CONTROVERTED ELECTION OF THE COUNTY OF MONTMORENCY.

1879
*June 9.
*Oct. 28.

P. V. VALIN.....APPELLANT;

AND

JEAN LANGLOIS.....RESPONDENT.

Dominion Parliament, plenary powers of legislation of—The Dominion Controverted Elections Act, 1874—*Jurisdiction of Provincial Superior Courts—Power of Dominion Parliament to alter or add to civil rights—Procedure—British North America Act, secs.* 18, 41, 91, *sub-secs.* 13 & 14 *of sec.* 92, *and secs.* 101 & 129—*Dominion Court.*

The Dominion Parliament, by "*The Dominion Controverted Elections Act*, 1874," imposed on the Provincial Superior Courts and the Judges thereof the duty of trying controverted elections of members of the House of Commons.

After the General Election of 1878, the Respondent fyled an election petition in the Superior Court for *Lower Canada* against the return of the Appellant as the duly elected member for the electoral district of *Montmorency* for the House of Commons. The Appellant objected to the jurisdiction of the Court, held by *Meredith*, C. J., on the ground that "*The Dominion Controverted Elections Act*, 1874," was *ultra vires*.

Held, affirming the judgment of *Meredith*, C. J., 1st. That "*The Dominion Controverted Elections Act*, 1874," is not *ultra vires* of the Dominion Parliament, and whether the Act established a Dominion Court or not, the Dominion Parliament had a perfect right to give to the Superior Courts of the respective Provinces and the Judges thereof the power, and impose upon them the duty, of trying controverted elections of members of the House of Commons, and did not, in utilizing existing judicial officers

*PRESENT:—Ritchie, C. J., and Fournier, Henry, Taschereau and Gwynne, J. J.; Strong, J., though present at the argument, was absent from illness when judgment was delivered.

1879

VALIN v. LANGLOIS.

and established Courts to discharge the duties assigned to them by that Act, in any particular invade the rights of the Local Legislatures.

2. That upon the abandonment by the House of Commons of the jurisdiction exercised over controverted elections, without express legislation thereon, the power of dealing therewith would fall, *ipso facto*, within the jurisdiction of the Superior Courts of the Provinces by virtue of the inherent original jurisdiction of such Courts over civil rights.
3. That the Dominion Parliament has the right to interfere with civil rights, when necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of *Canada*.
4. That the exclusive power of legislation given to Provincial Legislatures by sub-sec. 14 of sec. 92 *B. N. A. Act* over procedure in civil matters, means procedure in civil matters within the powers of the Provincial Legislatures.
5. Per *Ritchie*, C. J., and *Taschereau* and *Gwynne*, J. J., that "*The Dominion Controverted Election Act*, 1874," established, as the Act of 1873 did, as respects elections, a Dominion Court.

APPEAL from a judgment rendered by *Meredith*, C. J., (1) in the Superior Court for *Lower Canada*, District of *Quebec*, dismissing the preliminary objections of the Appellant to an election petition brought by the Respondent under the *Dominion Controverted Elections Act*, 1874, against the return of the Appellant, as member of the House of Commons for the electoral District of *Montmorency*.

The main question which arose on the preliminary objections, and on this appeal, was, whether the Dominion Parliament could legally impose on the Superior Court of the Province of *Quebec*, and the Judges thereof, the duty of trying Controverted Elections of members of the House of Commons.

Mr. *Pelletier*, Q. C., for Appellant:—

The *Dominion Controverted Elections Act of* 1874 did not create a Dominion tribunal, but invested with new

(1) 5 Q. L. R. 1.

attributes the Superior Court of the Province of *Quebec* and its Judges. The federal principle has for its end to preserve and protect the autonomy of the provinces, and the *British North America Act* has enumerated the rights and duties of every one of them. By the 92nd section of that Act, in each province, the Legislature has an unlimited authority and a power beyond control to make laws in relation to the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts. If so, the Federal Parliament cannot add to, take from, or extend the jurisdiction of provincial tribunals. All the Judges agree on this point. *Wilson*, J., in the *Niagara case* (1) holds that "The Dominion Parliament has not the power to enlarge or diminish the jurisdiction of the Provincial Courts." *Meredith*, C. J., in this case says: "I do not question the proposition, that under the Act of Confederation, the Dominion Parliament cannot enlarge the jurisdiction of the Provincial Courts." *Stuart*, J., in the case of *Belanger* v. *Caron* (2), says: "There can be no doubt that the Dominion Parliament is prohibited from making laws in relation to any Court of this Province, and in relation to the administration of justice by it." *Casault*, J., in the case of *Guay* v. *Blanchet* (3), says: "To concede to the Federal Parliament the power to make the Provincial tribunals, for federal objects, federal courts, is to acknowledge that it has the right to determine the questions to be litigated, and the jurisdiction, and the manner in which the Courts are to exercise it."

McCord, J., in the *Bellechasse case* (4) held that the Parliament of *Canada* has no power to extend the jurisdiction of the Superior Court of the Province of *Quebec*.

(1) 20 U. C. C. P. 268.
(2) 5 Q. L. R. 19.
(3) 5 Q. L. R. 43.
(4) Not reported.

1879

VALIN v. LANGLOIS.

Now, the Superior Court of the Province of *Quebec* owes its existence to an Act of the Province of *Quebec*, and its jurisdiction is such as the *Code of Procedure* established, and is circumscribed by the limits of the Province. There is nothing to show that this Court ever had before Confederation the power to try an election petition, and under sec. 92, No. 14, of the *British North America Act*, the Provincial Legislatures have no authority to legislate upon the subject of controverted elections for the House of Commons. This power exists in the Dominion Parliament, but if the Dominion Parliament has no power to give to the Superior Court the jurisdiction of the Circuit or of other Courts, on what principle can they give to such a Court, whose maintenance and organization are exclusively under the control of the Provincial Legislature, the exclusive jurisdiction which has always belonged to the House of Commons of pronouncing upon the validity of the election of its members? Suppose the Provincial Legislature had abolished the Superior Court immediately after the passing of this Act, would the Superior Court still be said to exist under this Act? A tribunal exists only when its judgments and decisions are invested with an authority which allows them to compel their execution. The judgment of the Superior Court is not valid outside of the limits of the Province, and unless this Act extends the jurisdiction of that Court beyond the territorial limits of the Province, the Court is powerless to decree that a member has not the right to sit in the House of Commons. I submit that the Dominion Parliament has not the power of extending the jurisdiction of a Provincial Court, and that an election petition against the return of a member for the House of Commons can only be tried by a Dominion Court.

It is also contended, a new court was created. Where do we find the elements constituting such a Court?

Is it because the Act refers the petitions to the *Superior Court*, which exists already? Is it in the fact that the Court is presided over by a judge holding no commission, but already appointed to hold the Superior Court, or because the officers directed to act are the officers of the Superior Court, provincial employees, over whom the Federal Government has no control? On the contrary, is it not evident that it was not the intention to create a new tribunal; as Mr. Justice *McCord* says, in the case of *Deslauriers* v. *Larue*, *in re* The Controverted Election of *Bellechasse* (1): "That the *Dominion Controverted Elections Act* 1874 does not intend to create a Dominion Court is apparent from the fact that it repeals the *Controverted Elections Act*, 1873, which did create a Dominion Court, and that, instead of substituting other provisions for the same purpose, it provides by section 3, that an election petition shall be tried by a provincial court *as if such petition were an ordinary cause* within its jurisdiction. From the difference between the two statutes, it is evident, not only that the Federal Parliament in passing the later one did not intend to create an additional court, as it had the power to do under section 101 of the *British North America Act*, but that it actually intended to *not* create one.

See also Mr. Justice *Wilson's* judgment in the *Niagara* case (2).

By the Act of 1873 the Judge, as an individual, was charged to try Controverted Elections, but the Act of 1874 says it is the Superior Court which is to try elections.

By section 30 of the Dominion Act, the Court is to report to the Speaker the result of the trial. What jurisdiction can he exercise to determine as to the right to a seat in a parliament held in another Province? Then

(1) Not reported. (2) 29 U. C. C. P. 288.

1879

VALIN v. LANGLOIS.

we have the 11th and 13th secs. of the Act as to fixing the time and place of trial, all of which proves sufficiently that it was the intention of the Parliament to give this Court the additional jurisdiction to try election petitions.

It is said, that under the 4th section a special tribunal has been created, from the fact that it is called "Court of Record." Supposing that such be the case, that tribunal would be imperfect; for the petition would be presented before the ordinary Superior Court, and in virtue of sections 11 and 13, the Superior Court only could fix the trial. This section, moreover, is only the reproduction of sec. 29 of 31 and 32 V., c. 125, and it was never contended there that these words had made a new or distinct tribunal of the Court of Common Pleas. It is the special Court, which the Judge presides over during the trial, which section 48 constitutes a Court of Record. The Courts to which Parliament has referred the Controverted Elections are still Provincial Courts. The provisions of this section have not deprived them of their character.

See Judge *Casault's* judgment on this point in *Guay* v. *Blanchet* (1).

Appellant further contends that the contestation of an election does not constitute a civil right and form *de plano* part of the jurisdiction of the civil courts of the Province of *Quebec*, and does not involve any civil plea, cause or matter, or any right, remedy, or action of a civil nature, such as contemplated by the laws from which the Superior Courts and the Judges thereof derive their jurisdiction.

It is a political right which the Respondent is praying the Court to have enforced; viz., that the Appellant be declared by the Court to be the legal representa-

(1) 5 Q. L. R. 49.

tive of the electors of the constituency of *Montmorency*. This surely is not a civil but a political matter.

The learned counsel referred to the judgments of *McCord*, J., in the *Bellechasse* case (not reported), and of *Casault*, J., in the *Levis* case (1), and commented at length on the cases therein cited in support of this branch of his argument; concluded by contending that, even if the Superior Courts had power to decide controverted elections on account of their original jurisdiction, that power would be in a latent state, since the Dominion Parliament cannot frame rules of procedure for Provincial Courts.

Mr. *Langlois*, Q. C., (the Respondent) :—

The first case I will rely upon is the case of *Bruneau* v. *Massue* (2). In that case *Dorion*, C. J., said that the "Judges as citizen were bound to perform all the duties which are imposed upon them by either the Dominion or the Local Legislature, provided neither Legislature had exceeded the limits of its legislative power." I contend that the only answer Judges can give to Parliament is, that all their time is taken up in the discharge of the administration of justice, and they are unable to execute their laws, but they can't say to parliament "you have no right to call upon us to carry out your laws." But when, as in this case, the Judge says: "I voluntarily execute powers given to me by an authority who has exclusive legislative power over the subject matter," I cannot see how it can be expected that this Court will say, this Judge wants to exercise a power he has no right to exercise.

As to the first objection, that the *Controverted Elections Act of* 1874 does not create a Dominion Court. I admit that it does not specifically say that the Superior

(1) 5 Q. L. R. 43. (2) 23 L. C. Jur. 60.

1879

VALIN v. LANGLOIS.

Court will be a Dominion Court, but indirectly such a Court has been created under sec. 48. It is true it is the only section which says it is a Court of Record, but that is sufficient. It cannot be denied that the Dominion Parliament had the right to say that certain persons should perform the duties of trying election petitions. Now, this is all that has been done, for it is easy to ascertain who are the Judges of the Superior Courts, and, if so, they are empowered to act by this Statute, and they can do so constitutionally. As to the Dominion Parliament having no authority to enlarge the jurisdiction of Provincial Courts, I contend that giving to these judges the right to try election petitions does not enlarge their jurisdiction. The fact of a Judge of a Court exercising judicial powers in virtue of a Statute which the legislative body had power to pass, does not enlarge the jurisdiction of that Court. If so, any legislation on insolvency, and other matters exclusively under the control of the Dominion Parliament, would be enlarging the jurisdiction of the Courts, who are bound to administer the laws of the Dominion Parliament, as well as the laws of the Provincial Legislatures.

Whether you call petitioning against the return of a member exercising a political or civil right, it is immaterial. The only distinction in law matters is between civil and criminal matters. There is no political matter in law as distinguished from civil or criminal matters.

The last objection is that which has reference to the jurisdiction of the Dominion Parliament over procedure. I submit that if the Dominion Parliament has the right to legislate who shall try election petitions, the procedure must follow the whole subject. The exclusive power of the Provincial Legislatures as to the regulation of *procedure* can only extend to matters over which they have exclusive authority, viz., over civil matters,

and certainly not matters over which the Dominion Parliament has exclusive legislative power, such as procedure in regard to insolvency.

