witnesses prove that he did not speak about the election, and that he had declared that he was neither

for Mr. Langevin nor for Mr. Tremblay; that he belonged to no party.

As to the charge against Rev. W. Tremblay. The evidence is contradictory. Ten of Defendant's witnesses contradict the six witnesses examined by the petitioners, as well as the political character that the latter have tried to give to the parish priest's words.

The charges against Rev. Mr. Fafard are supported but by two witnesses and by the evidence produced by the defence; nine witnesses prove that the parish-priest did nothing but his duty as a pastor. He wished to warn his flock of the danger that threatened them, if they kept company with a man of bad character, a man who constantly spoke against his parish-priest, and whose conduct showed easily what principles he had. There is nothing in his words that can affect the election. It is at most a matter to be discussed between the parish-priest and his parishoners.

Besides, in an analogous case, on deciding the Galway Town election, pages 350 and 351, Mr. Justice Keough, in his judgment on the 3rd of March, 1869, declares that such words do not interfere with the freedom of an election.

To prove their charge against Rev. Mr. Langlais, the Petitioners have examined 18 witnesses. The Respondent, by twenty-eight witnesses, proves that the sermon explained the Bishop's pastoral letter read by the parish-priest. It showed to the parishioners of St. Hilarion what the Church teaches by its Bishops with respect to Catholic Liberalism. The parish-priest attacked neither the Conservative party, the Liberal party, Mr. Langevin, nor Mr. Tremblay. He neither threatened nor intimidated any one. He left every one free to vote for whom he pleased, recommending only to

the people to vote according to their conscience, and not to give the scandal of selling their votes.

And with respect to the three or four individuals who, they say, have changed their opinion on account of the parish-priest's sermon, either these individuals, examined by the defence, prove themselves the contrary, or the contrary proof is given in a positive manner by other witnesses of the defence. These witnesses are Antoine Bouchard, Pierre Tremblay, Grégoire Tremblay, David Gilbert, &c.

With respect to Réul Asselin, who tried to show that the parish-priest had refused to make his pastoral visit with him, because he did not wish to follow the parish-priest in this election, it has been superabundantly proved, by the witnesses of the defence, that it is not so ; but that the reason of this refusal by the parish-priest was that Réul Asselin always thwarted the parish-priest in Church business.

The Petitioners have specially directed their attacks against the Reverend J. Sirois, parish-priest of St. Paul's Bay. They have examined eighteen witnesses ; the Defendant on his side has answered by examining twenty-eight witnesses.

The testimonies on both sides are so numerous that we would fear to abuse the patience of the Court, should we undertake to examine these testimonies one by one ; to compare them in order to see how they contradict one another, and to convince the Court that after all nothing certain remains before it but the analysis of the parish-priest's sermon. To this the whole evidence is reduced. It matters very little what the electors may have understood, at a period when they were working zealously in the contest ; the whole question is what did the parish-priest say. And if he has spoken within

the ordinary limits of preaching, no one can complain about the impression produced by his words ; for words uttered with conviction must always produce some effect.

The learned Counsels, in an argument which lasted nearly two days, commented on the voluminous evidence on the part of the defence in answer to the different charges brought against the Respondent, and concluded by referring, on the question of the free exercise of the Catholic religion in the Province of Quebec, to Christie's Canada, Vol. 6, p. 16; Despatch of Lord Dorchester, 1789; 2 Foyer Canadien, p. 131; Clarke's Colonial Law, p. 8; Quebec Act, 1774.

Mr. *J. Bethune*, Q.C., in reply:—It is manifest, by reading the circular to the clergy, that the Church did not fear a collision with civil power. It was not merely doctrinal preaching, as contended for by Respondent's counsel, but guidance in civil elections. The parish priests were to explain the pastoral letter at the eve of an election. In this case, all the priests of the county had in view was the success of Mr. Langevin. As to articles of capitulation, they were only of authority until the signing of the treaty. (1) Catholics under Treaty of Paris, 1763, cannot claim more freedom than Rev. Dr. Doyle, did in 1825 as a Catholic living under the British Constitution.

This case cannot be distinguished from the Bonaventure case. It is simply a question of degree as to the punishment threatened. In both cases what was said affected the freedom of the franchise. As to priests

(1) Reference was here made to the evidence given by Rev. Dr. Doyle before Parliament in 1825, at pp. 173, 190, 192, Vol. 8, Parl. Papers. Vol. 8---Reports of Committes. Catholic Emancipation Bill.

not being agents because they did not go round canvassing, surely if a priest calls his flock together on Sunday, and in church, where no one can answer him, publicly *ex cathedrâ* tells his parishioners, that they must vote for a candidate, it is equal to canvassing from house to house. In the Galway case (1) a letter was deemed sufficient to prove the agency. The general doctrine of agency, as laid down in Art. 1050–1054 of C. C. is applicable here.

As to the immunity of the priest, it cannot exist under the British constitutional system. In the British North America Act there is not a word of this immunity, and no difference is made in favour of elections taking place in the Province of Quebec. This is a new doctrine in Quebec. Several priests have been condemned by the Courts of Justice for libel, and this immunity was never raised. In Ontario and in the United States Catholics freely exercise their religion, and yet they do not claim these rights and privileges. If your Lordships are powerless to give effect to this Statute, manifestly it must destroy freedom in every county in the Province of Quebec.

28th February, 1877.

TASCHEREAU, J. (translated):—I acknowledge that it is with great misgivings as to my own powers, and with a deep feeling of regret that I find myself compelled to pronounce a decision as a Judge in a contestation of the nature of the present. Already an identical case, in which most important questions of law arose, has been unanimously decided by three eminent Judges of the Supreme Court of the Province of Quebec, professing the Catholic religion, and has created a precedent of high importance; but, on the other hand, the principles

(1) 2 O'M. & H., p. 53.

which those honorable Judges took, as the basis of their decision, have been commented on, and severly blamed as opposed to the faith by an eminent member of the Canadian Episcopate. I mention this circumstance in order to show the difficulty of the position in which I, together with one of my colleagues upon this Bench, am placed as a Catholic.

We have, therefore, to approve the principle set forth by the Judges in question, or to adopt the criticism pronounced upon them by his Lordship the Bishop, of whom I have made mention.

The whole difficulty arises out of the interpretation of the electoral law in reference to the asserted undue influence exercised by the clergy, and to the power of the Civil Courts to decide that question.

The difficulty is further increased by the decision rendered in the first instance by his Honour Judge Routhier, who set forth principles of law diametrically opposed to those of the Judges above alluded to.

In January, 1876, the Respondent was elected a member of the Parliament of Canada, as representative for the electoral district of Charlevoix, after a severe struggle on the part of Mr. P. A. Tremblay as a candidate.

The Appellants, electors of the County, and partizans of Mr. Tremblay, contested the election of the Respondent for corruption, threats, undue influence and corrupt practices, and their contestation was set aside by Judge Routhier, and it is of that judgment that the Appellants complain.

The chief grievances of the Appellants are comprised in the exercise of undue influence by certain *curés* of the County by means of sermons delivered by them from the pulpit during divine service upon several Sundays, immediately preceding the day of polling, and also

in private conversation; and, further, in threats held out to electors by influential persons in the county.

To succeed in their contestation it was incumbent upon the Appellants to prove:----

1. The agency of those members of the clergy and other persons.

2. Threats, amounting to undue influence, promises, or other corrupt practices.

I say at once that the Appellants have proved that agency in the most complete manner possible in such a case.

It appears, in fact, that through one Mr. Onésime Gauthier, the Respondent, the Hon. Mr. Langevin, was invited to come and solicit the votes of the electors of the County of Charlevoix; that gentleman replied that he would not accept the candidature except upon the condition that the support of the clergy of the County was assured to him. Mr. Gauthier assured himself of the good feeling of the several *curés* in the County, and upon the report which he made to the Respondent, the latter accepted and entered upon his electoral campaign; he met with and visited the *curés*; at a public meeting the Respondent declared that the members of the clergy were favourable to him, and that the electors should listen to the voice of their pastor; and at Eboulements, in the presence of the Respondent, one Mr. Gosselin, Vicar of the parish, publicly declared that all the clergy supported the respondent, and had unanimously selected him as their candidate. Taking as a sequence of all this, the sermons which a large number of those curés delivered from the pulpit, denouncing Mr. Tremblay and his political party, evidently with the view of favouring the avowed and well-known candidature of the Respondent, it is indubitable that that

gentleman is responsible for the consequences of the conduct of those curés, if the evidence shows on their part the exercise of undue influence provided for by the electoral law.

Let us remark here that the law does not require that the agency should be established by means of a written or even of a verbal authority; it is inferred from the relations of the parties—from the *bonâ fide* support which the agent affords to the candidate with the sincere view of ensuring his election. The agent here in question is not the one specified by section 121 of the Election Act, whose name should be notified by the candidate to the returning officer, but is the one specified by section 101; that is, the one who, with the formal or implied consent of a candidate, in good faith supports his candidature. All these qualities are present in the case of the reverend *curés* of whom I shall speak in a moment.

