Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition for leave to appeal of Valin v. *Langlois, from the Supreme Court of Canada; delivered December 13th,* 1879.

Present:

LORD SELBORNE.
SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

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

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Counsel present on both sides, the grounds on which an appeal would have been supported, or might have been supported, could have been better presented to their Lordships than they have been upon the present occasion by Mr. Benjamin.

In that state of the case their Lordships must remember on what principles an application of this sort should be granted or refused. It has been rendered necessary, by the legislation which has taken place in the colony, to make a special application to the Crown in such a case for leave to appeal; and their Lordships have decided on a former occasion that a special application of that kind should not be lightly or very easily granted; that it is necessary to shew both that the matter is one of importance, and also that there is really a substantial question to be determined. It has been already said that their Lordships have no doubt about the importance of this question, but the consideration of its importance and the nature of the question tell both ways. On the one hand those considerations would undoubtedly make it right to permit an appeal, if it were shown to their Lordships, *primâ facie* at all events, that there was a serious and a substantial question requiring to be determined. On the other hand, the same considerations make it unfit and inexpedient to throw doubt upon a great question of Constitutional Law in Canada, and upon a decision of the Court of Appeal there, unless their Lordships are satisfied that there is, *primâ facie*, a serious and a substantial question requiring to be determined. Their Lordships are not satisfied in this case that there is any such question, inasmuch as they entertain no doubt that the decisions of the Lower Courts were correct. It is not to be presumed that the Legislature of the dominion has exceeded its powers, unless upon grounds

really of a serious character. In the present case their Lordships find that the subject-matter of this controversy, that is, the determination of the way in which questions of this nature are to be decided, as to the validity of the returns of members to the Canadian Parliament, is, beyond all doubt, placed within the authority and the legislative power of the Dominion Parliament by the 41st section of the Act of 1863, to which reference has been made; upon that point no controversy is raised. The controversy is solely whether the power which that Parliament possesses of making provision for the mode of determining such questions has been competently or incompetently exercised. The only ground on which it is alleged to have been incompetently exercised is that by the 91st and 92nd clauses of the Act of 1867, which distribute legislative powers between the Provincial and the Dominion Legislatures, the Dominion Parliament is excluded from the power of legislating on any matters coming within those classes of subjects which are assigned exclusively to the Legislatures of the provinces. One of those classes of subjects is defined in these words by the 14th sub-section of the 92nd clause: "The "administration of justice in the province, in- "cluding the constitution, maintenance, and "organization of Provincial Courts both of "Civil and of Criminal Jurisdiction, and in- "cluding procedure in civil matters in those "Courts." The argument, and the sole argument, which has been offered to their Lordships to induce them to come to the conclusion that there is here a serious question to be determined, is that the Act of 1874, the validity of which is challenged, contravenes that particular provision of the 92nd section, which exclusively assigns to the Provincial Legislatures the power of legislating for the

administration of justice in the provinces, including the constitution, maintenance, and organisation of Provincial Courts of Civil and Criminal Jurisdiction, and including procedure in civil (not in criminal) matters in those Courts. Now if their Lordships had for the first time, and without any assistance from anything which has taken place in the colony, to apply their minds to that matter, and even if the 41st section were not in the Act, it would not be quite plain to them that the transfer of the jurisdiction to determine upon the right to seats in the Canadian Legislature,—a thing which had been always done, not by Courts of Justice, but otherwise,—would come within the natural import of those general words: "The adminis- " tration of justice in the province, and the " constitution, maintenance, and organisation " of Provincial Courts, and procedure in civil " matters in those Courts." But one thing at least is clear, that those words do not point expressly or by any necessary implication to the particular subject of election petitions; and when we find in the same Act another clause which deals expressly with those petitions there is not the smallest difficulty in taking the two clauses together and in placing upon them both a consistent construction. That other clause, the 41st, expressly says that the old mode of determining this class of questions was to continue until the Parliament of Canada should otherwise provide. It was therefore the Parliament of Canada which was otherwise to provide. It did otherwise provide by the Act of 1873, which Act it afterwards altered, and then passed the Act now in question. So far it would appear to their Lordships very difficult to suggest any ground upon which the competency of the Parliament of Canada so to legislate could be called in question. But the ground which is suggested is

this, that it has seemed fit to the Parliament of Canada to confer the jurisdiction necessary for the trial of election petitions upon Courts of ordinary jurisdiction in the provinces, and it is said that although the Parliament of Canada might have provided in any other manner for those trials, and might have created any new Courts for this purpose, it could not commit the exercise of such a new jurisdiction to any existing Provincial Court. After all their Lordships have heard from Mr. Benjamin, they are at a loss to follow that argument, even supposing that this were not in truth and in substance the creation of a new Court. If the subject-matter is within the jurisdiction of the Dominion Parliament, it is not within the jurisdiction of the Provincial Parliament, and that which is excluded by the 91st section from the jurisdiction of the Dominion Parliament is not anything else than matters coming within the classes of subjects assigned exclusively to the Legislatures of the provinces. The only material class of subjects relates to the administration of justice in the provinces, which, read with the 41st section, cannot be reasonably taken to have anything to do with election petitions. There is therefore nothing here to raise a doubt about the power of the Dominion Parliament to impose new duties upon the existing Provincial Courts, or to give them new powers, as to matters which do not come within the classes of subjects assigned exclusively to the Legislatures of the provinces. But in addition to that, it appears that by the Act of 1873 which, even by those Judges who are said to have disputed the competency of the Act of 1874, is admitted to have been competent to the Dominion Parliament, what appears to their Lordships