It was also said, that certain sections of the Act show that the duties assigned are to be performed by the Court, and not by the Judge. The answer to this objection is to be found in sec. 3 of the Act, which declares that the expression the Court means any one of the Judges of the Court, and it may be well to remark that all the duties imposed may be discharged by one single Judge. The election cases of *Montreal Centre* (1), and of *Argenteuil* (2) were also relied upon.

THE CHIEF JUSTICE:

This is an appeal from the judgment of Mr. Chief Justice *Meredith*, dismissing the preliminary objections of the Appellant, and declaring "*The Dominion Controverted Elections Act*, 1874," to be not *ultra vires* of the Dominion Parliament; and the correctness of this determination is the only question now in controversy.

This, if not the most important, is one of the most important questions that can come before this court, inasmuch as it involves, in an eminent degree, the respective legislative rights and powers of the Dominion Parliament and the Local Legislatures, and its logical conclusion and effect must extend far beyond the question now at issue. In view of the great diversity of judicial opinion that has characterized the decisions of the provincial tribunals in some provinces, and the judges in all, while it would seem to justify the wisdom of the Dominion Parliament, in providing for the establishment of a Court of Appeal such as this, where such diversity shall be considered and an authoritative declaration of the law be enunciated, so it enhances the

(1) 20 L. C. Jur. 77. (2) 20 L. C. Jur. 88.

1879

VALIN v. LANGLOIS.

responsibility of those called on in the midst of such conflict of opinion to declare authoritatively the principles by which both federal and local legislation are governed.

Previously to Confederation, the Governor or Lieutenant-Governor, Council and Assembly in the respective Provinces of *Canada*, *Nova Scotia* and *New Brunswick*, formed a legislative body of the Province, subordinate, indeed, to the Parliament of the Mother Country, and subject to its control, but, with this restriction, having the same power to make laws binding within the Province that the Imperial Parliament has in the Mother Country; and the propriety and necessity of such enactments were within the competency of the Legislature alone to determine. As the House of Commons in *England* exercised sole jurisdiction over all matters connected with controverted elections, except so far as they may have restrained themselves by statutory restrictions, the several Houses of Assembly always claimed and exercised in like manner the exclusive right to deal with, and be the sole judges of, election matters, unless restrained in like manner, and this claim, or the exercise of it, I have never heard disputed; on the contrary, it is expressly recognized as existing in the Legislative Assemblies by the Privy Council in *Théberge vs. Landry* (1). When the Provinces of *Canada*, *Nova Scotia* and *New Brunswick* sought "to be "federally united into one Dominion, under the Crown "of the United Kingdom of *Great Britain* and "*Ireland*, with a constitution similar in principles "to that of the United Kingdom," it became absolutely necessary that there should be a distribution of legislative powers, and so we find the exclusive powers of the Provincial Legislatures very

(1.) L. R. 2 App. Cas. 102.

specially limited and defined, while legislative authority is given to the Parliament of *Canada* to make laws for the peace, order and good government of *Canada*, in relation to all matters not coming within the classes of subjects by the act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is declared that, notwithstanding anything in the act, the exclusive legislative authority of the Dominion of *Canada* shall extend to all matters coming within the classes of subjects next thereinafter enumerated. It will be observed, that of the classes of subjects thus enumerated, either in respect to the powers of the Provincial Legislatures, or those of the Parliament of *Canada*, there is not the slightest allusion, direct or indirect, to the rights and privileges of Parliament, or of the Local Legislatures, or to the election of Members of Parliament, or of the Houses of Assembly, or the trial of controverted elections, or proceedings incident thereto. The reason of this is very easily found in the Statute, and is simply that, before these specific powers of legislation were conferred on Parliament and on the Local Legislatures, all matters connected with the constitution of Parliament and the Provincial Constitutions had been duly provided for, separate and distinct from the distribution of legislative powers, and, of course, over-riding the powers so distributed; for, until Parliament and the Local Legislatures were duly constituted,no legislative powers, if conferred, could be exercised.

Thus, we find that, immediately after declaring that there shall be one Parliament of *Canada*, consisting of the Queen, Senate and the House of Commons, the Imperial Act provides for the privileges of those Houses in these terms:—

The privileges, immunities and powers to be held, enjoyed and

1879

VALIN v. LANGLOIS.

exercised by the Senate and by the House of Commons and by the Members thereof, respectively, shall be such as are from time to time defined by the Act of the Parliament of *Canada*, but so that the same shall never exceed those at the passing of this Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of *Great Britain* and *Ireland*, and by the Members thereof.

And, after declaring what the constitution of the House of Commons shall be, and defining the electoral districts of the four Provinces, it makes provision for the continuance of existing election laws, until Parliament of *Canada* otherwise provides, in these words:—

Until the Parliament of *Canada* otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters, or any of them, namely:—The qualifications and disqualifications of persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the voters at elections of such Members, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which the elections may be continued, the trial of controverted elections, and proceedings incident thereto, the vacating of seats of Members, and the execution of new writs in case of seats vacated otherwise than by dissolution, —shall respectively apply to elections of Members to serve in the House of Commons for the same several Provinces (1).

And by the 31 Vic., Cap. 23, it is enacted that:

The Senate and the House of Commons, respectively, and the Members thereof, respectively, shall hold, enjoy and exercise such and the like privileges, immunities and powers as at the time of the passing of the *British North America Act*, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of *Great Britain* and *Ireland*, and by the Members thereof, so far as the same are consistent with and not repugnant to the said Act, such privileges, &c. shall be deemed part of the General and Public Law of *Canada*, and it shall not be necessary to plead the same, but the same shall, in all courts in *Canada*, and by and before all judges, be taken notice of judicially.

In *England*, as is well known, before 1770, contro-

(1) B.N.A. Act, sec. 41.

verted elections were tried and determined by the whole House of Commons, or, for a time, by special committees, and by committees of privileges and elections. This was succeeded by the *Grenville* Act, the principle of which was to select committees for the trial of election petitions by lot. This Act, in 1773, was made perpetual, but not without the expression of very strong opinions against the limitations imposed by it upon the privileges of Parliament (1).

In 1839, an act passed (Sir *Robert Peel's* Act) establishing a new system upon different principles, and it was not till 1868, after Confederation, that the jurisdiction of the House of Commons, in the trial of controverted elections, was transferred by statute to the courts of law. Very much the same course of procedure, up to and after the time of Confederation, prevailed in some, if not all of the Provinces.

But in 1873 the Dominion Parliament passed an Act to make better provision respecting election petitions and matters relating to controverted elections and Members of the House of Commons, and established Election Courts, the judges of which were to be judges of Supreme or Superior Courts of the Provinces, provided the Lieutenant Governors of the Provinces, respectively, should, by order made by and with the advice and consent of the Executive Council thereof, have authorized and required such judges to perform the duties thereby assigned to them, the intervention of the Legislature not being required, or, apparently, deemed necessary. This Act was repealed by the 37 Vic., cap. 10, "An Act to make better provision for the trial of Controverted Elections of Members of the House of Commons, and respecting matters connected therewith." This last Act, it is now contended, is *ultra vires*. The constitutionality of the Act of 1873, though

(1) 17 Par't Hist. 1071; L'd Campbell's Chrs. Vol. 6, p. 98.

1879

VALIN v. LANGLOIS.

questioned, as I understand, by one judge in *Quebec*, is, I believe, admitted, by all those who now think the Act of 1874 *ultra vires*, to have been *intra vires*, of the Dominion Parliament.

In determining this question of *ultra vires* too little consideration has, I think, been given to the constitution of the Dominion, by which the legislative power of the Local Assemblies, is limited and confined to the subjects specifically assigned to them, while all other legislative powers, including what is specially assigned to the Dominion Parliament, is conferred on that Parliament; differing in this respect entirely from the constitution of the *United States of America*, under which the State Legislatures retained all the powers of legislation which were not expressly taken away. This distinction, in my opinion, renders inapplicable those American authorities, which appear to have had so much weight with some of the learned judges who have discussed this question. And, as a consequence, too much importance has, I humbly think, been attached to section 101, which provides for the establishment of any additional courts for the better administration of the laws of *Canada*, and to sub-sections 13 and 14 of section 92, which vest in the Provincial Legislatures the exclusive powers as to property and civil rights in the Provinces, and "the administration "of justice in the Provinces, including the constitution, "maintenance and organization of Provincial Courts, "both of civil and of criminal jurisdiction, and includ- "ing procedure in civil matters in those courts."

The establishment of additional courts for the better administration of the laws of *Canada* was primarily, I think, intended to apply, when deemed necessary and expedient, rather to the general laws of the Dominion than to matters connected with the privileges, immunities and powers of the Senate and House of

Commons, though, of course, those might, incidentally, if so provided, come within the jurisdiction of such tribunals; that the property and civil rights referred to were not all property and all civil rights, but that the terms "property and civil rights" must necessarily be read in a restricted and limited sense, because many matters involving property and civil rights are expressly reserved to the Dominion Parliament, of which the first two items in the enumeration of the classes of subjects to which the exclusive legislation of the Parliament of Canada extends are illustrations, viz.:—1. "The public debt and property;" 2. "The regulation of trade and commerce;" to say nothing of "beacons, buoys, light houses, &c., "navigation and shipping," "bills of exchange and promissory notes," and many others directly affecting property and civil rights; that neither this, nor the right to organize Provincial Courts by the Provincial Legislatures was intended in any way to interfere with, or give to such Provincial Legislatures, any right to restrict or limit the powers in other parts of the Statute conferred on the Dominion Parliament; that the right to direct the procedure in civil matters in those courts had reference to the procedure in matters over which the Provincial Legislature had power to give those Courts jurisdiction, and did not, in any way, interfere with, or restrict, the right and power of the Dominion Parliament to direct the mode of procedure to be adopted in cases over which it has jurisdiction, and where it was exclusively authorized and empowered to deal with the subject matter; or take from the existing courts the duty of administering the laws of the land; and that the power of the Local Legislatures was to be subject to the general and special legislative powers of the Dominion Parliament. But while the legislative rights of the Local Legislatures are in this sense subor-

1879

VALIN v. LANGLOIS.

dinate to the right of the Dominion Parliament, I think such latter right must be exercised, so far as may be, consistently with the right of the Local Legislatures; and, therefore, the Dominion Parliament would only have the right to interfere with property or civil rights in so far as such interference may be necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of *Canada.*

It is, I think, to section 91, in reference to the legislative authority of the Parliament of *Canada*, and to sections 18 and 41, conferring privileges on the Senate and House of Commons, and legislative power over the trial of controverted elections and proceedings incident thereto, that we must look, to ascertain whether the Parliament of the Dominion, in enacting the 37 Vic. cap. 10, exceeded its powers, because, I think, all the other sections conferring legislative powers must be read as subordinate thereto, and because I cannot discover that any of the other provisions apply, or were intended to apply, to the particular subject matter thus legislated on, and which, I think, it was intended should be alone dealt with by the Dominion Parliament in any manner it might deem most expedient for the peace, order and good government of *Canada.* I think that the *British North America Act* vests in the Dominion Parliament plenary power of legislation, in no way limited or circumscribed, and as large, and of the same nature and extent, as the Parliament of *Great Britain*, by whom the power to legislate was conferred, itself had. The Parliament of *Great Britain* clearly intended to divest itself of all legislative power over this subject matter, and it is equally clear, that what it so divested itself of, it conferred wholly and exclusively on the Parliament of the Dominion.

The Parliament of *Great Britain*, with reference to

1879

VALIN v. LANGLOIS.

the power and privileges of the Parliament of the Dominion of *Canada*, and with reference to the trial of controverted elections, has made the Parliament of the Dominion an independent and supreme Parliament, and given to it power to legislate on those subjects in like manner as the Parliament of *England* could itself legislate on them. It is a constitutional grant of privileges and powers which cannot be restricted or taken away except by the authority which conferred it, and any power given to the Local Legislatures must be subordinate thereto.

The case of the *Queen* vs. *Burah* (1) enunciates a principle very applicable to this case. The marginal note is :

Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may be well exercised either absolutely or conditionally ; in the latter case leaving to the discretion of some external authority the time and manner of carrying its legislation into effect, as also the area over which it is to extend.

And Lord *Selborne*, delivering the judgment of the Privy Council, said :

But their Lordships are of opinion that the doctrine of the majority of the court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe those powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large and of the same nature as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question ; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done in legislation is within the general scope of the

(1.) L.R. 3 App. cases 904.