Decisions in England, the election law of which is identical with ours, and those rendered in Ontario and the Province of Quebec, lay down the principle that every person who in good faith takes part in an election for a candidate with his consent, becomes, *ipso facto*, an agent of the candidate. Upon that point there can be no doubt, and, unless I am mistaken, the election of a prominent member of Parliament was annulled in consequence of the excessive zeal of his agents.

I shall now give a brief summary of the statements of the reverend curés of which the Appellants complain.

1. The Reverend Mr. Cinq-Mars, *curé* of St. Fidèle, said to one Narcisse Bouchard upon an occasion when he had repaired to his (Bouchard's) house to administer the sacraments, that "to vote for M. Tremblay was a

grave sin, a matter of conscience," and that was said but a few days before the polling. Narcisse Bouchard swears that the conversation was commenced by Mr. Cinq-Mars. On the same day Mr. Cinq-Mars being taken back to his house by the person named Johnny Desbiens, said that "to vote for Mr. Tremblay was a mortal sin." And, further, the reverend gentleman repeated the same thing from the pulpit.

Let us remark that M. Cinq-Mars, when heard as a witness for the Respondent, did not deny those conversations and declarations.

2. The Reverend M. Doucet, *curé* of Malbaie, although he delivered no sermon with which he can be reproached, nevertheless said to the person named Dennis Harvey, that "although it was true that Mr. Tremblay was a perfectly honest man, and capable of doing his country service, yet he supported a dangerous party," and he added, "I shall read you the Bishop's pastoral letter on Sunday next, and they who choose to lose themselves will do so."

3. The *Curé* Sirois, of Bay St. Paul, in a sermon which lasted an hour and a half, made a violent attack upon the Liberal party, which he likened to Catholic Liberals, comparing them to ravening wolves, promoting by their speeches rebellion against religion, saying that "with that party in power we should wade in the blood of the priests; that all the horrors of the French revolution would be re-enacted; that to prevent those misfortunes Liberalism must be crushed by the people and by the clergy. That already the Canadians had been almost ruined by a terrible scourge, and that if the electors did not listen to their curé, that scourge would soon be renewed. That there were false Christs and false prophets."

Mr. Pâquet, a member of the Local House of Quebec, who took note of that sermon delivered by M. Curé Sirois, swears that he understood that those remarks applied to Mr. P. A. Tremblay, the candidate, and that that sermon of M. Sirois' made great impression upon the people, and had the effect of causing Mr. Tremblay to lose a good number of votes.

4. The Rev. Mr. Langlais, *curé* of St. Hilarion, declared that it was a grave, a mortal sin to vote for M. Tremblay, and that at the hour of their death the electors would like better to have followed the banner of the Pope than that of Victor Emmanuel and Garibaldi; and in a summary of that sermon which M. Langlais sent to the Archbishop of Quebec, he (Mr. Langlais) admits having said that it was a sin to vote for the Liberal party, and that at the hour of death those who had voted for the Liberal party would regret it, &c, &c.

5. The Rev. Mr. Tremblay, *curé* of St. Fidèle, in one of his sermons, used the following extraordinary language: "That he who should vote for M. Tremblay would be guilty of grave sin, and if he died after so voting, he would not be entitled to the services of a priest."

I give but a brief summary of the sermons of those gentlemen, all very nearly in the same sense, comparing Liberals in politics to Catholic Liberals. The proof of those sermons appears to me to be unassailable, and, I have asked myself, if, indeed, those singular sermons with which those gentlemen of the clergy are reproached were not delivered, why did not the Respondent cause them to be heard as witnesses to disprove the accusation? Nothing was easier for him. He did, indeed, cause the Rev. Mr. Cinq-Mars to be

heard as a witness, who nobly acknowledged the truth of the reproach which was made against him. I think, in fact, that it was the duty of those reverend gentlemen to come forward and deny (if they could conscientiously do so) the accusations made against them, were it but to protect the Respondent against the consequences of their imprudent language.

All these sermons, accompanied by threats and declarations of cases of conscience, were of a nature to produce in the mind of a large number of the electors of the county, compelled to hear these things during several consecutive Sundays, a serious dread of committing a grievous sin, and that of being deprived of the sacraments. There is here an exerting of undue influence of the worst kind, inasmuch as these threats and these declarations fell from the lips of the priest speaking from the pulpit in the name of religion, and were addressed to persons of little instruction, and generally well disposed to follow the counsels of their curés.

I can conceive that these sermons may have had no influence whatever on the intelligent and instructed portion of the hearers; nevertheless, I have no doubt but these sermons must have influenced the majority of persons void of instruction, notwithstanding that by reason of the secrecy in voting by ballot it has not been possible to point out more than six or eight voters as having been influenced to the extent of affecting their will. According to the testimony of over fifteen witnesses, a very large number changed their opinion in consequence of this undue influence. I may here state, that, in like cases to annul an election, a large number of cases of undue influence by a candidate or an agent is not required, and that one single case well

proved, suffices, although the candidate availing himself of it may have had an overwhelming majority.

Taking the evidence as a whole, it appears to me to be clear that a general system of intimidation was practised; that as a consequence undue influence was exercised, and that the electors did not consider themselves free in the exercise of their elective franchise.

The undue influence which the evidence reveals in this case seems to me as general and effective as that referred to in the several English and Canadian decisions which I shall not quote *in extenso*, but content myself with briefly indicating, namely:—

1. The Mayo election case in 1857.
2. The Longford case.
3. The Galway cases.
4. The case of the County of Bonaventure.

The principle of all the decisions in these cases is that the priest must not appeal to the fears of his hearers, nor say that the elector who votes for such a candidate will commit a sin, or incur ecclesiastical censures, or be deprived of the sacraments. Mr. Justice Fitzgerald expressed himself in accordance with these views in the Longford case.

The object of the electoral law was to promote, by means of the ballot, and with the absence of all undue influence, the free and sincere expression of public opinion in the choice of members of the Parliament of Canada. This law is the just sequence to the excellent institutions which we have borrowed from England, institutions which, as regards civil and religious liberty, leave to Canadians nothing to envy in other countries.

The able Advocate for the Respondent maintained before the Court below that the *curés*, whose names I

have just mentioned as being accused of having exercised undue influence, were not amenable to that civil tribunal, inasmuch as they were in the pulpit (*chaire de vérité*) at the moment when they delivered the incriminated sermon, that, as such, they were commissioned to instruct their parishioners, to forewarn them against Catholic Liberalism. The Advocate quoted the Treaty of Peace of 1763, which, on the cession of Canada to England, guaranteed to us the free exercise of our religion. I admit, without the least hesitation, and with the most sincere conviction, the right of the Catholic priest as to preaching to the definition of dogmas and of all points of discipline; I deny that he has, in this case or in any other similar case, the right to point to an individual or a political party and hold them up to public indignation, by accusing them of Catholic Liberalism or of any other equally grievous irregularity, and, above all, to say that he who should help in the election of such individual would commit a grievous sin. Admitting the singular doctrine I am opposing, it would be competent for a *curé* to exclude a Protestant from in any way being a candidate for the representation, on the pretext that he is opposed to the Catholic religion. The good sense of the ecclesiastical authorities and of the people has hitherto condemned such a doctrine, and the present composition of the representation in Parliament shows that, if such a doctrine existed, it has happily ceased to be countenanced. It has been maintained by the Respondent that the reverend curés might have spoken as they did without, by so doing, having used an undue influence which could be deemed such in this case, inasmuch as the acts with which they are charged were in spiritual matters and not in temporal matters, and that in conse-

quence they could not be judged by a civil tribunal, but only by an ecclesiastical tribunal. A single answer would suffice to set at naught this singular pretension; it is, that the tribunal which is to take cognizance of a contestation of an election is indicated by the law, which, by that choice, excludes every other tribunal. Nevertheless, let us say a word as to the ecclesiastical tribunal of which the Respondent invokes the jurisdiction as exclusive, and I ask myself where is that tribunal to be found in Canada. For me it is invisible, intangible, non-existent in this country, being capable of existing effectively therein but by the joint action of the episcopacy and of the civil power, or by the mutual consent of the parties interested, and in the latter case it would be only in the form of a conventional arbitration, which would be binding on no one but the parties themselves. If this tribunal exists, I am not aware that it has any code of law or of procedure; it would have no power to summon the parties and the witnesses, nor to execute its judgments. And if it existed, it would be very singular to see the Jew seeking, at the hands of a Catholic Bishop, the justice he can claim from civil tribunals, and submitting to a corporal punishment adjudged by that tribunal, and the same might be said of any other individual belonging to a different religion. In place of this ideal system (Mr. Justice Routhier admits that it does not exist in this country) we have a special law, the Electoral Law, and for the Province of Quebec we have, moreover, our civil code and code of procedure, protecting the exercise of the rights of all, Catholics, Protestants, or others. All are equal before that law, which declares that whosoever does injury to another must repair it, and indicates the means to be used to compel him to do so.