to be exactly the same thing in substance, and not so very different even in form, was done. It was intended that when a Court of Appeal should be constituted for the dominion, a Judge of that Court of Appeal should be the Judge in the first instance of election petitions, and three Judges of the same Court should have power to sit in appeal from any judgment of a single Judge. But it was necessary also to provide for the interval between the passing of the Act and the constitution of such a Court of Appeal; and that Act of 1873 provided that in the meantime the Judges of the existing Provincial Courts should exercise, under Regulations contained in it, the same jurisdiction. It did not indeed say the Courts; it said the Judges of the Courts; and that is really in their Lordships' view the sole difference, for this purpose, between the Act of 1873 and the Act of 1874. The Act of 1874 in substance does the same thing, except that in the definition clause it uses this language: "The expression "'the Court,' as respects elections in the "several provinces herein-after mentioned "respectively, shall mean the Courts herein-"after mentioned or any Judges thereof;" and then it mentions by their known names the existing Courts of the different provinces. When their Lordships go on to look at the provisions which follow in the Act, it is clear not only that a new jurisdiction is conferred upon those Courts, but that everything necessary for the exercise of that new jurisdiction is provided for, even the power to take evidence; it is said that a single Judge in rotation, and not the entire Court, is to exercise that jurisdiction; and, in the 48th section,—"That on the trial "of an election petition, and in other proceedings "under this Act, the Judge shall, subject to the

" provisions of this Act, have the same powers " of jurisdiction and authority as a Judge of one " of the Superior Courts of Law or Equity for " the Province in which such election is held, " sitting in term or proceeding at the trial of an " ordinary civil suit, and the Court held by him " in such trial shall be a Court of Record." Words could not be more plain than those to create this as a new Court of Record, and not the old Court with some superadded jurisdiction to be exercised as if it had been part of its old jurisdiction. And all that is said as to the employment of the same officers, or of any other machinery of the Court for certain purposes defined by reference to the existing procedure of the Courts,—shows that the Dominion Legislature was throughout dealing with this as a new jurisdiction created by itself; although in many respects adopting, as it was convenient that it should adopt, existing machinery. Therefore their Lordships see nothing but a nominal, a verbal, and an unsubstantial distinction between this latter Act, as to its principle, and those provisions of the former Act which all the Judges of all the Courts in Canada, apparently without difficulty, held to be lawful and constitutional.

Then their Lordships are told that some of the Judges of the Courts of First Instance have thought there was more of substance in the distinction than there appears to their Lordships to be, and have declined to exercise this jurisdiction. It has been said that five Judges have been of that opinion. On the other hand, two Judges of First Instance—I think both in the province of Quebec, the Chief Justice, in the present case, and in another case, Mr. Justice Caron, a Judge whose experience on the Canadian Bench has been long, and whose reputation is high,—have been of opinion that this law was perfectly within the competency of the Dominion

Legislature, and they could see nothing in the distinction taken between the present law, as to its principle, and the former. And now the question has gone to the Court of Appeal, the Supreme Court of Canada, who, constituted as a full Court of four Judges, have unanimously been of that opinion; and nothing has been stated to their Lordships, even from those sources of information with which Mr. Benjamin has been supplied, and which he has very properly communicated to their Lordships; nothing has been stated to lead their Lordships at all to apprehend that there is any real probability that any Judge of the inferior Courts will hereafter dispute their obligation to follow the ruling of the Supreme Court, unless and until it shall be reversed by Her Majesty in Council; nothing has been said from which their Lordships can infer that any Provincial Legislature is likely to offer any opposition to such a ruling on this question as has taken place by the Court of Appeal, unless, as has been said, it should at any future time be reversed by Her Majesty in Council.

Under these circumstances their Lordships are not persuaded that there is any reason to apprehend difficulty or disturbance from leaving untouched the decision of the Court of Appeal. Their Lordships are not convinced that there is any reason to expect that any of the Judges of the Court below will act otherwise than in due subordination to the appellate jurisdiction, or refuse to follow the law as laid down by it. If indeed the able arguments which have been offered had produced in the minds of any of their Lordships any doubt of the soundness of the decision of the Court of Appeal, their Lordships would have felt it their duty to advise Her Majesty to grant the leave which is now asked for; but on the contrary, the result

of the whole argument has been to leave their Lordships under the impression that there is here no substantial question at all to be determined, and that it would be much more likely to unsettle the minds of Her Majesty's subjects in the Dominion, and to disturb in an inconvenient manner the legislative and other proceedings there, if they were to grant the prayer of this Petition, and so throw a doubt on the validity of the decision of the Court of Appeal below, than if they were to advise Her Majesty to refuse it.

Under these circumstances their Lordships feel it their duty humbly to advise Her Majesty that this leave to appeal should not be granted, and that the Petition should be dismissed.