1879

VALIN v. LANGLOIS.

affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

Whether, therefore, the Act of 1874 established a Dominion Election Court or not, I think the Parliament of the Dominion, in legislating on this matter, on which they alone in the Dominion could legislate, had a perfect right, if in its wisdom it deemed it expedient so to do, to confer on the Provincial Courts power and authority to deal with the subject matter as Parliament should enact; that the legislation, being within the legislative power conferred on them by the Imperial Parliament, their enactments in reference thereto became the law of the land, which the Queen's Courts were bound to administer.

I am at a loss to discover how the conferring of this jurisdiction on the Judges of the Supreme and Superior Courts, and on those Courts, in any way interferes with or affects, directly or indirectly, the autonomy of the Provinces, or the right of the Local Legislatures to deal with such property and civil rights in the Provinces, and the administration of justice in the Provinces, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in such civil matters in those courts, as the Local Legislatures have a right to deal with, reading, of course, those matters so to be dealt with, as subject and subordinate to the superior powers and authority of the Dominion Parliament over all subjects not assigned exclusively to the Legislatures of the Provinces, of which subjects pre-eminently prominent as beyond the jurisdiction or control of the Local Legislatures, stand the privileges, immunities and powers to be held, enjoyed and exercised by the

Senate and by the House of Commons, and by the Members thereof, respectively, and all rights connected with the qualifications and disqualifications of persons to sit or vote as Members of the House of Commons, the voters at the election of such Members, the Returning Officers, the proceedings at elections, and the trial of controverted elections, and all proceedings incident thereto.

Transferring this new and this peculiar jurisdiction vested in the House of Commons to the Supreme and Superior Courts, in other words, substituting those courts in place of the House of Commons in relation to these matters, with which the Local Legislatures have nothing whatever to do, can in no way, that I can perceive, militate against, or derogate from, the right of the Local Legislatures to make laws in relation to all subjects or matters exclusively reserved to them. Nor can I discover that, in so substituting the Judges of the Supreme and Superior Courts, the Parliament of the Dominion has in any way transcended its legislative powers. These courts are surely bound to execute all laws in force in the Dominion, whether they are enacted by the Parliament of the Dominion or by the Local Legislatures, respectively. They are not mere local courts for the administration of the local laws passed by the Local Legislatures of the Provinces in which they are organized. They are the courts which were the established courts of the respective Provinces before Confederation, existed at Confederation, and were continued with all laws in force, "as if the union had not been made," by the 129th sec. of the *British North America Act*, and subject, as therein expressly provided, "to be repealed, abolished or altered by the Parliament of *Canada*, or by the Legislatures of the respective Provinces, according to the authority of the Parliament, or of that Legislature, under this Act."

1879

VALIN v. LANGLOIS.

They are the Queen's Courts, bound to take cognizance of and execute all laws, whether enacted by the Dominion Parliament or the Local Legislatures, provided always, such laws are within the scope of their respective legislative powers.

If it is *ultra vires* for the Dominion Parliament to give these courts jurisdiction over this matter, which is peculiarly subject to the legislative power of the Dominion Parliament, must not the same principle apply to all matters which are in like manner exclusively within the legislative power of the Dominion Parliament; and, if so, would it not follow, that in no such case could the Dominion Parliament invoke the powers of these courts to carry out their enactments in the manner they, having the legislative right to do so, may think it just and expedient to prescribe. If so, would it not leave the legislation of the Dominion a dead lettter till Parliament should establish courts throughout the Dominion for the special administration of the laws enacted by the Parliament of *Canada*: a state of things, I will venture to assume, never contemplated by the framers of the *British North America Act*, and an idea to which, I humbly think, the Act gives no countenance; on the contrary, the very section authorizing the establishment by Parliament of such courts, speaks only of them as "additional courts for the better "administration of the laws of *Canada*." It cannot, I think, be supposed for a moment that the Imperial Parliament contemplated that until an Appellate Court, or such additional courts, were established, all or any of the laws of *Canada* enacted by the Parliament of *Canada*, in relation to matters exclusively confided to that Parliament, were to remain unadministered for want of any tribunals in the Dominion competent to take cognizance of them.

Whether, then, this Act is to be treated as declaring

the courts named Dominion Election Courts, or whether it is to be treated as merely conferring on particular courts already organized a new and peculiar jurisdiction, is a matter, to my mind, of no great importance, as I think, while they have clearly the power of establishing a new Dominion Court, they have likewise the power, when legislating within their jurisdiction, to require the established courts of the respective Provinces, and the judges thereof, who are appointed by the Dominion, paid out of the treasury of the Dominion, and removeable only by address of the House of Commons and Senate of the Parliament of the Dominion, to enforce their legislation.

If the Dominion Parliament cannot pass this Act, this startling anomaly would be produced, that, though with respect to the rights and privileges of Parliament the Dominion of *Canada* are invested with the same powers as at the passing of the Act pertained to the Parliament of *Great Britain*, and though exclusive jurisdiction over, and the exclusive right to provide for, the trial of controverted elections is specially conferred on the Dominion Parliament, and though the constitution of the Dominion is to be similar to that of *Great Britain*, there are, in connection with these privileges and these elections, matters with which there is no legislative power in the country to deal; for it is very clear that, as there is no pretence for saying that the Local Legislatures have any legislative power or authority over the subject-matters dealt with by the Act, so nothing the Local Legislatures might say or do could affect the question, and, therefore, however desirable, it might be universally admitted, that just such a tribunal for settling these questions should be established in the very terms of this Act, the Dominion would be in this extraordinary position, that no legislation in the Dominion could accomplish it, for the simple reason that,

1879

VALIN v. LANGLOIS.

if legislated on, as has been done by the Dominion Parliament, the legislation would be *ultra vires*; any legislation by the Local Legislatures would, if possible, be even more objectionable, they not having a shadow of right to interfere with the rights and privileges of Parliament, or the election of Members to serve therein, or to establish any tribunal whatever to deal with or affect either, as the whole and sole legislative power to intermeddle or deal with such rights and with elections and controverted elections is conferred on and vested in the Dominion Parliament alone.

To hold that no new jurisdiction, or mode of procedure, can be imposed on the Provincial Courts by the Dominion Parliament, in its legislation on subjects exclusively within its legislative power, is to neutralize, if not to destroy, that power and to paralyze the legislation of Parliament. The Statutes of Parliament, from its first session to the last, show that such an idea has never been entertained by those who took the most active part in the establishment of Confederation, and who had most to do with framing the *British North America Act*, the large majority of whom sat in the first Parliament. A reference to that legislation will also show what a serious effect and what unreasonable consequences would flow from its adoption.

There is scarcely an Act, relating to any of the great public interests of the country which have been legislated on since Confederation, that must not in part be held *ultra vires* if this doctrine is well founded, for in almost all these Acts provisions are to be found, not only vesting jurisdiction in the Provincial Courts, but also regulating, in many instances and particulars, the procedure in such matters in those courts, as a reference to a number I shall cite will abundantly show.

In the first session of the Dominion Parliament, in the Act respecting Customs, 31 Vic., cap. 6, by sec,

100, all penalties and forfeitures relating to the Customs or to Trade and Navigation, unless other provision be made for the recovery thereof, are to be sued for by the Attorney-General, or in the name or names of some officer of Customs, or other person thereunto authorized by the Governor-in-Council, and if the prosecution be brought before anyCounty Court or Circuit Court it shall be heard and determined in a summary manner upon information filed in such court. And by other sections, special provisions are made for the mode of procedure in reference to cases of this description, as also for the protection of the officers, entirely different from the procedure in ordinary civil cases.

So also by the Act respecting the Inland Revenue, 31 Vic., cap. 8, provisions are made for the protection of the officers of the Inland Revenue, whereby the proceedings in the Provincial Courts are restrained and regulated. And by 31 Vic., c. 10, for regulating the Postal Service, the enactments of the Acts respecting Customs, more especially for the protection of officers, are extended and applied to officers employed in the Post Office.

And in the Public Works Act, 31 Vic., cap. 12, sec. 48, all costs in awards made by the arbitrators under that Act, where the award is in favor of the claimant, shall be taxed by the proper officer of the Court of Queen's Bench, Supreme Court or Common Pleas, in the Provinces of *Ontario*, *Nova Scotia* and *New Brunswick*, and, in *Quebec*, by a Judge of the Superior Court.

So by the 31st Vic., cap. 15, sec. 7, of the Act to prevent unlawful training to the use of arms, provision is made for the protection of Justices and others acting under this Act, which regulates in a very special manner the procedure in all courts where such actions may be brought.

1879

VALIN v. LANGLOIS.

So by the 31st Vic., cap. 17, an Act for the settlement of the affairs of the Bank of Upper Canada, authority was given to the Court of Chancery, or a Judge thereof, to make orders and directions with reference to the trust therein referred to.

So by the 31st Vic., cap. 23, an Act to define the privileges, &c., of the Senate and House of Commons, and to give necessary protection to persons employed in the publication of parliamentary papers, provision is made on certificate of Speaker of either House for the immediate stay of, and putting a final end to, all civil or criminal proceedings in any court in *Canada*.

So under the Trade Mark and Designs Act, 1868, in case any person not being the lawful proprietor of a design be registered as proprietor thereof, the rightful owner is authorized to institute an action in the Superior Court in *Quebec*, in the Court of Queen's Bench in *Ontario*, and in the Supreme Courts of *Nova Scotia* and *New Brunswick*, and the course of procedure is pointed out and specially regulated.

So under 31 Vic., cap. 61, respecting fishing by foreign vessels, special provisions are made for the protection of officers by regulating the issuing of writs, and otherwise regulating the proceedings in informations and suits brought under the Act.

So with respect to the Act relating to aliens and naturalization, 31 Vic., cap. 66, duties are imposed on the Judges of any Court of Record in *Canada*, and on the Provincial Courts therein named, as to admitting and confirming aliens in all the rights and privileges of British birth, and directing the mode of procedure in such cases.

So by the Railway Act, 1868, 31 Vic., cap. 68, sec. 15, the duty of appointing arbitrators is imposed on a Judge of one of the Superior Courts in the Province in which the place giving rise to the disagreement is situated.

So, also, by sub-section 13 as to ordering notices, and by sec. 15 as to appointing sworn surveyors; 19 as to taxing costs; 22, appointing, on death of arbitrator, another; 24 and 25, vesting in Judge the summary power of determining the validity of any cause of disqualification urged against arbitrator; 27 and 28, power to Judge to issue warrant to Sheriff to put company in possession of land under award or agreement; and in many other matters in said Act quite distinct from the jurisdiction and procedure in ordinary civil cases.

32 and 33 Vic., cap. 11, patents for inventions: Provision is made for actions for infringement and impeachment of a patent, and for power of courts and procedure and pleading in such cases.

And notably, with respect to insolvency, by the first Insolvent Act, 1869, and Act in amendment thereof of 1870, summary jurisdiction is given to judges and courts, and appeals to judges and from judges to courts, and Provincial Courts are clothed with powers, and modes of procedure are given them, which the Local Legislatures could have no right to confer, as they have no right to legislate on the subject matter of insolvency, And in *Ontario* the judges of the Superior Courts of Common Law and of the Court of Chancery, or any five of them, of whom the Chief Justice of *Ontario*, or the Chancellor, or the Chief Justice of the Common Pleas shall be one, are required to make and settle such forms, rules and regulations as shall be followed in the proceedings in Chancery. And in *Nova Scotia* an entirely new jurisdiction is given in insolvency to the Probate Courts or judges of probate, which they never in any way before possessed.

And as to banks and banking, 34 Vic., cap. 5., jurisdiction in a summary manner is given to the Superior Courts of Law and Equity to adjudicate as to the parties

1879

VALIN v. LANGLOIS.

legally entitled to shares, and the mode of procedure is there pointed out.

And as to the Public Lands of the Dominion, 35 Vic., cap. 23, a summary remedy is given to a judge of any court, having competent jurisdiction in cases respecting real estate, to grant an order which shall have the force of a writ of *Hab. Fac. Pos.*, upon proof to his satisfaction that land forfeited should properly revert to the Crown, to deliver up the same, &c., and the mode of procedure is provided by the Act.

37 Vic., cap. 45, Inspection of Staple Articles, as to actions or suits against any person for anything done in pursuance of this Act, limitations and restrictions are imposed and directions given as to procedure before and at trial and on giving judgment.