In this case the petitioners, electors of the Electoral division of Charlevoix, ask for the annulling of the Respondent's election, on the principle that by his agents he carried the election by undue means, and they addressed themselves to the civil tribunal, the sole tribunal constituted for that object. The ecclesiastical tribunal could neither annul nor confirm the election, nor condemn in an effective manner any one of the parties to pay the costs. Parliament could not ratify such a judgment, it would, by so doing, renounce its privileges and violate the most elementary constitutional principles. In connection with what I have just said, I cannot abstain from referring to a judgment of Mr. Justice Routhier, enunciating the extraordinary doctrine of the immunity of the Catholic priest who, speaking from the height of the pulpit, would allow himself to defame any person whomsoever, and this immunity would protect him up to the point of not being liable to be brought before the civil tribunals, and this on the plea that he is only amenable to an Ecclesiastical Court. Such is not the law, such it was not up to the time of the judgment in question. The most ancient as well as the most modern authors repudiate this doctrine. In the Province of Quebec, the particulars of the causes in which actions for defamation brought against priests speaking from the pulpit have been maintained, would be more curious than edifying, and after forty years of practice as an Advocate at the Bar of Quebec, and as a Judge, I have heard, for the first time, the opinion expressed which I have just stated. The principle which should govern in cases of the like nature is the following, to wit, that the minister who so far forgets himself in the pulpit as to revile or defame any person, does not speak

of religion, does not define doctrine or discipline, but puts aside his sacred character, and is considered like any other man as satisfying his personal revenge, or as acting through interest, and, in consequence, he is not held to be in the exercise of his spiritual functions. With this exception, full and entire liberty is guaranteed to the priest by all our civil laws, and by the Treaty of Peace of 1763, rights which have always been recognized by the Imperial Government. If this judgment of Mr. Justice Routhier, instead of being reversed in appeal, had been maintained, we might strike out from our civil and criminal codes of law several hundred of articles on defamation, rebellion, and other subjects of the highest importance. Let us judge from this the confusion which this interpretation of priestly immunity would produce. As for me, my oath of office binds me to judge all matters which are brought before me according to law and to the best of my knowledge. The law expressly forbids all undue influence, from whatever source it may arise, and without any distinction. I must, therefore, carry out this law fully and entirely, conformably to the Act. I cannot discover anything in this law which can be interpreted as being contrary to my religion and to the exercise of that same religion by its ministers. I have no discretion to employ. I cannot alter the law, and I think that, in favour of this proposition, I have the support of the soundest theologians who have written on the question of determining how far the powers and the duty of the Judge extend in the application of a law, and even of an unjust law; if I am deceived, I have the advantage of the companionship and soundness of these theologians. Applying this law to the various cases of undue influence and threats in ques-

tion in this cause, I am of the opinion, as are all the members of this Court, that undue influence has been employed by the Rev. Messrs. Cinq-Mars, Doucet, Sirois, Langlais, and Tremblay, all *curés* of parishes in the County of Charlevoix. As agents of the Respondent, the acts of these priests bind their principal for all legal purposes, and are sufficient to annul the election of the Respondent.

As it is not proved that the Respondent had any actual knowledge of the addresses set down to these gentlemen, or that he approved of them, the Respondent ought not to be disqualified by reason of the indiscreet zeal of his agents. We have given much consideration to this important point, concerning the disqualification an of elected member, involving the temporary loss of a portion of his civil rights ; and, in spite of some plausible presumptions, we have considered ourselves bound to give the Respondent the benefit of the doubt. Nor are we disposed to consider as proved, the charges of fraudulent practices committed by Messrs. Denis Gauthier, Onézime Gauthier, Joseph Kane, J. S. Perrault, and by the Hon. David Price. We do not consider as proved the accusation brought against the Respondent of threats made by him to Major Dufour, that he would make him lose his place as Major, with an annual salary of $120, if he continued to work in favour of the candidature of his adversary, Mr. Tremblay, because the evidence of that man stands by itself, and is not corroborated by any important circumstance. If to that is added the fact that the Respondent, in the most emphatic manner, denied having made any such threats, and that the Major, in the course of the election, played a somewhat extraordinary part, attending alternately the meetings of the two candidates, appearing to support first one party and then the other,

we shall be convinced of the injustice of disqualifying the Respondent upon evidence which does not inspire full and entire confidence. The judgment of the Court will be in effect to declare the election of the Respondent as the representative of the electoral district of Charlevoix void, with costs against the Respondent to be taxed according to law, less, however, the cost of printing that part of the record comprising the subpœnas and certificates of service thereof, the exclusion of which the Petitioners should have applied for, in view of the inutility of those documents; and we shall also declare by the formal judgment that the Respondent is not to pay to the Petitioners the cost of summoning, and the taxing of the witnesses, specified in the judgment, and summoned to prove accusations of threats, and promises, and others, from which we have exonerated the Respondent in this judgment.

The following is the judgment as rendered in French by the Honorable Judge :—

J'avoue que c'est avec une grande défiance de mes propres forces, et avec un profond chagrin que je me trouve obligé de me prononcer comme juge dans une contestation de la nature de celle-ci.

Il est vrai que déjà une cause identique, dans laquelle s'élevaient les questions de droit les plus importantes, a été décidée à l'unanimité par trois juges éminents de la Cour Supérieure de la Province de Québec, professant la Religion Catholique, et que cette décision a créé un précédent d'une haute portée. Mais il est également vrai qu'un membre éminent de l'épiscopat canadien a jugé à propos de commenter ce jugement, de le blâmer sévèrement, et de déclarer contraire à la foi catholique les principes de droit invoqués par ces

honorables juges. Ceci me suffit pour démontrer la difficulté dans laquelle je me trouve, comme catholique, de concert avec un de mes confrères de cette cour.

Nous avons donc à approuver les principes émis par le tribunal dont je viens de parler, ou à nous incliner devant l'opinion de Sa Grandeur l'Evêque qui les a condamnés.

Nous avons à interpréter la loi électorale dans une de ses dispositions les plus importantes, à déclarer si elle réprouve et défend l'influence indue qu'on allègue avoir été exercée par le clergé dans l'élection dont il s'agit, et s'il est au pouvoir des tribunaux civils, de se prononcer sur l'exercice de cette influence.

Nous avons de plus à peser la valeur des raisons données au soutien du jugement rendu en première instance par Son Honneur le Juge Routhier, qui a fait une longue énonciation de principes de droit diamétralement opposés à ceux émis par les juges que j'ai déjà mentionnés.

En janvier 1876, l'intimé fut élu membre de la Chambre des Communes du Canada pour représenter la division électorale de Charlevoix, à la suite d'une lutte sérieuse avec M. P. A. Tremblay.

Les appelants, électeurs du comté et partisans de M. Tremblay, contestèrent l'élection de l'Intimé, pour cause de corruption, menaces, influence indue, manœuvres frauduleuses, et leur contestation fut rejetée par M. le juge Routhier. C'est de ce jugement que les appelants se plaignent.

Les principaux griefs des appelants sont ceux-ci: exercice d'une influence indue par certains curés du comté, au moyen de discours par eux faits en chaire à l'office divin, plusieurs dimanches consécutifs avant la votation, et par des conversations privées pendant l'élec-

tion, et menaces faites à des électeurs par des personnes influentes du comté.

Pour réussir dans leur contestation, les appelants devaient prouver : 1o. L'agence de ces membres du clergé, et autres personnes incriminées ; 2o. des menaces équivalant à une influence indue ; 3o. des promesses, ou autres manœuvres frauduleuses.

Je dois dire de suite que les appelants ont fait de cette agence la preuve la plus complète qu'il soit possible de faire dans des cas semblables.

En effet, l'on voit que par l'entremise d'un M. Onésime Gauthier ; l'Intimé, l'honorable M. Langevin est invité à venir briguer les suffrages des électeurs du comté de Charlevoix. Il répond qu'il n'acceptera la candidature que si on lui assure l'appui du clergé du comté. M. Gauthier sonde les dispositions des différents curés du comté, et sur le rapport favorable qu'il fait à l'Intimé, ce dernier accepte la lutte et commence sa campagne électorale. Il fait la rencontre des curés et leur fait visite. Dans une assemblée publique, il déclare que les membres du clergé lui sont favorables, et que les électeurs doivent écouter la voix de leurs pasteurs. Aux Eboulements, en présence de l'Intimé, un M. Gosselin, vicaire de la paroisse, déclare publiquement que tout le clergé supporte l'Intimé et que c'est le clergé qui l'a unanimement choisi comme candidat. A la suite de ces faits, plusieurs curés font des discours en chaire, dénonçant M. Tremblay et son parti politique, évidemment dans le but de favoriser la candidature, avouée et bien connue, de l'Intimé. Il est indubitable que l'Intimé doit être tenu responsable, par l'annulation de son élection, des conséquences de la conduite de ces curés, si la preuve constate qu'ils ont exercé l'influence indue prévue et punie par la loi électorale.