I do not, of course, put forward this legislation as in itself in any way determining, or even as confirmatory of the right of the Dominion Parliament so to legislate, for it is too clear that if they do not possess the legislative power, neither the exercise nor the continued exercise of a power not belonging to them could confer it or make their legislation binding. But I put forward these Acts as illustrative of the powerlessness, or perhaps I should rather say helplessness, of the Dominion Parliament, if they have not the right to legislate without control in the most full and ample manner over all matters specially or generally confided to them by the Imperial Parliament, and over which all must admit they have sole control, without being met by so effectual an obstruction, in giving effect to such legislation, as by closing the Queen's Courts against the administration of laws so enacted by and under the authority of the Parliament of *Great Britain*, by virtue of which the Dominion and Provincial constitutions now exist, and also as illustrative of the utter want in the Dominion, if the Dominion Parliament does not

possess it, of any legislative power to meet emergencies requiring legislative control in matters so unequivocally affecting the peace, good order and government of *Canada*, so clearly taken from the Provincial Assemblies and confided to the Parliament and Government of *Canada*.

But I have had no great difficulty in arriving at the conclusion that this Act substantially establishes, as the Act of 1873 did, as respects elections, a Dominion Court, though it utilizes for that purpose the Provincial Courts and their Judges. In considering the *British North America Act*, in the view just presented, as also the Dominion Act on the point to be now discussed, the following extract from the judgment of *Turner*, L. J., in *Hawkins* vs *Gathercole* (1) may not be inapplicable here. He says:

> But, in construing Acts of Parliament, the words which are used are not alone to be regarded; regard must also be had to the intent and meaning of the legislature. The rule on this subject is well expressed in the case of *Stradling* vs. *Morgan* in *Plowden's* Reports, in which case it is said at page 204: "The judges of the law in all times past have so far pursued the intent of the makers of statutes, that they have expounded Acts which were general in words to be but particular where the intent was particular." And, after referring to several cases, the report contains the following remarkable passage, at page 205: "From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter, they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected, sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the legislature, which they

(1) 6 De G., M. & G. at p. 20.

1879

VALIN v. LANGLOIS.

have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion."

The same doctrine is to be found in *Eyston* vs. *Studd* and the note appended to it, also in *Plowden* (1), and many other cases. The passages to which I have referred, I have selected as containing the best summary with which I am acquainted of the law upon this subject. In determining the question before us, we have, therefore, to consider, not merely the words of the Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign meaning and extraneous circumstances, so far as they can justly be considered to throw light upon the subject.

In seeking to discover the intention of the Dominion Parliament, if Parliament had no power to add to the jurisdiction of a Provincial Court, or in any way interfere with its procedure, one is struck at the outset with the strong, if not irresistible, inference that this raises, that the intentions of Parliament must have been to establish an independent tribunal in the nature of a Dominion Court, and not to add to the jurisdiction, or affect the procedure, of Provincial Courts, because, it must, I think, be assumed that Parliament intended to do what they have a right to do to legislate legally and effectively, rather than that they intended to do what they had no right to do, and which, if they did do, must necessarily be void and of no effect; and having established a Court by the Act of 1873, which it seems to be admitted is *intra vires*, is it reasonable to suppose that Parliament would repeal a valid enactment, and for the accomplishment of substantially the same object, substitute in its place a law beyond their powers to enact, and which, therefore, could be nothing but a dead letter on the Statute Book. But, as for the reasons I have stated, I think, even if a distinct and independent court is not created, the Act is not beyond the power of Parliament, I cannot invoke

(1.) Pp. 459, 465.

this inference, as it appears to me those holding the contrary opinion might and should do.

But, independent of all this, the Act seems to contain within itself everything necessary to constitute a court.

The jurisdiction is special and peculiar, distinct from, and independent of, any power or authority with which any of the courts, or the judges referred to in it, were previously clothed. The act conferring this jurisdiction provides all necessary materials for the full and complete exercise of such jurisdiction in a very special manner, wholly independent of, and distinct from, and at variance with, the exercise of the ordinary jurisdiction and procedure of the courts.

The rights which are to be determined through the instrumentality of this new jurisdiction are political, rather than civil rights, within the usual meaning of that term, or within the meaning of that term as used in the *British North America Act*, which, as I have said, applies, in my opinion, to mere limited civil rights, and thus we find them treated in the case of *Théberge vs. Landry*(1), which was an application to the Privy Council for special leave to appeal from the decision of the Superior Court of *Quebec*, under the Controverted Election Act, 1875, declaring an election void, which was refused.

The Lord Chancellor in that case speaks of the *Quebec* Controverted Election Acts thus:

> These two Acts of Parliament, the Acts of 1872-75, are Acts peculiar in their character. They are not acts constituting or providing for the decision of mere ordinary civil rights, they are acts creating an entirely new, and up to that time unknown, jurisdiction in a particular court of the colony, for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that court that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly, of deciding election petitions, and determining the *status* of those who claimed to be Members of the Legislative

(1) L. R. 2 App. cas. 102.

1879

VALIN
v.
LANGLOIS.

Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive and enable the constitution of the Legislative Assembly to be distinctly and speedily known.

Now, the subject matter, as has been said, of the legislation is extremely peculiar. It concerns the rights and the privileges of the electors, and of the Legislative Assembly, to which they elect Members. Those rights and privileges have always, in every colony, following the example of the Mother Country, been jealously maintained and guarded by the Legislative Assembly; above all, they have been looked upon as rights and privileges which pertain to the Legislative Assembly in complete independence of the Crown, so far as they properly exist, and it would be a result somewhat surprising, and hardly in consonance with the general scheme of the legislation, if, with regard to rights and privileges of this kind, it were to be found that in the last resort the determination of them no longer belonged to the Legislative Assembly, no longer belonged to the Superior Court, which the Legislative Assembly had put in its place, but belonged to the Crown in Council with the advice of the advisers of the Crown at home, to be determined without reference either to the judgment of the Legislative Assembly, or of that court which the Legislative Assembly had substituted in its place.

The object of the Act of 1873 and that of 1874 was the same, the recitals in both are precisely alike, and the provisions are in many respects substantially the same. That object was to establish and substitute entirely new tribunals for the trial of Election Petitions, in lieu of the committees theretofore dealing with such matters, and both Acts alike contained all provisions necessary, not only to give such new tribunals full jurisdiction, but also all necessary and suitable provisions to enable them, and the judges thereof, effectually to exercise such jurisdiction, not only with reference to the principles, but also to the rules and practice by which they should be governed and act in dealing with election petitions. The object of the two Acts being then precisely the same, the accomplishment of the desired result being by instrumentalities substantially

much the same, if, as I understand it is, generally conceded, by those that hold the Act of 1874 *ultra vires*, that the Act of 1873 established an independent Dominion Court, and was within the power of the Dominion Parliament, I am somewhat at a loss to understand how it can be said that the tribunals established by the Act of 1874 are not equally within the power of the Dominion Parliament.

The judges cannot sit in controverted election matters under the general jurisdiction of their respective courts, for those courts have no jurisdiction in such cases, and therefore, in discharging the duties imposed by this Act, they do not, and cannot do so as judges of the respective courts to which they belong, but they act as Election Judges appointed by and under the Act, outside of and distinct from the jurisdiction they exercise in their respective Provincial Courts, which is left untouched by this Act.

Without relying too much on the Statute of 1873, which, though a repealed statute, being *in pari materiâ* with that of 1874, might properly be referred to for the purpose of construing the latter (1), I think a careful and critical examination of the Act of 1874 will exhibit an evident intention that, as the first did, so does the last establish an independent Dominion Election Court.

This is more especially noticeable with reference to the enactments under the headings "interpretation

(1) See *Exparte Copeland*, 2 De G. M. & G. 920, where Lord Justice *Knight Bruce* says: "Although it has been repealed, still, upon a question of construction arising upon a subsequent statute on the same branch of the law, it may be legitimate to refer to the former Act. Lord *Mansfield*, in the case of *The King* v. *Loxdale* thus lays down the rules. 'Where there are different statutes *in pari materiâ*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.'" 1 Burr. 44.

1879

VALIN v. LANGLOIS.

"clauses," "procedure," "jurisdiction and rules of court," "reception and jurisdiction of the judge," "witnesses," and the provision as to who may practice as agent or attorney, or as counsel in such courts in the case of such petitions, and all matters relating thereto before the court or judge. I will only notice more particularly some of them. 1st. The power given to make rules. It provides that the judges of the several courts in each Province, respectively, or a majority, which, in *Ontario*, would include the judges of the Court of Error and Appeal, Queen's Bench, Common Pleas and Court of Chancery, shall make such rules, and until such rules are made, "the principles, practice and rules on which "petitions touching the election of Members of the "House of Commons in *England* are, at the passing "of this Act, dealt with, shall be observed, &c." 2nd. As to the reception, expenses and jurisdiction of the judge. The judge is to be received not as a judge of the Superior Court in that character, but as a judge of the Election Court, in like manner as if he were about to hold a sitting at *nisi prius*, or a sitting of the Provincial Court of which he is a member, showing that the Legislature did not contemplate that he was then actually about to sit as a member of the Provincial Court, but as being about to try an election petition, and when about to do this he is to be treated as if he were about to hold a sitting of the Provincial Court of which he is a member, and when his powers in such a trial, and in other proceedings under this Act, are defined, he is not treated simply as a judge of one of the Superior Courts upon whom, as such, further jurisdiction is conferred, but similar powers, as such judge, are given him in the court held by him, and that court so held by him is declared to be a Court of Record, indicating, I think, very clearly, that the court was treated by the Legislature as distinct from a Provincial Court, and required this

1879

VALIN v. LANGLOIS.

statutory declaration to make it a Court of Record, and that the judge was not to be considered as then acting as a judge of a Provincial Court, nor the trial as a trial in such a court. The words of the clause are these (1):

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, jurisdiction and authority as a judge of one of the Superior Courts of Law or Equity for the Province in which such election was held, sitting in term, or presiding at the trial of an ordinary civil suit, and the Court held by him for such trial shall be a Court of Record.

So, in like manner, are the witnesses treated as being subpœnaed, sworn and treated, not as being actually within the jurisdiction of the Provincial Courts, but section 49 declares that they

Shall be subpœnaed and sworn in the same manner, as nearly as circumstances will admit, as in cases within the jurisdiction of the Superior Courts of Law or Equity in the same Province; and shall be subject to the same penalties for perjury.

So, again, in the provision made for regulating the persons entitled to practice as attorneys or barristers before the tribunal thus established, such tribunal is very clearly distinguished from the Provincial Courts The clause is this (2):

Any person who, according to the law of the Province in which the petition is to be tried, is entitled to practice as an attorney at law or Solicitor, before the Superior Courts of such Province, and who is not a Member of the House of Commons, may practice as attorney or agent, and any person, who, according to such law, is entitled to practice as a barrister at law, or advocate, before such Courts, and who is not a member of the House of Commons, may practice as Counsel, in the case of such petition, and all matters relating thereto, before the Court or Judge in such Province.

Reading these special provisions in connection with the Act of 1873, and what has been said of the Act generally, I think it is not arriving at a forced or unnatural conclusion to say that that Parliament intended

(1) Sec. 48. (2) Sec. 67.

1879

VALIN v. LANGLOIS.

to establish Dominion Tribunals exceptional in their jurisdiction, perfect in their procedure, and with all materials for exercising such jurisdiction, and having nothing in common with the Provincial Courts; that these judges and courts were merely utilized outside their respective jurisdictions for giving full effect to these statutory tribunals to deal with this purely Dominion matter.

An objection has been suggested by a learned judge, for whose opinion I have the very highest respect, and which has been treated as of much force by another learned judge of a different Province, and on that account I will notice it. It is said that, if this is a court distinct from the courts of which the judges are primarily members, the judges have never been appointed thereto by the Crown, nor sworn as judges thereof, and therefore they are not judges of this new tribunal, if, as such, it exists. But, in my humble opinion, there is no force in this objection. The judges require no new appointment from the Crown, they are Statutory Judges in Controverted Election matters by virtue of an express enactment by competent legislative authority. The statute make the judges for the time being of the Provincial Courts judges of these peculiar and special courts. The Crown has assented to that statute, therefore they are judges by virtue of the law of the Dominion, and with the Royal sanction and approval. As to their not being sworn, the statute has not provided they should be sworn. If, being sworn judges already, the Legislature was willing to entrust them with the power conferred by this Act, without requiring them to be sworn anew, how does this invalidate the Act, and how can the judges refuse to discharge the duties thus by law imposed on them, because, it may be, the Parliament might, or ought to have gone further and required the judges to be

specially sworn faithfully to discharge these special duties. Under the law of 1873, the judges in all the Provinces acted in what, it is admitted, were new Dominion Courts, without being specially appointed or sworn, the statute not requiring either, and I have yet to learn that their proceedings on that account ever have been or ever could be questioned.