Il faut remarquer que la loi n'exige pas que l'agence soit le résultat d'une autorisation écrite ou verbale. L'agence s'infère des relations des parties, de l'appui *bonâ fide* que l'agent a donné au candidat dans le but sincère d'assurer son élection. Il n'est pas ici question de l'agent dont il est parlé dans la section 121 de l'acte électoral et dont le nom doit être donné à l'officier-rapporteur par le candidat qui l'emploie, mais il s'agit de l'agent mentionné à la section 101 du dit acte, savoir : de celui qui, avec l'assentiment formel ou implicite d'un candidat, soutient *bonâ fide* sa candidature. Toutes ces conditions de l'agence se rencontrent chez les Révérends curés qui ont violé l'acte électoral dans l'élection de l'Intimé

Toutes les décisions rendues en Angleterre, ou la loi électorale est identique à la nôtre, et celles rendues dans les Provinces d'Ontario et de Québec, concernant le principe que toute personne qui de bonne foi s'immiscie dans une élection pour favoriser un candidat, avec l'assentiment de ce dernier, devient *ipso facto* l'agent de ce candidat. Ce point n'est pas susceptible de doute, et plusieurs membres marquants du Parlement ont vu leurs élections annulées par suite du zèle outré de leurs agents.

Je vais maintenant donner un court aperçu des discours prononcés par certains curés à l'occasion de l'élection dont il s'agit.

1° Le Révérend M. Cinq-Mars, curé de St. Fidèle, dit au nommé Narcisse Bouchard, en se rendant dans sa famille pour y administrer les sacrements de l'Eglise, peu le jours avant la votation, " que voter pour M. Tremblay était un péché grave, un cas de conscience." Narcisse Bouchard jure qu'à cette occasion, c'est M. Cinq-Mars qui avait entamé la conversation. Le même

jour, le même M. Cinq-Mars, ramené chez lui par le nommé Johnny Desbiens, dit " que voter par M. Tremblay était un péché mortel." En chair, M. Cinq-Mars a répété les même paroles.

Et remarquons que M. Cinq-Mars, entendu comme témoin par l'Intimé, n'a pas nié avoir tenu ces conversations et fait ces déclarations.

2° Le Révérend M. Doucet, curé de la Malbaie, n'a fait en chair aucun discours qu'on puisse lui reprocher. Mais il a dit privément à un nommé Denis Harvey que " quoiqu'il fût vrai que M. Tremblay fût un parfait honnête homme et capable de rendre des services à son pays cependant il soutenait un parti dangereux." Et ajouta-t-il, " Je vais vous lire la lettre pastorale des Evêques dimanche prochain, et après cela, ceux qui voudront se perdre se perdront."

3° M. le Curé Sirois, de la Baie St. Paul, dans un discours d'une heure et demie, a fait une sortie violente contre les membres du parti libéral, " qu'il a assimilés aux catholiques-libéraux, les comparant à des loups ravisseurs, disant qu'ils fomentaient par leurs discours la rébellion contre la religion, qu'avec ce parti au pouvoir on marcherait dans le sang des prêtres, que toutes les horreurs de la révolution française se renouvelleraient ; que pour prévenir tous ces malheurs, il fallait que le libéralisme fût écrasé par le peuple et le clergé ; que déjà les Canadiens avaient été presque ruinés par un fléau terrible, et que si les électeurs n'écoutaient pas leur curé, ces fléaux se renouvelleraient bientôt ; qu'il y avait des faux Christs et des faux Prophètes "

M. Paquet. membre de la Législature de Québec, qui a pris note de ce discours de M. Sirois, jure qu'il a compris que ces remarques s'appliquaient à M. P. A.

Tremblay, candidat, et que le discours de M. Sirois à fait une grande impression sur les gens, et a eu l'effet de faire perdre un bon nombre de votes à M. Tremblay.

4. Le Révérend M. Langlais, curé de St. Hilarion, a déclaré que " c'était un péché grave, mortel, que de voter pour M. Tremblay, et qu'à l'heure de la mort, les électeurs aimeront mieux avoir suivi la bannière du Pape que celle de Victor Emmanuel et de Garibaldi." Dans une analyse de ce discours que M. Langlais a envoyée à l'Archevêque de Québec, il admet avoir dit que " c'était un péché de voter pour le parti libéral, et qu'à l'heure de la mort ceux qui auraient voté pour le parti libéral le regretteraient."

5. Le Révérend M. Tremblay, curé de St. Fidèle, dans un de ses sermons, a prononcé les paroles extraordinaires qui suivent : " que celui qui voterait pour M. Tremblay serait coupable d'un péché grave, et qui s'il mourait après avoir ainsi voté, il n'aurait pas droit aux services d'un prêtre."

Je n'ai donné qu'une courte analyse et que des extraits des discours de ces révérends Messieurs. On voit que tous parlent à peu prés dans le même sens. La preuve qui a été faite à cet égard me semble inattaquable, et je me suis demandé, si vraiment les incroyables et étranges propos qu'on leur reproche n'ont pas été tenus, pourquoi l'intimé n'a-t-il pas fait entendre ces Messieurs comme témoins à décharge ? Rien ne lui était plus facile. Cependant il n'a examiné comme témoin que le Révérend M. Cinq-Mars, qui a noblement admis la vérité des paroles qu'on lui avait attribuées. Je crois même que ces prêtres auraient dû offrir eux-mêmes à l'Intimé le secours de leur témoignage pour nier (s'ils le pouvaient consciencieusement) la vérité des accusations portées contre eux, ne fut-ce que pour

protéger l'Intimé contre les conséquences de leur imprudent langage.

Tous ces discours, accompagnés de menaces, et d'affirmations de *cas de conscience*, étaient de nature à produire dans l'esprit du plus grand nombre des électeurs du comté, condamnés à entendre ces choses pendant plusieurs dimanches consécutifs, une crainte sérieuse de commettre un péché grave, et d'être privés des sacrements de l'Eglise. Il y a en cela l'exercice d'une influence indue de la pire espèce. En effet, ces menaces et ces déclarations tombaient de la bouche du prêtre parlant du haut de la chaire et au nom de la religion, et étaient adressées à des gens peu instruits et généralement bien disposés à écouter la voix de leurs curés.

Je conçois que ces discours peuvent n'avoir produit aucun effet sur la partie intelligente et instruite des auditeurs ; mais je n'ai aucun doute qu'ils n'aient dû affecter la majorité des personnes ignorantes, quoique à raison du secret du vote au scrutin, on n'ait pu trouver plus de six ou huit voteurs qui aient été *influencés*, d'après la preuve, au point de n'être plus libre dans l'exercice de leur franchise. D'après le témoignage de plus de 15 témoins, un très-grand nombre ont changé d'opinion par suite de cette influence indue. Il est élémentaire, au reste, de dire que pour l'annulation d'une élection, un seul cas bien établi d'influence indue suffit, quelque écrasante qu'ait été la majorité du candidat élu.

D'après l'ensemble de la preuve, il me parait évident qu'un système général d'intimidation a été suivi, que l'influence indue a été exercée, et que les électeurs ne se sont pas considérés libres dans l'exercice de leur franchise électorale.

L'influence indue que la preuve révèle en cette cause, me semble avoir été aussi générale et aussi effective que celle qui a donné lieu aux diverses décisions qui ont été rendues sur la matière, tant en Angleterre qu'en Canada, dans les causes suivantes :

1° Mayo election case (1857.)

2° Longford case.

3° The Galway cases.

4° Bagot case.

5° La cause de Bonaventure.

Le principe de toutes ces décisions est que le prêtre ne doit pas faire appel aux craintes de ses auditeurs, ni dire que l'électeur qui votera pour tel candidat commettra un péché ou encourra des censures ecclésiastiques, ou sera privé des sacrements.

Voici ce que disait M. le Juge Fitzgerald dans la cause de Longford. Après avoir soutenu que le clergé d'une division électorale avait le droit de s'assembler pour appuyer un candidat, il ajoutait :

" In the proper exercise of his influence on electors " the priest may counsel, advise, recommend, entreat " and point out the true line of moral duty, and explain " why one candidate should be preferable to another, " and may, if he thinks fit, throw the whole weight of " his character into the scale ; but he may not appeal " to the fears, or terrors, or superstition of those he ad- " dresses. He must not hold out hopes of reward, " here or hereafter, and he must not use threats of tem- " poral injury, or of disadvantage, or of punishment " hereafter. He must not, for instance, threaten to ex- " communicate, or to withhold the sacraments, or to " expose the party to any other religious disability, or " denounce the voting for any particular candidate as " a sin, or as an offence involving punishment here or " hereafter."

L'objet de la loi électorale est de favoriser au moyen du vote au scrutin, et par la répression de toute influence indue, l'expression franche et sincère de l'opinion publique dans le choix des membres du Parlement. Cette loi est le complément naturel des belles institutions que nous tenons de l'Angleterre, et qui, sous le rapport de la liberté civile et religieuse, ne nous laissent rien à envier aux autres peuples.