As, then, I can see no reasons why the Dominion Parliament should not delegate to the Judges of the several Provinces, individually, or collectively, or both, whom they appoint and pay, and can by address remove, power to determine controverted elections, the doing of which, not being inconsistent, or in any way in conflict with their duties as judges of their respective courts, but, on the contrary, as shown by the present legislation of all the Provinces, in reference to controverted elections in the Local Legislatures, in so acting they are most suitable and proper tribunals, and as the Imperial Parliament has left it to the Parliament of *Canada* to provide for the trial of controverted elections and proceedings incident thereto, and they have discharged this duty by the Statute of 1874, utilizing existing judicial officers and established courts, by engrafting on, or establishing independent of, those courts throughout their respective Provinces tribunals eminently qualified to discharge the important duties assigned to them, they have not, in so doing, in my opinion, in any particular invaded the rights of the Local Legislatures, or brought the new jurisdiction, or the procedure under it, in any way in conflict with the jurisdiction or procedure of any of the courts of the Provinces; and therefore the Dominion Parliament, in enacting the Act of 1874, have not, in my opinion, exceeded the express power conferred on them to provide for the trial of controverted elections and proceedings incident thereto; and, therefore, I think this appeal must

1879

VALIN v. LANGLOIS.

be dismissed with costs, and the case remitted to the court below, to be proceeded with according to the due course of law.

FOURNIER, J:

L'unique question soumise par le présent appel est de savoir, si le parlement fédéral avait le pouvoir de passer l'acte des élections contestées de 1874.

Cette question dont on ne peut exagérer l'importance a été très savamment discutée et décidée en sens inverse par les différentes cours provinciales devant lesquelles elle a été portée.

Les raisons données de part et d'autre sont exposées avec les plus grands développements, et sont certainement dignes de toute l'attention possible ; mais après la revue si complète qui en a été faite par l'honorable juge en chef, il n'y aurait aucune utilité à les résumer ici de nouveau. Pour cette raison je me contenterai de donner succinctement les principaux motifs qui m'ont fait adopter la même conclusion que mes honorables collègues.

C'est en 1873, que le Parlement fédéral exerçant, pour la première fois, le pouvoir qui lui est conféré par la section 41me de l'acte de l'*Amériqne Britannique du Nord*, de législater sur le sujet des élections contestées a adopté et consacré par le statut 36 Vict., ch. 28, le principe de référer au pouvoir judiciaire la décision des élections contestées qui, jusqu'alors, avaient été décidées par les chambres ou leurs comités à l'exclusion des tribunaux ordinaires. La loi dont la légalité est attaquée en cette cause a révoqué le premier statut, en conservant toutefois le principe de la référence au pouvoir judiciaire ainsi qu'un grand nombre de ses autres dispositions.

Plusieurs des honorables juges appelés à décider cette

question sont entrés dans un examen critique très détaillé des principales dispositions de ces deux lois, afin de prouver que la première (celle de 1873) était constitutionnelle en créant une cour spéciale d'élection, en vertu de l'article 101 de l'acte de l'*Amérique Britannique du Nord*, tandis que la seconde est inconstitutionnelle en assumant le pouvoir d'étendre la juridiction de certaines cours provinciales à la décision des élections contestées,—sujet qui n'était pas auparavant de leur compétence.

Je ne crois pas devoir entrer dans l'examen des raisons invoquées pour établir cette différence ; non plus que dans l'examen de cette autre question de savoir, si l'acte de 1874 ne constitue pas, comme celui de 1873, une cour fédérale, et que partant la loi, se trouvant dans les limites du pouvoir accordé au Parlement Fédéral par l'article 101, de créer des tribunaux additionnels, cette loi doit en conséquence être déclarée constitutionnelle.

Il me suffira de dire que, si la proposition que le gouvernement fédéral ne peut imposer de nouveaux devoirs aux cours et aux juges existant lors de la Confédération est correcte, ces deux actes sont exposés aux mêmes objections, car dans l'un et l'autre les tribunaux provinciaux et le personnel qui les compose sont soumis à l'accomplissement de nouveaux devoirs. Il importe peu pour la décision de la véritable contestation soulevée dans ce débat, que les nouveaux devoirs judiciaires soient imposés aux juges et aux cours dans un cas, comme par l'acte de 1873, sous la dénomination de cour d'élection ; ou qu'ils le soient dans l'autre, comme par l'acte de 1874, aux cours provinciales et aux juges sous les dénominations par lesquelles ils sont désignés dans les lois provinciales qui leur ont donné l'existence. Au fond la question est toujours la même, car que l'on prenne les juges collectivement comme cour, ou en leur qualité individuelle de membres de la cour, il faut tou-

1879
VALIN
v.
LANGLOIS.

jours en venir à la question de savoir quel pouvoir a le parlement fédéral de leur imposer de nouveaux devoirs.

Aussi la question se réduit-elle pour moi, simplement à savoir si le parlement fédéral a le pouvoir qui lui a été si emphatiquement et si énergiquement nié par certains honorables juges dont je respecte infiniment l'opinion, d'imposer de nouveaux devoirs aux juges et aux tribunaux provinciaux et même d'étendre leur juridiction s'il en est besoin. Je regrette d'avoir à dire que j'entretiens sur ce sujet une opinion diamétralement opposée à la leur.

Si je n'hésite pas à faire cette déclaration, c'est qu'un nombre encore plus considérable d'honorables juges ont adopté cette manière de voir qui, du reste, me semble d'accord avec l'esprit et la lettre de la constitution

Si la proposition que j'émets plus haut n'était pas correcte, il s'ensuivrait nécessairement que les auteurs de la Confédération auraient omis de créer, pour l'exécution des lois fédérales, un pouvoir judiciaire co-existant avec le nouvel ordre de choses.

Cependant, comme nous l'indique le préambule de l'acte de l'*Amérique Britannique du Nord*, leur premier devoir était de doter l'union fédérale des provinces d'*une constitution reposant sur les mêmes principes que celle du Royaume-Uni*. Un des éléments essentiels de la constitution britannique, comme de tout gouvernement régulier, c'est la création d'un pouvoir judiciaire qui forme, avec les pouvoirs législatif et exécutif, les trois éléments indispensables de tout gouvernement. Ont-ils commis une faute d'une aussi haute gravité, pouvant avoir de si funestes conséquences sur leur œuvre, que celle de n'avoir pas pensé à la création d'un pouvoir judiciaire ? D'après certaines opinions, cette étrange omission aurait été faite, et il y aurait eu ainsi entre le 1er juillet 1867, époque à laquelle l'acte de l'*Amérique du Nord* est entré

en force, et la réunion du parlement fédéral en novembre 1867 un interrègne de quatre mois pendant lequel il ne se serait pas trouvé un seul tribunal compétent pour faire exécuter les lois fédérales.

Cependant, dès l'instant que la nouvelle constitution est entrée en force, le gouvernement fédéral devenait propriétaire de toutes les propriétés publiques énumérées dans la cédule 3 de l'acte de l'*Amérique Britannique du Nord*, en même temps qu'il était chargé par la 122e section de l'exécution des lois de douanes, d'accise et par la 41e sec. des lois électorales qui demeuraient en force.

Il se serait donc, dans ce cas, trouvé dans l'impossibilité soit de protéger ses propriétés, soit de collecter les revenus, l'accès aux tribunaux provinciaux lui étant interdit.

Mais on répond à cet argument en alléguant qu'une aussi grande faute n'a pas été commise, que bien au contraire, par l'acticle 101, le gouvernement du Canada est investi du pouvoir de créer une cour d'appel et des tribunaux additionnels pour la meilleure administration de ses lois, que des pouvoirs suffisants sous ce rapport lui ont été donnés précisément parce que le pouvoir exclusif d'organiser des tribunaux pour les provinces était réservé aux législatures,—qu'ainsi les deux gouvernements ont chacun leurs attributions particulières et exclusives pour la création de tribunaux. L'article 101 ne justifie pas cette conclusion, il n'établit pas dans le présent un pouvoir judiciaire—il ne donne que la faculté d'établir, suivant les besoins et les circonstances, une cour d'appel et des tribunaux *additionnels* pour la *meilleure administration* de ses lois. D'après les termes de cette section il en existait donc déjà pour l'exécution des lois fédérales, puisque cette faculté n'est donnée que pour être exercée lorsque *l'occasion le requerra*, comme dit

1879
VALIN
v.
LANGLOIS.

l'article, c'est-à-dire dans le cas ou les tribunaux existant deviendraient, pour une raison ou pour une autre, incapables de faire exécuter les lois fédérales. Si cette section n'admettait pas l'existence d'un pouvoir judiciaire fédéral, elle eut été autrement rédigée ; il était aussi facile de décréter de suite l'existence d'une cour d'appel ou de tout autre tribunal, que d'en permettre la création dans l'avenir. Si la chose n'a pas été faite c'est sans doute parceque on reconnaissait que le pouvoir judiciaire dont on conservait l'existence par la section 129 pourrait encore suffire aux besoins du pays pour longtemps, et on laissait prudemment à l'avenir le soin d'exercer le pouvoir de créer de nouveaux tribunaux suivant les circonstances. Ce n'est certainement pas sur la section 101, qui n'accorde qu'un pouvoir facultatif, qu'on peut s'appuyer pour prouver que les auteurs de la Confédération ont crée un pouvoir judiciaire qui pouvait répondre aux besoins immédiats de la Confédération. C'est par d'autres sections que l'organisation judiciaire a été effectivement établie et complétée, de manière à entrer en existence en même temps que l'acte constitutionnel lui-même.

Cette organisation résulte de diverses dispositions de l'acte de l'A. B. N. auxquelles je ferai allusion après avoir mentionné celles sur lesquelles on s'appuie le plus fortement pour en contester l'existence.

Les adversaires de la constitutionalité de la loi en question fondent leurs principaux arguments sur les sous-ss. 13 et 14 de la s. 92 attribuant exclusivement aux législatures la juridiction sur " La propriété et les " droits civils dans la province, et l'administration de la " justice dans la province y compris la création, le main- " tien et l'organisation de tribunaux de justice pour la " province, ayant juridiction civile et criminelle, y com- " pris la procédure en matières civiles dans ces tribu- " naux."

J'admets sans hésitation le contrôle exclusif des législatures sur ces deux catégories de sujets. A elles seules appartient sans doute le droit de régler les droits civils *dans la province*, comme l'organisation de tribunaux de justice *pour la province ;* et le parlement fédéral commettrait certainement un excès de pouvoir s'il législatait sur ces matières *pour la province.* Mais s'en suit-il nécessairement que ce dernier n'a aucune juridiction sur les droits civils ne concernant que la Puissance en général, de même que sur l'organisation et le maintien des tribunaux en autant que la Puissance y est intéressée. Y a-t-il pour celle-ci dans les deux paragraphes une exclusion absolue de toute juridiction ? Je ne le pense pas. Il me semble, au contraire, que les termes mêmes s'opposent à une interprétation aussi restrictive. En effet, les mots *pour la province* ajoutés à la suite des pouvoirs donnés sur les droits civils et l'organisation des tribunaux, restreignent bien pour les législatures, l'exercice de ces pouvoirs aux limites de la province, mais ne comportent pas l'exclusion de l'exercice par le parlement fédéral d'une juridiction semblable sur les diverses catégories de droits civils qui lui sont attribués. Rien n'est plus clair ni plus certain que les législatures n'ont pas une juridiction complète sur les droits civils. Si tel était le cas, les termes *droits civils*, comprenant par opposition au droit criminel tous les droits dont un sujet peut jouir, il s'en suivrait que les provinces auraient une juridiction illimitée sur tout ce qui ne dépendrait pas du droit criminel. La distinction que l'on a voulu faire entre les droits civils et les droits politiques n'est fondée sur aucune autorité positive. Les termes *droits politiques* n'ont pas dans le droit anglais une signification consacrée par la loi ou par les décisions judiciaires. Pour exprimer la même idée Blackstone emploie indifféremment les mots *liberté civile* ou *liberté politique.* Sa sub-division des *droits*

1879

VALIN v. LANGLOIS.

en quatre catégories n'a pas d'autre raison que celle d'en faciliter l'exposition, comme il le dit : " in order to " consider them with any tolerable ease and perspicuity, " it will be necessary to distribute them methodically " under proper heads." La décision du Conseil Privé dans la cause de *Landry vs. Théberge* (1) n'a pas établi non plus, comme on le prétend, une distinction entre les droits civils et les droits politiques. Lord *Cairns* dit, en parlant des deux lois de *Québec* sur les élections contestées, qu'elles n'avaient pas pour objet de pourvoir à la décision de droits civils ordinaires (*of mere ordinary civil rights*) ; et il qualifie aussi cette législation comme extrêmement particulière, (*extremely peculiar*), mais il ne dit pas qu'elle a pour objet de statuer sur les droits politiques comme sujet distinct des droits civils. Il ne fait même pas usage des mots *droits politiques* dans son jugement. Le langage qu'il tient à ce sujet est conforme à ce que dit Blackstone au sujet de sa division des *rights*. Pour achever de démontrer que les termes *droits civils*, dans le paragraphe 13, ne peuvent avoir la signification étendue qu'on veut leur donner, il suffit de rappeler que la banqueroute et la faillite, les brevets d'invention et de découverte, les droits d'auteurs, le mariage et le divorce et beaucoup d'autres sujets qui, sans nul doute, sont compris dans les termes génériques de droits civils, sont cependant exclusivement du ressort du parlement fédéral.

Il serait donc plus correct de dire, que le pouvoir législatif au sujet *des droits civils* a été partagé entre le parlement fédéral et les législatures, que de conclure qu'il est en entier du domaine exclusif de ces dernières. Je ne puis pour ces raisons voir dans le paragraphe 13 d'obstacles à l'exercice de la juridiction assumée par le parlement fédéral.

(1) L. R. 2 App. Cases 268.

Le paragraphe 14 concernant l'organisation des tribunaux et la procédure n'a pas non plus l'effet d'enlever au parlement fédéral toute juridiction sur les tribunaux provinciaux.

L'on a comparé la position des provinces dans la Confédération Canadienne à celle des Etats dans l'Union Américaine, pour en conclure que les provinces ont une indépendance aussi complète que celle des Etats, et que le gouvernement fédéral ne peut exercer aucun pouvoir quelconque sur les tribunaux provinciaux, pas plus que ne pourrait le faire le Congrès aux Etats-Unis à l'égard des tribunaux d'Etats. S'il y a sous beaucoup de rapports analogie entre les deux constitutions, il n'y en a certainement aucune dans le mode adopté pour la distribution du pouvoir législatif. Dans la constitution américaine, on a adopté à cet égard un principe tout à fait opposé à celui qui a été suivi dans l'acte de l'A. B. N.

Les Etats en consentant à entrer dans l'Union Américaine, ont conservé leur position d'Etats souverains et indépendants, sous la déduction seulement des pouvoirs qu'ils ont spécialement délégués au Congrès. On a fait ici précisément l'inverse. Le parlement impérial, qui a organisé l'état de chose actuel, a jugé à propos de ne donner aux provinces que des attributions définies et limitées, laissant au gouvernement fédéral, moins les attributions réservées, l'exercice de tous les pouvoirs de la souveraineté compatibles avec l'état colonial. Ceci est évident d'après la sec. 91.

En effet, à part du pouvoir exclusif sur les sujets mentionnés dans les 29 paragraphes de l'article 91, le gouvernement fédéral est en outre revêtu d'une autorité souveraine sur tout ce qui n'a pas été spécialement abandonné aux législatures. Le commencement de l'article s'exprime ainsi sur ce sujet: "Il sera loisible à "la Reine, de l'avis et du consentement du Sénat et de

1879

VALIN v. LANGLOIS.

"la Chambre des Communes, de faire des lois pour la "paix, l'ordre et le bon gouvernement du Canada, rela- "tivement à toutes les *matières ne tombant* pas dans les "catégories de sujets par le présent acte exclusivement "assignés aux législatures des provinces; mais pour "plus de garantie, sans toutefois restreindre la généralité "des termes ci-haut employés dans cette section, il est "par le présent déclaré que (nonobstant toute disposi- "tion contraire énoncée dans le présent acte) l'autorité "législative exclusive du parlement du Canada s'étend "à toutes les matières tombant dans les catégories de "sujets ci-dessous énumérés." (Suivent les 29 paragraphes énonçant ces divers sujets.)

Il est évident d'après ce texte que les attributions du parlement fédéral sont de deux sortes, les unes définies et énumérées dans les 29 paragraphes, les autres indéfinies et consistant dans le pouvoir de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, et n'ayant pas d'autres limites ou restrictions que celles contenues dans les 16 paragraphes de l'article 92.

Comme il n'était guère possible de faire une énumération complète de tous les pouvoirs et, sans doute, pour parer à de graves inconvénients, on s'est servi dans la rédaction de notre constitution, comme dans celle des Etats-Unis, d'un langage général contenant en principe les pouvoirs conférés, laissant à la législation future la tâche d'en compléter les détails. Pour l'interprétation de cet article on peut faire application des observations suivantes (1):

In the opinion which was delivered, the Court observed that the constitution unavoidably dealt in general language, and did not enter nto a minute specification of powers, or declare the means by which those powers were to be carried into execution. This would have been a perilous and difficult, if not an impracticable task; and the constitution left it to Congress, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model

(1) 1 Kent's Comm: p. 389

the exercise of its powers, as its own wisdom and the public interest would require.

Mais le langage de l'article 91, si général qu'il soit, est amplement suffisant pour conférer le pouvoir qui a été exercé, à moins qu'on ne prouve qu'en cela il a été commis une infraction aux attributions spéciales des provinces.

Mais, bien au contraire, il est admis de toute part que le sujet qui fait la matière de la loi attaquée n'est pas de la compétence des législatures. D'après la nature du sujet, comme d'après la disposition contenue dans la sec. 41, toute juridiction est interdite aux législatures concernant les contestations d'élections fédérales. Ainsi l'argument basé sur le fait que les législatures ont le pouvoir exclusif de régler la procédure ne peut avoir aucune valeur en face de la sec. 41 qui confère spécialement au parlement fédéral le droit non-seulement de statuer sur les contestations d'élections, mais encore celui d'en régler les procédures, *et les procédures y incidentes*, dit cet article. Aucune législature ne pouvant émettre la prétention de régler la procédure à cet égard, il n'y a donc pas eu dans ce cas usurpation de pouvoirs par la loi en question. Ce point me semble si clairement établi par le texte de la section que je ne le crois pas susceptible d'être mis en doute.

Indépendamment de la sec. 91, suffisante suivant moi, pour justifier la passation de la loi attaquée, il y a encore la sec. 129 qui donne en termes formels au gouvernement fédéral les pouvoirs les plus étendus sur les tribunaux en existence, savoir, ceux de les *révoquer*, *abolir* ou *modifier*.

Sec. 129. Sauf toute disposition contraire prescrite par le présent acte, toutes les lois en force en Canada, dans la Nouvelle-Ecosse ou le Nouveau-Brunswick, lors de l'union, tous les tribunaux de juridiction civile et criminelle, toutes les commissions, pouvoirs et autorités ayant force légale, et tous les officiers judiciaires, administratifs et ministériels en existence dans les provinces à l'époque de l'union

1879

VALIN
v.
LANGLOIS.

continueront d'exister dans les provinces d'Ontario, de Québec, de la Nouvelle-Ecosse et du Nouveau-Brunswick respectivement, comme si l'union n'avait pas eu lieu ; mais ils pourront, néanmoins, (sauf les cas prévus par des actes du parlement de la Grande-Bretagne ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande, être révoqués, abolis ou modifiés par le parlement du Canada, ou par la législature de la province respective, conformément à l'autorité du parlement ou de cette législature, en vertu du présent acte.

Pouvait-on employer un langage plus fort et plus complet pour donner juridiction sur ces tribunaux ? Je ne le pense pas. L'effet de cette section, à laquelle ils doivent leur existence actuelle, est évidemment de les soumettre au pouvoir législatif du gouvernemen- fédéral tout aussi bien, il est vrai, qu'à celui du gout vernement local, et de les rendre de fait, communs à ces deux gouvernements pour l'administration des lois par eux adoptées dans les limites de leurs pouvoirs respectifs.

Puisqu'ils sont sujets à la condition de pouvoir être révoqués, abolis ou modifiés par l'un ou l'autre de ces gouvernements, ces tribunaux ne sont donc pas, comme on l'a affirmé si positivement, assujétis uniquement à l'autorité des législatures locales. Les termes de cette section ne permettent pas de doute sur le pouvoir du parlement fédéral d'imposer de nouveaux devoirs aux juges et aux tribunaux, puisqu'il a le pouvoir de les révoquer, abolir, ou modifier, "*conformément à l'autorité du parlement en vertu du présent acte.*" C'est sans doute à cause du pouvoir ainsi réservé qu'on a attribué au gouvernement fédéral par les sections 96 et 106 la nomination des juges et le paiement de leur salaire, s'ils eussent dû être au service exclusif des gouvernements locaux on aurait laissé à ceux-ci le choix et le paiement du salaire d'officiers auxquels le gouvernement fédéral ne pouvait imposer aucun devoir.

Ainsi chaque fois que le parlement fédéral passe une

loi sur un sujet qui est de sa compétence, imposant aux juges ou aux cours de nouveaux devoirs, il exerce le pouvoir qu'il a par cette section de modifier les tribunaux, et cette loi doit recevoir son exécution tout aussi bien que celles des gouvernements locaux, dont les pouvoirs sur les tribunaux, en vertu de cette section, ne diffèrent point de ceux du parlement, à l'exception seulement que chacun d'eux ne peut les exercer que dans les limites de ses attributions spéciales. Ils sont enfin les tribunaux de Sa Majesté chargés de faire exécuter toutes les lois auxquelles elle a donné sa sanction en vertu de la nouvelle constitution.

La Cour Supérieure de la province de Québec, désignée dans la loi en question comme l'une de celles auxquelles la juridiction contestée est conférée, étant en existence lors de la Confédération est en conséquence devenue comme toutes les autres, sujette à subir les modifications que le gouvernement fédéral pourrait juger convenable de lui imposer. En serait-il de même à l'égard d'une cour créée depuis ? C'est une autre question ; et comme elle ne peut pas être soulevée dans cette cause, je ne crois pas devoir m'en occuper.

Partant du point de vue que j'ai adopté, il ne m'a pas semblé nécessaire non plus de m'occuper de la question, de savoir si, en outre des dispositions de l'acte de l'Amérique Britannique du Nord, les cours de première instance n'ont pas, comme attribution inhérente à leur constitution, une juridiction suffisante pour décider des contestations d'élections dans le cas où le parlement, au lieu d'adopter la loi actuelle, eut simplement renoncé à l'exercice de sa juridiction exclusive sur ce sujet. J'ai limité mes observations à la seule question de savoir s'il n'a pas de fait le pouvoir de conférer cette juridiction aux cours provinciales. Trouvant dans les dispositions de l'acte de l'Amérique Britannique du Nord, citées plus haut, une complète

1879

VALIN v. LANGLOIS.

justification du pouvoir exercé, je n'ai pas cru devoir aller plus loin.

De ce qui précède, je conclus : 1o. que les paragraphes 13 et 14 de la section 92 n'ont pas l'effet d'enlever au parlement fédéral la juridiction qu'il a exercée en adoptant la loi en question ; 2o. que les pouvoirs généraux de la section 91 et ceux de la section 41 sont suffisants pour autoriser cette législation ; 3o. que la section 129 lui donne le droit de faire exécuter par les cours provinciales la loi dont il s'agit, aussi bien que toutes les autres lois fédérales adoptées dans les limites de ses attributions.

[TRANSLATED.]

FOURNIER, J. :—

The sole question submitted by the present appeal is, whether the Federal Parliament had the power to pass the Controverted Elections Act of 1874.

This question, the importance of which it is impossible to exaggerate, has been very learnedly discussed, and decided in different ways by the several Provincial Courts before whom it has been raised.

The reasons given on both sides are set out with the greatest fulness, and are certainly worthy of every possible consideration ; but, after the thorough review of them by the Chief Justice, there would be no advantage in giving another summary of them here. For this reason I shall content myself with giving briefly the principal reasons which have made me adopt the same conclusion as that of my honorable colleagues.

It was in 1873 that the Federal Parliament, exercising, for the first time, the power conferred on it by the 41st section of the *British North America Act* to legislate on the subject of contested elections, adopted and established by Statute 36 Vic., c. 28, the principle of referring to the judicial power the decision of contested elections,

which, until then, had been decided by the Houses of Parliament, or their committees, to the exclusion of the ordinary tribunals. The law, the legality of which is attacked in this case, although it has revoked the first statute, retains the principle of reference to the judicial power, as well as a large number of its other provisions.

Several of the honorable judges called on to decide this question have entered into a very detailed critical examination of the principal provisions of these two laws, in order to prove that the first (that of 1873) was constitutional in creating a special Election Court, in virtue of Article 101 of the *British North America Act*, while the second is unconstitutional, in assuming the power to extend the jurisdiction of certain Provincial Courts to the decision of contested elections, a subject matter with which they were not before competent to deal.