L'habile avocat de l'Intimé a prétendu devant la cour de première instance que les prêtres-curés, accusés d'avoir exercé une influence indue, n'étaient pas justiciables d'un tribunal civil, vu qu'ils étaient dans la chaire de vérité, au moment où ils firent les discours qu'on leur reproche ; que comme curés ils avaient mission d'instruire leurs paroissiens et de les prévenir contre des erreurs telles que le libéralisme politique. Il a aussi invoqué le traité de paix de 1763 qui, lors la cession du Canada à l'Angleterre, a garanti aux Canadiens le libre exercice de la religion catholique. J'admets sans la moindre hésitation et avec la plus sincère conviction le droit du prêtre catholique à la prédication, à la définition du dogme religieux et de tout point de discipline ecclésiastique. Je lui nie dans le cas présent, comme dans tout autre cas semblable, le droit d'indiquer un individu ou un parti politique et de signaler et vouer l'un ou l'autre à l'indignation publique, en l'accusant de libéralisme catholique ou de toute autre erreur religieuse. Et surtout, je lui nie le droit de dire que celui qui contribuerait à l'élection de tel candidat commettrait un péché grave.

En admettant la singulière doctrine que je combats, on permettrait à un curé de travailler, par ses dénonciations, à exclure un protestant de toute candidature à la représentation du peuple, sous le prétexte qu'il est op-

posé à la religion catholique. Le bon sens des autorités ecclésiastiques et du public a fait justice d'une telle prétention, qui n'a jamais été sérieusement appuyée.

Comme conséquence nécessaire de son opinion, l'Intimé a prétendu que même en cas d'abus en fait de prédication ou dans l'exercice de leur ministère comme pasteurs, les prêtres curés ne relèvent pas d'un tribunal civil, mais du tribunal ecclésiastique seul chargé de les restreindre, et que dans la présente cause, les actes qu'on leur reprochait étaient en matière spirituelle, et non en matière temporelle.

Une seule réponse suffirait pour mettre à néant cette prétention singulière. C'est que le tribunal qui doit prendre connaissance d'une contestation d'élection est indiqué par la loi, qui, par ce choix, exclut toute autre juridiction.

Cependant, disons un mot du prétendu tribunal ecclésiastique, dont l'Intimé invoque la juridiction comme exclusive. Je me demande, où le trouverons-nous ce tribunal en Canada ? Pour moi, il est *invisible*, *insaisissable*, il n'existe pas en ce pays, il ne peut y exister effectivement que par l'action conjointe de l'Episcopat et du pouvoir civil, ou par le consentement mutuel des parties intéressées, et dans ce dernier cas il n'existerait qu'à titre d'arbitrage conventionnel, et n'obligerait que les parties elles-mêmes, et par la seule force de leur convention. Si un tel tribunal existe, je ne lui connais aucun code de loi ou de procédure ; il n'a aucun pouvoir d'assigner les parties et leurs témoins, ni d'exécuter ses propres sentences. Et s'il existait, il serait assez singulier de voir le juif aller demander à un évêque catholique le redressement de torts que lui aurait causés un prêtre catholique, solliciter de cet évêque la justice qu'il peut réclamer des tribunaux

civils, ou se soumettre à une peine afflictive qui serait prononcée par ce *tribunal ecclésiastique !* On pourrait multiplier les exemples, et en dire autant de tout autre individu appartenant à n'importe quelle dénomination religieuse autre que la religion catholique.

Au lieu de ce système idéal (M. le Juge Routhier admet qu'il *n'existe pas* en ce pays), nous avons une loi spéciale, la loi électorale de la Puissance, et pour la Province de Québec, nous avons en outre nos codes civil et de procédure, qui protégent l'exercice des droits de tous, catholiques, protestants ou autres. Tous sont égaux devant ces lois, qui déclarent que quiconque porte préjudice à un autre doit réparation et indiquent les moyens à employer pour obliger à cette réparation.

Dans cette cause, les Pétitionnaires, électeurs de la division électorale de Charlevoix, demandent l'annulation de l'élection de l'Intimé, sur le principe qu'au moyen de ses agents, il a emporté l'élection par des moyens indus, et ils s'adressent au tribunal civil seul constitué pour cet objet. Le *tribunal ecclésiastique* ne pourrait ni annuler, ni maintenir l'élection, ni condamner d'une manière effective aucune des parties à payer les dépens. Le Parlement ne pourrait ratifier le jugement d'une telle Cour sans renoncer à ses priviléges, et sans violer les principes constitutionnels les plus élémentaires.

Je sais que M. le Juge Routhier a déjà, dans une autre cause, affirmé la doctrine extraordinaire qu'un prêtre catholique, qui, parlant du haut de la chaire, se permettrait de diffamer quelqu'un, serait protégé à tel point par son immunité ecclésiastique, qu'il ne pourrait être traduit devant nos tribunaux civils, et ne relèverait que d'une cour ecclésiastique.

Telle n'est pas la loi et elle n'a jamais été telle. Les

auteurs les plus anciens comme les plus modernes répudient cette doctrine. Dans la Province de Québec, le détail des causes dans lesquelles des actions en diffamation portées contre des prêtres pour abus de prédication ont été maintenues, serait plus curieux qu'édifiant, et après quarante années de pratique au barreau de Québec, comme avocat et comme Juge, j'ai pour la première fois entendu exprimer l'opinion que M. le Juge Routhier a énoncée dans son jugement.

Le principe qui doit dominer dans les causes de cette nature est celui-ci ; que le prêtre qui s'oublie dans la chaire jusqu'à injurier ou diffamer quelqu'un, ne parle pas religion, ne définit pas la doctrine ni la discipline, mais sort de son caractère sacré, et est censé, comme tout autre homme, satisfaire une vengeance personnelle ou agir par intérêt, et conséquemment n'est pas dans l'exercice de ses fonctions spirituelles. A part de cela, liberté pleine et entière est assurée au prêtre par toutes nos lois civiles et par le traité de 1773, et a toujours été reconnue par le Gouvernement Impérial.

Si ce jugement de M. le Juge Routhier au lieu d'être renversé en appel, eût été maintenu, nous pourrions rayer de nos Codes de lois civiles et criminelles, plusieurs centaines d'articles sur la diffamation, la rébellion, et autres sujets de la plus haute importance.

Jugeons par là de la confusion que produirait cette interprétation des immunités du prêtre !

Quant à moi, mon serment d'office m'oblige de juger toutes les causes qui me sont soumises suivant la loi, et au meilleur de ma connaissance.

La loi défend expressément toute influence indue, de quelque source qu'elle vienne, et sans aucune distinction. Je dois donner à cette loi une exécution pleine et entière, conformément au statut. Je ne vois rien

dans cette loi qui puisse être interprété comme contraire à ma religion ni à l'exercice de cette religion par ses ministres. Je n'ai aucune discrétion à exercer, je ne puis modifier la loi.

Je pense qu'en énonçant ces propositions, j'ai le concours des Théologiens les plus distingués qui ont écrit sur les pouvoirs et les devoirs du Juge dans l'application de la loi, *et même d'une loi qui paraîtrait injuste.*

Appliquant ici la loi aux divers cas d'influence indue qui ont été prouvés dans cette cause, je suis d'opinion, avec tous les membres de cette Cour, qu'il y a eu exercice d'influence indue de la part des Révérends Messieurs Cinq-Mars, Doucet, Sirois, Langlais et Tremblay, tous curés de paroisses du comté de Charlevoix. Ces prêtres ayant été les agents de l'Intimé, leurs actes lient leur principal [l'intimé] et suffisent pour annuler l'élection en cette cause.

Mais comme il n'est pas prouvé que l'Intimé ait eu une connaissance *actuelle* des discours prononcés par eux, ou qu'il les ait approuvés, l'Intimé ne devra pas être déqualifié à raison du zèle indiscret de ces agents

Nous avons donné beaucoup d'attention à ce point important de la déqualification d'un membre élu, entraînant la perte temporaire d'une partie de ses droits civils. Dans l'espèce actuelle, malgré quelques présomptions plausibles, nous nous sommes crus obligés de donner à l'Intimé le bénéfice du doute.

Nous ne sommes pas non plus disposés à considérer comme prouvés les reproches de pratiques frauduleuses faits à MM. Denis Gauthier, Onézime Gauthier, Joseph Kane, J. S. Perrault, et l'honorable David Price.

Nous ne pouvons maintenir l'accusation portée contre l'Intimé d'avoir fait des menaces au Major

Dufour de lui faire perdre sa place de Major, avec un salaire annuel de $120, s'il continuait à travailler en faveur de la candidature de M. Tremblay. Le témoignage de Dufour est isolé, et n'est fortifié par aucune circonstance importante. De plus, l'Intimé a nié de la manière la plus emphatique avoir fait ces menaces, et si l'on considère que le Major Dufour a dans le cours de cette élection, joué un rôle assez extraordinaire, qu'il était vu fréquentant alternativement les assemblées de l'un et de l'autre candidat, qu'il paraissait supporter tantôt un parti, tantôt l'autre, on doit être convaincu de l'injustice qu'il y aurait de déqualifier l'Intimé sur un témoignage qui n'inspire pas une confiance pleine et entière.