I do not think it necessary to enter into an examination of the reasons brought forward to establish this distinction; nor into an examination of this other question, namely, whether the Act of 1874 did not constitute, as did that of 1873, a Federal Court, and, in consequence thereof, the law being *ultra vires* of the power given to the Federal Parliament by sec. 101, of creating additional tribunals, should be declared constitutional.

It is sufficient for me to say that, if the proposition that the Federal Government cannot impose new duties on the courts and judges existing at the time of Confederation is correct, these two Acts are open to the same objections, for in both, the provincial tribunals and the *personnel* which compose them, have the performance of new duties devolved on them. It matters little, for the decision of the real issue raised in this discussion, whether the new judicial duties have been

1879
VALIN
v.
LANGLOIS.

imposed on judges and on courts in one case, as has been done by the Act of 1873, under the denomination of an Election Court, or whether, in the other case, such duties have been imposed, as has been done by the Act of 1874, on provincial courts and on judges under the names by which they are designated in the provincial laws which have given them existence. The question, nevertheless, remains the same, for whether the judges are taken collectively as a court, or in their quality of individual members of the court, it always comes back to the question as to whether the Federal Parliament had the power to impose upon them new duties.

Thus, the question seems to me to be reduced simply to one whether the Federal Parliament has the power, which has been so emphatically and energetically denied to it by some honorable judges, whose opinion I greatly respect, to impose new duties on provincial judges and tribunals, and even to extend their jurisdiction, if necessary. I regret to be obliged to say that on this subject I entertain an opinion diametrically opposed to theirs.

If I do not hesitate to make this declaration it is because a still larger number of honorable judges have adopted this view, which, besides, seems to me in accord with the spirit and letter of the constitution.

If the proposition which I have above laid down be not correct, it necessarily follows that the authors of Confederation have omitted to create, for the execution of federal laws, a judicial power co-existing with the new order of things.

The preamble of the *British North America Act* indicates, however, that their first duty was to endow the federal union of the Provinces with a constitution based on the same principles as that of the United Kingdom. One of the essential elements of the British Constitution, as of every regular government, is the

creation of a judicial power, such power and the legislative and executive powers forming the three indispensable elements of every government. Have they committed a mistake of such a very grave nature as never to have thought of the creation of a judicial power? In the opinion of some, this strange omission was made, and thus there existed between the 1st of July, 1867, when the *British North America Act* came into force, and the meeting of the Federal Parliament, in November, 1867, an interregnum of four months, during which time there could not be found a single tribunal competent to execute the federal laws.

Notwithstanding this, from the moment the new constitution came into force, the Federal Government became proprietor of all the public properties enumerated in Schedule 3 of the *British North America Act*, at the same time that it became charged with the execution of the laws relating to customs and excise, and, by the 41st section, of the electoral laws which remained in force. It would have found itself, therefore, during such interregnum, under the impossibility either of protecting its properties or of collecting its revenues, recourse to the Provincial Courts being forbidden.

But this argument is answered by alleging that such a great mistake has not been committed; that, on the contrary, by section 101, the Government of *Canada* is invested with the power of creating a Court of Appeal and additional tribunals for the better administration of its laws; that ample powers in this respect were given to it, precisely because the exclusive power of organizing tribunals for the Provinces was reserved to the Legislatures, and that thus the two governments have each their peculiar and exclusive rights of creating tribunals.

In my opinion section 101 does not justify this conclusion. It does not in terms establish a judicial power;

1879

VALIN v. LANGLOIS.

it only gives the right to establish, as circumstances and requirements might demand, a Court of Appeal and *additional* tribunals for the *better execution* of the laws. According to the terms of this section there were tribunals already existing for the execution of federal laws, since this power is given to be exercised only "from time to time," in the words of the section, that is to say, in the event of the existing tribunals becoming, for any reason, incapable of executing the federal laws. If this section was not intended to recognize the existence of a federal judicial power, it would have been differently drawn—it would have been just as easy to have directed the immediate creation of a court of appeal, or of any other tribunal, as to have allowed their creation at some future time. If this was not done, it was, doubtless, because the judicial power, whose existence was preserved by sec. 129, was recognized as being still sufficient for the requirements of the country for a long time, and the power to create new tribunals was prudently left to be exercised in the future according to circumstances. Certainly sec. 101, which gives only an optional power, cannot be relied on to prove that the authors of Confederation created a judicial power suitable to the immediate needs of Confederation. It is by other sections that a judicial organization has been effectively established and completed, in such a manner as to come into existence at the same time as the constitutional act itself.

This organization depends upon various provisions of the *British North America Act*, to which I shall allude, after having mentioned those on which reliance is most strongly placed for contesting its existence.

The opponents of the constitutionality of the law in question found their principal arguments on sub-sections 13 and 14 of section 92, giving to the legislatures exclusive jurisdiction over "property and civil rights in the

province," and "the administration of justice in the province," including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.

I admit, without hesitation, the exclusive control of the legislatures over these two classes of subjects. To them alone belongs, without doubt, the right of regulating civil rights *in the province*, as well as the organization of courts of justice *for the province*, and the Federal Parliament would certainly exceed its power if it were to legislate on these matters for the province. But does it necessarily follow that the latter has no jurisdiction over civil rights which concern only the Dominion in general, as well as over the organization and maintenance of courts in so far as the Dominion is interested? Do these two paragraphs contain an absolute exclusion of all jurisdiction in the Dominion Parliament? I do not think so. It seems to me, on the contrary, that these very terms are opposed to an interpretation so restricted. In fact, the words "in the province," following the enumeration of the powers given over civil rights, and the organization of courts, effectually confine the exercise of these powers to the limits of the Province, but do not go so far as to exclude the exercise by the Federal Parliament of a similar jurisdiction over the different classes of civil rights which are confided to it. Nothing is clearer nor more certain than that the legislatures have not a complete jurisdiction over civil rights. If such were the case the term "civil rights," comprehending, in opposition to the criminal law (*droit criminel*), all the rights which a subject can enjoy, it would follow that the provinces would have an unlimited jurisdiction over everything not belonging to the criminal law. The distinction which some have wished to make between civil rights

1879

VALIN v. LANGLOIS.

and political rights is not founded on any positive authority. The term "political rights" has not in English jurisprudence (*droit anglais*) a technical meaning established either by law or by judicial decisions. To express the same idea, *Blackstone* uses, indifferently, the words "civil liberty" or "political liberty." His subdivision of rights into four classes was for no other reason than to facilitate the discussion of them; as he puts it: "in order to consider them with any tolerable ease and perspecuity it will be necessary to distribute them methodically under proper heads." Neither has the decision of the Privy Council in the cause of *Landry v. Théberge* (1) established, as is pretended, a distinction between civil rights and political rights. Lord *Cairns* says, in speaking of the two laws of *Quebec*, relating to contested elections, that their object was not to provide for the decision of "mere ordinary civil rights," and he describes also this legislation as "extremely peculiar," but he does not say that its object was to legislate on political rights as a subject distinct from civil rights. He does not even make use of the words "political rights" in his judgment. The language which he makes use of on the subject is in conformity with what *Blackstone* says on the subject of the division of rights. To show conclusively that the term "civil rights," in sub-section 13, cannot have the extensive meaning which it is desired to give it, it is sufficient to recall to mind that bankruptcy and insolvency, patents of invention and discovery, the rights of authors, marriage and divorce, and many other subjects, which, without any doubt, are comprised in the general term "civil rights," are, notwithstanding, exclusively within the jurisdiction of the Federal Parliament.

It would, therefore, be more correct to say that the legislative power over the subject of "civil rights" has

(1) L.R. 2 App. cases 268.

been divided between the Federal Parliament and the legislatures, than to conclude that it is wholly within the exclusive domain of the latter. I cannot, for these reasons, see in sub-section 13, obstacles to the exercise of the jurisdiction assumed by the Federal Parliament.

Nor has sub-section 14, concerning the organization of courts and procedure, the effect of depriving the Federal Parliament of all jurisdiction over provincial Courts.

The position of the provinces in the Canadian Confederation has been compared with that of the *United States* in the American Union, in order to draw therefrom the conclusion that the provinces have an independence as complete as that of the *States*, and that the Federal Government cannot exercise any right whatever over Provincial Courts, any more than could the Congress of the *United States*, with respect to the courts of the *States*. If there be, in many respects, an analogy between the two countries, there is certainly none whatever in the mode adopted for the distribution of the legislative power. In the American Constitution a principle altogether opposed to that which has been followed in the *British North America Act* has been adopted. The *States*, in consenting to enter the American Union, preserved their position of sovereign and independent States, under the limitation only of the powers specially delegated to Congress. Here precisely the reverse has been done. The Imperial Parliament, which has created the existing state of things, has judged it right to give to the provinces only defined and limited powers, leaving to the Federal Government, after deducting the powers thus reserved, the exercise of all the powers of sovereignty compatible with the Colonial state. This is evident from section 91. In fact, besides the exclusive power over the subjects mentioned in the 29th sub-section of section 91, the Federal

1879

VALIN v. LANGLOIS.

Government is, in addition, invested with a sovereign authority over everything which has not been specially ceded to the legislatures. The beginning of the section expresses itself thus on the subject:

> It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of *Canada*, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared, that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of *Canada* extends to all matters coming within the classes of subjects next hereinafter enumerated.

(Then follow the 29 sub-sections setting forth the different subjects.)

It is evident, according to this section, that the powers of the Federal Parliament are of two kinds, the one defined and enumerated in the 29 sub-sections, the other undefined and consisting of the power to make laws for the peace, order and good government of *Canada*, and having no other limits or restrictions than those contained in the 16 sub-sections of section 92.

As it was scarcely possible to make a complete enumeration of all the powers, and, no doubt, to avoid grave inconveniences, use was made in drawing our Constitution, as in that of the *United States*, of general language, containing in principle the conferred powers, leaving to future legislation the task of completing the details. To interpret this section the following observations can be applied:—

> In the opinion which was delivered, the court observed that the Constitution unavoidably dealt in general language, and did not enter into a minute specification of powers, or declare the means by which those powers were to be carried into execution. This would have been a perilous and difficult, if not an impracticable task; and the Constitution left it to Congress, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the

exercise of its powers as its own wisdom and the public interest would require (1).

But the language of section 91, general though it may be, is amply sufficient to confer the power which has been exercised; at any rate, in the absence of proof that in doing so there has been committed an infringement on the special powers of the provinces. But, on the contrary, it is admitted on all sides that the subject matter of the law which is attacked is not within the jurisdiction of the legislatures. From the nature of the subject, as well as by the provisions of sec. 41, all jurisdiction over contested federal elections is denied to the legislatures. Thus the argument based on the fact that the legislatures have the exclusive power of regulating procedure can have no weight in face of sec. 41, which confers specially on the Federal Parliament the right not only to legislate respecting contested elections, but, in addition, that of regulating their procedure, "and proceedings incident thereto," says the section. No legislature being able to set up the pretension of a right to regulate the procedure with respect to this matter, three is then in this case no usurpation of powers by the law in question. This point seems to me so clearly established by the wording of the section that I do not believe it susceptible of doubt.

Independently of section 41, sufficient, in my opinion, to justify the passing of the law which has been called in question, there is, besides, section 129, which gives in formal terms to the Federal Government the most extensive powers over the courts in existence, namely, those of *repealing*, *abolishing* or *altering* them.

Except as otherwise provided by this Act, all laws in force in *Canada*, *Nova Scotia* or *New Brunswick* at the union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative and minis-

(1) 1 Kent's Com. p. 389.

1879

VALIN v. LANGLOIS.

terial, existing therein at the union, shall continue in *Ontario, Quebec, Nova Scotia and New Brunswick*, respectively, as if the union had not been made; subject, nevertheless, (except with respect to such as are reached by, or exist under Acts of the Parliament of *Great Britain*, or of the Parliament of the United Kingdom of *Great Britain* and *Ireland*) to be repealed, abolished or altered by the Parliament of *Canada*, or by the legislature of the respective Province, according to the authority of the Parliament, or of that legislature under this Act.

Could stronger or fuller language be used to give jurisdiction over these courts? I think not. The effect of this section, to which they owe their very existence, is evidently to place them under the legislative power of the Federal Government as well as, it is true, under that of the Local Government, and to make them, in fact, common to both these governments for the administration of the laws adopted by them within the limits of their respective powers.