Le jugement de la Cour va être à l'effet de déclarer nulle l'élection de l'Intimé, comme représentant de la division électorale de Charlevoix, avec une condamnation de l'Intimé aux dépens à être taxés suivant la loi. Mais les frais d'impression de cette partie du dossier imprimé qui comprend les *subpœnas* et les certificats de leur signification, et que les Pétitionnaires auraient dû demander d'élaguer, vu l'inutilité de ces pièces, resteront à la charge des Pétitionnaires, ainsi que les frais d'assignation et de taxe des témoins mentionnés au jugement et qui avaient été assignés pour prouver les accusations dont nous avons exonéré l'Intimé par notre présent jugement.

RITCHIE, J.:—

We are agreed that, with respect to all the charges, except that of undue spiritual influence and intimidation, the evidence is not of such a conclusive character as would justify us in reversing the decision of the learned Judge, and declaring the election void by reason of any such alleged corrupt

acts. But with respect to the charge of undue influence and intimidation, the case is very different, and several questions have been raised of very great magnitude; grave questions of constitutional law, in which all in this Dominion are deeply interested.

Whilst it has not been denied that a number of the *curés* of the county of Charlevoix did interest themselves actively on behalf of the Respondent, it has been claimed that they did no more than as clergymen of the Catholic Church they had a right to do; that what they did was in the exercise of the spiritual functions of their offices, and which are not cognizable before and for which they are not amenable to the jurisdiction of the Civil Courts; that the Respondent is not responsible for what they said or did; and that what they said or did had not such an influence on the result of the election as to render it not a free election; and therefore the election should not be avoided by reason of anything said or done by these gentlemen. At the outset, I have no hesitation in saying, that I cannot look on the matter in controversy in this case, so far as this Court is concerned, as at all a religious question. The electoral franchise is a statutory civil right, pure and simple, and its exercise is regulated and protected by statute, and the means of redress for any interference with, or infringement of, this right is likewise provided for by statutory enactments, and by and within these statutory provisions, and by and before the civil tribunals indicated therein must all questions affecting the validity of elections and the conduct of parties as affecting elections be tried and determined: and it is, therefore, simply a constitutional legal question we have to determine. And having determined what the law is, we have only to apply facts we may find

established by the evidence to that law, and to declare whether there has been any breach of the law, and, if so, declare the penalty that the law attaches to such infringement. It has long ago been said by a standard legal authority as a common law doctrine that "It is essential to the very existence of Parliament that elections should be free, wherefore all undue influences on electors are illegal." The rights of individual electors are the rights of the public. All, without distinction of class or creed, are alike interested in the good government of the country, and in the enactment of wise and salutary laws, and therefore the public policy of all free constitutional governments in which the electoral principle is a leading element, (at any rate of the British Constitution) is to secure freedom of election; and it has been truly said a violation of this principle is equally at variance with good government and subversive of popular rights and liberties, and therefore the Legislature has, with the greatest care, made stringent provisions to prevent any unconstitutional interference with the freedom of elections, by prohibiting anything calculated to interfere with the free and independent exercise of the franchise in the following plain and unmistakeable language:—"Every person who, directly or indirectly, by himself or any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens the infliction, by himself, or by or through any other person, of any injury, damage, harm, or loss, or in any manner practices intimidation upon, or against, any person, in order to induce, or compel, such person to vote, or refrain from voting, or on account of such person having voted or refrained from voting at any election * * shall forfeit the sum of two hundred

dollars, &c." It has been contended, and the learned Judge below seems to have sanctioned the contention, that this section does not apply to undue spiritual influence. Independent of the principle of the common law, of which this section may be said to be in affirmance rather than a statutory introduction of a new principle, the section has repeatedly received judicial construction in Ireland and in England and in this Dominion whenever and wherever the question has been raised, so far as I am aware, except in the judgment now appealed from. It has been clearly declared that undue spiritual influence is within the spirit and the letter of the enactment, and this interpretation, and construction has never received any legislative repudiation. With the clause thus judicially passed on in Great Britain and Ireland, where first enacted, and with a resolution of a Committee of the House of Commons on their journals, affirming the doctrine that undue spiritual influence, if alleged and proved should avoid an election, which resolution was reported pursuant to the 90th section of the then Act respecting Controverted Elections on the 22nd April, 1869," is on this point in these words :—" That inasmuch as the petitioners do not intend to go into a scrutiny, and no list of objections have been filed by the petitioners, nor any particulars furnished as to any of the charges or allegations of corruption or undue influence, and as there is no allegation of knowledge or scienter on the part of the sitting member as to the alleged spiritual influence said to have been exercised at the said election, which said spiritual influence, if properly alleged and true, would, of itself, in the judgment of this committee, be sufficient to render the said election absolutely null and void," passed by—Yeas—Mr. Wood, M. Masson (Soulan-

ges), M Masson (Terrebonne), Mr. Merritt—4; Nay—Mr. Mills—1. so it passed in the affirmative;" the Parliament of this Dominion enacted the section I have read in the very words of the Imperial statute. Now, it is a well established rule that where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them without any alteration in a subsequent statute, the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them. We, therefore, on the principles of the common law, on the construction of the language of the Act, of which we entertain no doubt, and on judicial authority, cannot for a moment doubt that it is our duty to declare that undue spiritual influence and intimidation is prohibited by the statute. But the learned Judge intimates that, while that might be so in England or Ireland, it is not so in the Province of Quebec; he does not suggest what the law would, in his view, be in the other Provinces of the Dominion, but I am clearly of opinion that the law on this point is the same in all parts of this Dominion as it is in Great Britain. The rights secured to the Roman Catholic Church of Quebec by treaty and by Imperial legislation are sacred, and not to be impaired or curtailed by any decision of this or any other court.

The Treaty of Paris (1763) declares "That his Britannic Majesty on his side agrees to grant the liberty of the Catholic Religion to the inhabitants of Canada; he will consequently give the most precise and the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish Church as far as the laws of Great Britain permit;" and

By 14 Geo. III., cap. 83, it is provided, sec. 5: "And for the more perfect security and ease of the mind of the inhabitants of the said Province (Quebec) it is hereby declared that his Majesty's subjects, professing the religion of the Church of Rome, of and in the said Province of Quebec, may have, hold and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy, declared and established by an Act made in the first year of Queen Elizabeth over all the dominions and countries which then did or thereafter should belong to the Imperial Crown of this realm, and that the clergy of said Church may hold, receive and enjoy their accustomed dues and rights with respect to such persons only as shall profess the said religion." By 1 Elizabeth, cap. 1, sec. 16, thus referred to, it is enacted "that, and to the intent that, all usurped and foreign power and authority, spiritual and temporal, may for ever be clearly extinguished, and never to be used or obeyed within this realm or any of your Majesty's dominions or countries; may it please your Highness: That it may be further enacted by the authority aforesaid that no foreign prince, persons, or prelate, state or potentate, spiritual or temporal, shall at any time after the last day of this Session of Parliament use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence or privilege, spiritual or ecclesiastical, within this realm, or within any other of your Majesty's dominions or countries that now be or hereafter shall be, but from thenceforth the same shall be clearly abolished out of this realm and all other your Highness's dominions for ever, any statute, ordinance, custom, constitutions, or any other matters or cause whatsoever to the contrary in any wise notwithstanding.

"17. And also it may likewise please your Highness that it may be established and enacted, by the authority aforesaid, that such jurisdictions, privileges, superiorities, and pre-eminces—spiritual and ecclesiastical—as by any spiritual or eccelesiastical power or authority, hath heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever, by authority of this present Parliament, be united and annexed to the Imperial Crown of this realm."

Thus we see that under these Acts the free exercise of the religion of the Church of Rome is guaranteed to the inhabitants of Quebec as far as the laws of Great Britain permit, subject to the King's supremacy. But while the members of that Church thus have a perfect right to the full and free exercise of their religion in as full and ample a manner as any other Church or denomination in the Dominion, every member of that Church, like every member of every other Church, is subordinate to the law. There is no man in this Dominion so great as to be above the law, and none so humble as to be beneath its notice. So long as a man, whether clerical or lay, lives under the Queen's protection in the Queen's dominion, he must obey the laws of the land, and if he infringes them he is amenable to the legal tribunals of the country—the Queen's Courts of Justice. Upon a question of immunity somewhat analogous, though not exactly similar to this, raised in the Queen's Bench of Ireland, in the case *O'Keefe v. Cardinal Cullen*, Fitzgerald, J., a Catholic, I believe—but that is wholly immaterial—uses language so apposite to the present case that I cannot refrain from quoting it at length. The

case will be found reported in 7 Irish Law Reports (C. L.) 371. Fitzgerald, J., says: "The point emphatically relied on for the Plaintiff, and which we were confidently called on to decide in his favour, was that the rule or the supposed rule of the Roman Catholic Church which prohibits a priest from impleading another priest in the temporal courts in respect of matters relating to his office and character of priest, under pain or suspension from ecclesiastical functions of expulsion from membership in the Church is illegal and void as being against public policy. This question, which is of importance to the government of all voluntary churches, has been so fully and ably handled by my brother Barry that I have to say but little on it. There can be no doubt that if the rule in question or rule of any Church had for its object the exemption of the clergy from secular authority or their immunity from civil jurisdiction or civil punishment, it would be our duty at once to declare that such a rule was utterly illegal. Upon this there ought to be, as there is, no doubt. No church, no community, no public body, no individual in the realm, can be in the least above the law, or exempted from the authority of its civil or criminal tribunals. The law of the land is supreme, and we recognize no authority as superior or equal to it. Such ever has been and is, and I hope will ever continue to be, a principle of our Constitution."

And near the conclusion of his judgment he adds :—

"And I may add for ourselves the general proposition that we do not profess to have jurisdiction over any church or religious association as such; we do not undertake to decide for them ecclesiastical questions or questions of discipline or internal government. All that we undertake to do is to enforce the law of the land,

to protect civil rights and to uphold and preserve the public peace."

The 95th section of the Election Act being in force throughout the Dominion, we are bound to say it can be contravened by no man with impunity. The question then arises, was there any breach of the law by any of the parties charged in the petition ? I regret to be compelled to answer this in the affirmative.

Clergymen, and I draw no distinction—my observations I wish distinctly to be understood as applying to all churches and denominations alike—Clergymen, I say, are citizens, and have all the freedom and liberty that can possibly belong to laymen, but no other or greater. The fullest and freest discussion of the fitness of the candidates, of the policy of the Government, of the merits of the Opposition, of any or all of the public questions of the day, can be denied to neither priest nor layman ; but while there may be free and full discussion, solicitation, advice, persuasion, the law says, in language not to be mistaken, and not to be disregarded, there shall be no undue influence or intimidation to force an elector to vote or to restrain him from voting in a particular manner. The layman cannot use undue influence or intimidation, neither can the priest ; many things, in themselves perfectly legal, may become corrupt, using the word, as pointed out by Mr. Justice Blackburn, in the North Norfolk case (1) as meaning with the object and intention of doing that thing which the statute intended to forbid, not "*corrupt*" in the sense in which you may look upon a man as being a knave or a villain. As, for instance, in the case of a layman, as put by Justice Blackburn, " the landlord has a perfect right to choose his tenant and

(1) O'M. & H., 241.

turn him out, but if the landlord threatens or does inflict that turning out of his tenant for his vote, that is inflicting harm and loss within the meaning of the Act," and he says, "I think that was intended to be struck at by the statute."

So in the Blackburn and Oldham cases, he says it was rightly held that though the loss and harm to be done to a man is not an illegal harm—not a matter that would be a crime—yet if it be a loss inflicted for the purpose of affecting the vote, it is brought within the statute. And in the North Allerton case (1) two persons threatened a Baptist minister that they would give up their pews in his chapel if he voted as he wished to do. Willes, J., said, "If agency had been proved, I should have held it to be a case of intimidation within the fifth section of the Corrupt Practices Prevention Act, 1854."

So a clergyman has no right, in the pulpit or out, by threatening any damage, temporal or spiritual, to restrain the liberty of a voter so as to compel or frighten him into voting or abstaining from voting otherwise than as he freely wills. If he does, in the eye of the law this is undue influence. But, as I intimated before, legitimate influence can be denied neither to the clergy nor to the laity. As Willes, J., said in the Litchfield case; "The law cannot strike at the existence of influence. It is the abuse of influence with which alone the law can deal."

If this, then, is the state of the law, let us see what was done in this case. On 23rd August, 1875, the election of Tremblay was declared void. On the 28th August, judgment was received by the Speaker, who issued his warrant for a new election. On the same

(1) O'M. & H., 168.

day an inscription for review was filed, the Court sitting in review on the 18th December declared the election void, and judgment was received by the Speaker on the 3rd of January. On the 22nd day of September, 1875, the archbishop and bishops of the Province of Quebec issued a pastoral letter to the clergy in Quebec, in which many matters were discussed, and Part V. was devoted to "the part of the clergy in politics." After declaring *inter alia* that "there are political questions in which the clergy may, and even should, interfere in the name of religion," and, after pointing out that political questions might affect the Church, and that a candidate might present himself hostile to the Church, and that a political party might likewise be judged dangerous, &c., it, in a subsequent paragraph, declares that "the priest and the bishop may then (under the circumstances previously recounted), in all justice, and should, in conscience, raise their voice, point out the danger, and authoritatively declare to vote on such side is a sin, that to do such an act makes liable to the censures of the Church."

This pastoral letter was directed to be read and published at the *prone* of all parochial churches or chapels of parishes, and missions where public service is performed, on the first Sunday after its reception, and, in a circular of the same date, from the bishops to the clergy, was the following paragraph:—"A priest accused of having exercised undue influence in an election, for having fulfilled some priestly office, or given advice as preacher, confessor or pastor, and, being summoned before a Court, should respectfully but firmly challenge the competency of the Civil Court, and plead an appeal to an Ecclesiastical Court."

With these documents in the hands of the *curés*,

they read them as directed, and a number of them in their churches discussed the election then about to take place. And after most carefully analysing, sifting, comparing and considering every part of the great mass of evidence in this case, we are constrained to the conclusion that certain of these *curés*, viz., the Rev. Messrs. Sirois, Doucet, Cinq Mars, Langlais and Tremblay exceeded the limits permitted by law, and that several persons were unquestionably acted on and hindered and prevented, by the threats, intimidation and undue influence of these reverend gentlemen, from voting for Mr. Tremblay, as they wished and had intended to do, and, but for such illegal interference, they would have done But it is alleged that these gentlemen were not the agents of Mr. Langevin, and that their acts did not affect the result of the election, and, therefore, there is no ground for declaring the election void. The rule is well settled, that one corrupt practice contrary to the Statute, if done by an agent, is sufficient to avoid the election, though done without the knowledge of the Respondent, and the reason of this is very obvious. The law does not view the contest as one solely between the Petitioner and the Respondent, and, therefore, as said by Lord Coleridge in *Moeson v. Perry.* "What the law looks at is not the guilt or innocence of the candidates, but the purity of election; the candidate is liable for the acts of the agents, if done on his behalf and in his interest, though personally altogether unaware and innocent of it." Let us see, then, whether these gentlemen can be legally considered the agents of the Respondent. To obtain a solution of this question, I think we need go no further than the evidence of the Respondent him-

(1) L. R. 10 C. Pleas 174.

self. The Respondent, in his testimony, gives this account of the terms on which he consented to become a candidate. He says: "The first time M. Gauthier spoke to me he asked me if I would consent to run against M. Tremblay. I answered him, I would run if I were the only candidate against M. Tremblay, if the clergy seemed to me to be in my favour, and if the electors of the county who were opposed to M. Tremblay seemed disposed to vote for me. I understood that under these circumstances he would support me. I did not accept the candidature at that interview. He made me the offer a second time. I then understood that he had gone ino the county and satisfied himself that I would be the only candidate against M. Tremblay. He told me that I would have the support of the clergy. I understood that he had met at Baie St. Paul a certain number of the priests of the county."

The Respondent, when asked whether he had not stated at a public meeting at Baie St. Paul, and other places, that he had been asked or chosen as a candidate by the whole clergy of the county, does not deny the statement, but says he does not recollect whether he used those expressions, nor does he give any expressions he did use, but says, "The meaning of my words was that the clergy of the county were in my favour, and wished to see me elected," clearly recognizing a united action on the part of the clergy on his behalf, and this is still more apparent in the answer to the following question:—

"*Question*—Is it not true that you did not accept the candidature until you had convinced yourself, or had been assured, that the whole clergy of the county were in your favour and would support you?

"*Answer*—I convinced myself that the clergy of the

county were in my favour, and would not have run had it not been so, as I would not wish to have been elected against the will of the clergy."

It appears also from his testimony that he called on all the clergy in the county with one and the same object, because, in addition to mentioning the individual curés, he, speaking of the Rev. Mr. Doucet, *curé* of Malbaie, says, "I spoke to him once during the election; I called on him at his residence and told him why I was calling; it was the same reason that had induced me to visit the other members of the clergy in the county," and what that reason was is placed beyond doubt by the Respondent, when, in answer to another question, speaking of the Rev. Mr. Ambrose Fafard, *curé* of St. Urbain, he says, "I think I saw him twice; I spoke to that gentleman about the elections on that occasion as I have also done on the other occasions when I met other members of the clergy," and that he identified himself with them in the canvass, and recognized and adopted what they said and did on his behalf is placed beyond any doubt whatever by his answer to the following question:—

"*Question*—Is it not true that at a public meeting, held at the church-door at Malbaie, you publicly stated that you had been asked for by the whole clergy of the county, and that the electors were bound to obey the voice of their *curé*, or something in that sense or to that effect?

"*Answer*—I do not recollect the very words that I may have used on that occasion, but what I may have said was in conformity with what I had said in the other parishes of the county, viz., that the clergy of the county were in favour of my candidature, and desired it. As to whether I have said that the people should

listen to the voice of the clergy, I don't know whether I stated it on that occasion, but it was decidedly my opinion; and if I did not then say so I must have said it elsewhere."

M. Tremblay, the candidate, deposed, and his statement in this particular, is not denied by the Respondent:—

"I met M. Langevin in many parishes, and in each of his speeches he invariably spoke of the clergy, stating that the electors were obliged to obey the voice of their pastor, and answer to the call of the bishops or of the bishop, for I took a note of that expression at St. Agnes, held at Mr. Joseph McNicoll's, 'that he had the unanimous support of the clergy of the county;' and when, at Eboulements, the truth of this was questioned, the Vicar, M. Gosselin, from the garret window of his parsonage, asserted in the presence of M. Langevin that he was certain M. Langevin had the support of all the curés in the county; that at St. Fidèle he stated the same thing as to the unanimous support of the clergy. At St. Agnes Mr. Langevin said 'the electors must obey the powerful voice of the clergy.' I noted the expression. The notes I took were in writing."

Here, then, we have the Respondent, before determining to run the election, stipulating *inter alia* that he should have the support of the clergy; and, on receiving from the gentlemen who asked him to run, and who, he understood, had gone into the county and had met at Baie St. Paul a certain number of the priests of the county, the assurance that he would have their support, he accepts the candidature, and, after such acceptance goes himself into the county, calls on all the clergy, talks with them about the election, and, no doubt, from his testimony, received confirmatory

assurances of their favour and support; and at public meetings promulgated the fact that the clergy favoured and desired his candidature and publicly proclaimed to the people that they should listen to and obey the voice of the clergy. It is somewhat difficult to conceive how a candidate could much more formally and unequivocally put forward parties whose aid he desired and appreciated, and whose words and acts on his behalf throughout the election he not only adopted but put forward as authoritative words, to be obeyed. If parties so recognized and commended to the public by a candidate are not his agents, and their words and acts are not to affect the election, if such words and acts are not contrary to the provisions of the Act, it is difficult to understand how an election can ever be disturbed for the words and acts of agents, unless, indeed, it is shown the candidate was cognizant of and authorized the very words uttered and acts done, which is clearly not necessary for the avoidance of the election. With respect to the general effect of the language of these cués, in view of the united action of all the clergy in the county, or the fact that it was not isolated cases of undue influence, but it was an attempt to affect the whole population of the parishes, of the fact that the whole county was Roman Catholic, that a large proportion of the population were illiterate, and of the effect proved to have been produced on numerous witnesses, and the general feeling evidently produced by the pastoral, the sermons, and the declarations of the curés, I cannot doubt that the combined effects of the bishop's pastoral and the denunciations of the clergy so permeated the county as to make it impossible for me to say that there was a free election; and though I have no means of computing or ascertaining the exact

extent of the terror or undue influence, it was still in my opinion such and so great an interference with the freedom of the elections as demands that the election should be annulled, even if the agency of the curés had not been established.

The last, and a most serious question remains, viz: whether there is sufficient evidence to connect the Respondent with the words and acts of the curés as to justify his disqualification. This question we have most seriously and anxiously considered. In view of the *quasi* penal nature of the enactment, I think, that before inflicting consequences so serious, the evidence should be most clear and conclusive; and though we have found it somewhat difficult to arrive at the conclusion that the Respondent was not aware of what his agents, the curés, were saying and doing on his behalf, still we are not prepared to say there is not such a reasonable doubt on the point as to justify us in adopting the milder view, and reporting that the undue influence was not with the Respondent's actual knowledge and consent.

MR. JUSTICE HENRY:—Concurring fully in the judgments just delivered by my brothers Ritchie and Taschereau upon the points in issue, I consider it necessary, dissenting as I do from the majority of the Court in regard to a portion of the costs, to explain my views in regard to them.

Previous to the making by me of the order for the translation and printing of the case, I enquired particularly of the Counsel on both sides if by any agreement between them portions of the evidence or other parts of the record might not be omitted? Both parties alleged that the whole was required to be used on the

hearing, and I had therefore no authority to make an order for less than the whole, at all events, of the evidence. Moreover, it did not occur to me, nor did I imagine that "record" in our rule had in Quebec a peculiar technical meaning by which all the documents in a cause would be included even to the subpœnas issued. Had I been aware that such was the case, I certainly would have made an exception which would have prevented the necessity and cost of printing all such unnecessary papers.

Rule 55, however, provides that "In election appeals a Judge in Chambers may, *upon the application of the Appellant*, make an order, dispensing with the whole or any part of the record, and may also dispense with the delivery of any factum or points for argument in appeal. Such order may be obtained *ex parte*, and the party obtaining it shall forthwith cause it to be served on the adverse party." The Appellant here, so far from seeking an order of that kind alleged that such would not be practicable. It is, therefore, through this default that unnecessary printing took place, and he ought not to reimburse himself out of the pocket of the Respondent. When awarding costs to the Appellant, I think the cost of the unnecessary printing should not be included.

I cannot, however, agree to any other deduction, and dissent from the decision not to reimburse the Appellant for the costs of the witnesses in the issues found against him. The witnesses examined were necessary, and there were reasonable grounds for inquiry on all the charges brought against the Respondent, and strong although not necessarily conclusive evidence given to sustain them.

The Respondent has been declared illegally elected,

and his seat declared vacant. The law has been maintained, and a party illegally elected has been unseated, and the law vindicated. In election cases there are generally many charges of bribery and other undue influences, and if the petitioner succeeds in one or more of them, I know of no principle under which he would not be allowed the costs of witnesses on other charges attempted to be proved, but which, in the opinion of the Court, fell slightly short. The policy in the administration of the Statute should be to encourage investigations into charges of undue influence, and I cannot help thinking that if a successful petitioner or prosecutor is left to pay the costs of his witnesses in all but the individual case in which he is successful, I cannot but feel that we are imposing conditions that will tend seriously to prevent that searching inqury into cases of alleged bribery, and other undue influences, which is necessary to enforce obedience to the law when there are such incessant temptations during an election to violate it. I think, too, that on the general principles governing taxation in ordinary suits at law, the Appellant is entitled to the costs in question.

I have made research, and can find no election case wherein such costs were disallowed, but ascertained that in 25 cases in England and Ireland, since the trials have been before Judges, each party had to pay *all* his own costs, and in 85 cases *full costs* were taxed against the unsuccessful party, and in no case were costs disallowed as to one or more branches of a case, unless for special reasons wholly absent from this case.

There is a discretionary power as to costs, but I must dissent to the judgment of the majority of the Court as to the portion of the costs in question, as I conceive the principle wrong upon which it is founded.

The Chief Justice, Strong, J. Fournier, J. and Henry, J. concurred on the merits;

Fournier, J. concurred with Henry, J. as to costs.

The following is a copy of the judgment and decision of the Supreme Court of Canada.

The appeal of the above named Appellants from the judgment of the Superior Court for the Province of Quebec, rendered by the Hon. Mr. Justice Routhier on the 5th day of November, A.D., 1876, setting aside the petition of the said Appellants, complaining of the illegality of the election of the said Respondent as a member of the House of Commons of Canada for the Electoral District of Charlevoix, having come on to be heard before this Court on the 26th, 27th, 29th, 30th and 31st days of the month of January last past, and the 1st day of the month of February instant, in presence of Counsel as well for the Appellants as the Respondent, and this Court having heard what was alleged by Counsel aforesaid, was pleased to direct that the said appeal should stand over for judgment, and it having come on this day for judgment this Court did order and adjudge that the said appeal should be, and the same was allowed and that the said judgment of the said Superior Court for the Province of Quebec be reversed, and this Court did further adjudge and determine as follows:—

1. That the said The Honorable Hector Louis Langevin was not duly elected a member to serve in the House of Commons for the Electoral District of Charlevoix, in the Province of Quebec, at the election held in the month of January, A.D. 1876, which election and return were published in the *Canada Gazette*, on the 5th day of February, A.D. 1876.

2. That the said election for the said Electoral District of Charlevoix is a void election.

3. That the said Hector Louis Langevin was by his agents guilty of the offence of undue influence at the said election.

4. That the said offence of undue influence was committed by the Reverend Joseph Sirois, curé of Baie St. Paul; the Reverend W. Tremblay, curé of St. Fidèle; the Reverend Ignace Langlais, curé of St. Hilarion; the Reverend François Cinq-Mars, curé of St. Siméon; and the Reverend N. Doucet, curé of St. Etienne of Malbaie, the agents of the said Hector Louis Langevin, without his actual knowledge and consent.

5. That the said Hector Louis Langevin do pay to the Petitioners the costs of this appeal, except the costs as to the 60 pages of the printed case in appeal relating to the subpœnas and to the bailiff's certificates as to the service thereof.

6. That the Prothonotary of the said Superior Court for the District of Saguenay do pay to the said petitioners the sum of one hundred dollars deposited in his hands on the 28th day of November last, as security for costs on their appeal to this Court.

7. That the said Hector Louis Langevin do pay to the said petitioners the costs of the said proceedings in the said Superior Court, except so much of the costs of the evidence and hearing as are incidental to those portions of the case in which the petitioners have failed, namely:—those relating to the bribery, threats and undue influence charged in the petition, and from which the Respondent remains exonerated. Their Lordships Mr. Justice Fournier and Mr. Justice Henry dissenting from the deduction of the costs of the Appellants as hereinbefore last mentioned.