Since they are subject to the condition of being repealed, abolished or altered by either of these governments, these courts are not, therefore, as has been asserted so positively, subject solely to the authority of the Local Legislatures. The terms of this section leave no doubt as to the power of the Federal Government to impose new duties on the judges and courts, since it has the power of repealing, abolishing, or altering them "according to the authority of the Parliament..... under this Act." It is, no doubt, on account of this reserved authority that the Federal Government was given by sections 96 and 100 the appointment of the judges, and was charged with the payment of their salaries. If they were to remain under the exclusive control of the Local Legislatures, and not subject to the performance of any duties which might be imposed by the Dominion Parliament, their appointment and the payment of their salary would most likely have been left to the Local Government.

Thus each time the Federal Parliament passes a law on a matter within its jurisdiction, imposing on the judges or on the courts new duties, it exercises the power given it by this section of altering the courts, and this law should be executed as fully as those of the local governments, whose powers over the courts, in virtue of this section, do not differ from those of Parliament, with the sole exception that each of them can exercise these powers only within the limits of its special powers (*attributions spéciales*). The Courts are, in fine, the tribunals of Her Majesty, charged with the execution of all the laws to which she has given her sanction in virtue of the new Constitution.

The Superior Court of the Province of *Quebec*, designated in the law in question as one of those on which the contested jurisdiction is conferred, being in existence at the time of Confederation, became, in consequence, like all the others, liable to undergo the alterations which the Federal Government might think right to impose on it. Would it be the same with respect to a court created since? That is another question, and as it cannot be raised in this cause, I do not think it necessary to consider it. Nor, taking the view which I have adopted, has it seemed to me necessary to consider the question whether, outside of the provisions of the *British North America Act*, the courts of original jurisdiction have not, as an inherent element of their Constitution, sufficient jurisdiction to decide contested elections in the event of Parliament, instead of adopting the existing law, having simply abandoned the exercise of its exclusive jurisdiction over this subject. I have limited my observations to the sole question as to whether it had not, in fact, the power to confer this jurisdiction on provincial courts. Finding in the provisions of the *British North America Act*, above

1879

VALIN v. LANGLOIS.

cited, a complete justification of the power exercised, I have not thought it necessary to go further.

From what precedes, I draw these conclusions: 1st. That paragraphs 13 and 14 of section 92 have not the effect of depriving the Federal Parliament of the jurisdiction which it has exercised in adopting the law in question. 2nd. That the general powers of section 91 and those of section 41 are sufficient to authorize this legislation. 3rd. That section 129 gives it the right to require the provincial courts to execute the law in question, as well as the other federal laws adopted within the limits of its powers.

HENRY, J:

The determination of the issue raised by the preliminary objection in this case, to the authority of the learned judge who presided at the trial of the petition, touching and questioning, as it does, the power of the Parliament of *Canada* to pass the act under which that trial was being had, being most important, demanded and has received my most diligent study and consideration. I have carefully read and weighed all the judgments upon the subject delivered in *Ontario*, *Quebec* and *New Brunswick*, as well as the several statutes bearing upon it, and will endeavor, briefly, to give the conclusion at which I have arrived.

After mature consideration of the legitimate sources from which the power to try the merits of an election petition against the return of a Member of the House of Commons, which is now questioned, is derived, I have arrived at the conclusion that much has been written, many arguments used, positions taken, and theories advanced that are wholly unnecessary.

Arguments have been advanced from premises which do not exist, the determination of which cannot affect

those that do, and upon which latter alone we are bound to decide. Some learned judges contend for the existence of an inherent power in Imperial and Provincial Courts to try such petitions, and that that power always existed though in a latent condition; being controlled in *England* by the assertion of the House of Commons of its exclusive jurisdiction which, by degrees, became universally acknowledged as the law of the land, as being within the law and custom of Parliament; and, in the several Provinces of the Dominion, by the assumption of a similar jurisdiction, and by statutes at different times passed. That, so existing, but its exercise prevented, it would assert itself at any moment when the controlling power was removed by legislative enactment. By other learned judges the correctness of this theory is disputed, and lengthy and exhaustive arguments are advanced to establish the position that such a jurisdiction or power never existed. I do not think the settlement of that controversy at all necessary in the present case. In considering the issue before us we are not driven to draw analogies in regard to the courts in *England*, and those of the several united Provinces, when we have sufficient otherwise upon which to base our judgment. It will be sufficient for us, and I think we are bound, to rest it on the statutes immediately applicable to the issue before us.

We have, in the united Provinces, a written constitution embraced in the Imperial Statute, passed in 1867, for the object of uniting them. That statute contains the germs and distribution of the legislative functions and powers to be exercised in the general Parliament and the Provincial Legislatures, and to it we are irresistibly turned for guidance and direction.

In framing that Act, one of the first considerations would be, and no doubt was, to prevent, if possible,

1879

VALIN v. LANGLOIS.

conflict in legislation, as between the general and local legislatures; but no one can read it without seeing, from the necessarily peculiar distribution of the legislative powers, the difficulty of doing so. The present case is a proof of it, as appears by the antagonistic judgments given in relation to the question at issue. I cannot better exhibit the difficulty just referred to, and the opportunity offered by the necessarily peculiar provisions for the distribution of legislative powers to raise a question of conflict, than by a reference to the matter of "civil rights." I need not define here what may be included by that comprehensive term. It is sufficient for my present purpose to claim that a large portion of the "civil rights" are, legitimately and without question, affected,controlled and guarded by Dominion legislation, which interferes with and excludes local legislation on many branches of "civil rights," although by the distribution of legislative powers "civil rights in the Province" is, by sub.-sec. 14 of section 92, awarded specially to the Local Legislatures.

There is but a small minority of the subjects given expressly to the Dominion Parliament that do not affect "civil rights within the Province," and its whole legislation in respect of them is clearly an authorized invasion of the powers of local legislation conferred by the general term "civil rights in the Province." The whole purview of the act, with a proper consideration of its objects, is evidence of its policy to limit local legislation to those "civil rights in the Province," not included specially or otherwise in the powers given to the Dominion Parliament.

In the construction of one part of the Act, it is not less our duty than our privilege to take into consideration every part of it, and when an apparent conflict is presented, we are bound to give weight to arguments drawn from a due appreciation of the objects which

are apparent on the face of it, and, if possible, so to construe it as to give effect to all its provisions, and not so as to leave, unnecessarily, some of them inoperative.

The opening clause of section 91 of the *British North America Act*, 1867, provides that: "It shall be lawful "for the Queen, by and with the advice and consent of "the Senate and House of Commons, to make laws for the "peace, order and good government of Canada, in rela- "tion to all matters not coming within the classes of "subjects by this Act assigned exclusively to the Legis- "latures of the Provinces." This is followed by a declaration that the annexed statement of powers should not restrict the general provision of the clause.

Had there been no limitation in this clause, the power "to make laws for the peace, order and good govern- "ment of Canada" would have embraced every subject of legislation that could be presented, but there being a limitation, it is necessary to ascertain the nature and extent of it. It withholds from Parliament the right to legislate "in regard to matters coming within the classes of subjects *by this Act* assigned *exclusively* to the legislatures of the Provinces." It will be observed that the words of this clause "by this Act" do not refer us specifically to section 92 or its provisions, but generally to the Act, to ascertain what is "exclusively" awarded to the Local Legislatures. We must look at the *whole Act*, and apply the result as the proper deduction from the otherwise comprehensive and unlimited powers given by the clause to the Parliament of Canada.

Taking, then, the Act, and considering it in all its objects and bearings, what are the necessary deductions to be made for those matters *exclusively* given by it to the Local Legislatures—for it is only such as have been so *exclusively* given that form the exception.

Sub-section 13 of section 92 gives to the Local

1879
VALIN
v.
LANGLOIS.

Legislatures the exclusive right to legislate in regard to "Property and civil rights in the Province," and sub-section 14 "The administration of justice in the "Province," including "the Constitution, maintenance "and organization of Provincial Courts, both of civil "and criminal jurisdiction, and including procedure in "civil matters in those courts."

What, then, does the term civil rights *in the Province* include. This, I take it, would, if not controlled and limited by other provisions of the Act, include every question of civil rights arising between individuals in each Province, but no one could reasonably contend that legislation on the subjects of "The regulation of trade and commerce," Navigation and shipping," Bills of exchange," "Weights and Measures," "Interest," "Legal tender," "Bankruptcy and insolvency," and many others, including "Marriage and divorce," by the local authorities, would not, taking the whole Act, be *ultra vires*, although otherwise coming within the scope and comprehension of the provision "Civil rights within the Province."

Legislation by the Dominion Parliament on such subjects is legitimate and binding, and the Provincial Courts are bound to determine the "civil rights of parties" in the Province solely by it. I make these references to explain why, in my view, we should not construe the first clause of sec. 91, merely by sub-sections 13 and 14 of section 92, but by the whole purview and object of the Act.

Being so guided, what are the local legislative powers under sections 13 and 14? Deducting the indirect and incidental powers of legislation given by the Act to Parliament, the Local Legislatures have the *exclusive* right to legislate only in regard to the remainder. The question here, then, is, to which of the two Legislatures is given the power of legislating as to

the trial of contested elections? In reply, let me say that that subject is not only given to Parliament, but excluded from the powers of the Local Legislatures. It is a subject, therefore, the latter cannot touch. It is not questioned but that Parliament has the power of dealing generally with the whole subject It has that, not only under the provisions of the first clause of section 91, before cited, but by section 129 of the Imperial Act, which provides for the continuance of all laws, etc., existing at the union, "subject, nevertheless, * * * * to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective Provinces, *according to the authority of the Parliament, or of that Legislature under this Act.*"

By the terms of the clause just cited, all laws were continued in force, but in regard to the trial of contested elections to the House of Commons there was no statutory provision applicable, although such had previously existed in the several united Provinces. The first preamble to the Act is as follows: "Whereas, the Provinces "of *Canada, Nova Scotia* and *New Brunswick* have ex- "pressed their 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;" and the third preamble alleges the expediency of providing for "the constitution of the legislative authority "in the Dominion." The conclusion is irresistible, from the suggestions contained in the preambles just referred to, and from the whole scope and meaning of the Act, that it was intended to leave no subject requiring legislation unprovided for; and that in the powers given all should be included; and, in the distribution, either Parliament or the Local Legislatures should deal with every subject. This consideration is

1879

VALIN v. LANGLOIS.

of value when dealing with the present and other cases of a similar kind.

The question here is, however, not strictly one of a conflict of legislation, for, as to it, the Parliament alone has legislated; nor is it claimed, that with reference to the subject-matter in question, any Local Legislature could deal; nor, in reference to the general subject, that any legislative prerogative of the Local Legislatures has been invaded. The right of the Parliament to deal with the general subject of the trial of contested elections is admitted; but it is objected, that in so dealing with it as to give to the Provincial Courts power to try them, and in framing the procedure, it has trenched on the prerogatives of the Local Legislatures to which were committed the right to deal with "civil rights in the Province," and "the ad-"ministration of justice in the Province, including the "constitution, maintenance and organization of Pro-"vincial Courts."

To determine the point it becomes necessary, first, to ascertain the true meaning of the two sub-sections 13 and 14.

First, then, as to "civil rights." We are told in some of the judgments to which I have referred that the rights involved in contested elections are not *civil* but *political* ones, and a judgment of the Privy Council is cited in support of that doctrine.

The answer I give to that proposition is that, although in *France*, in the *United States* and other countries, political rights are, in some regards, looked upon as differing from ordinary civil rights, there is no such distinction ordained in *England*, where "civil rights" covers and includes those which the learned judges call political only. I have read the judgment of the Privy Council referred to, and can find in it no warrant for the allegation made in regard to it. "Political"

rights are not mentioned as such, but the judgment is founded on the denial of the right of the Sovereign to review the judgment of a court under local statutes substituting it, in the trial of contested elections, for the committee of the Legislative Assembly; and vesting in that court a "*very peculiar jurisdiction*, which, up to "that time, had existed in the Legislative Assembly." The judgment, so far from distinguishing between political and civil rights, refers to those involved as civil rights, but not "*ordinary* civil rights."

The right of the Local Legislatures to legislate as to civil rights, as I have before stated, is subordinated to those civil rights not affected by Dominion powers of legislation and to those *in the Province*, and not including matters of a *general* character.

The 14th section gives local authority to deal with "administration of justice *in the Province*," which I construe to mean the power of legislating for the administration of justice in the Province in regard to the subjects given by the Act, and, to that extent only, to provide for "the constitution, maintenance and organization of Provincial Courts," including the procedure necessary for the administration of justice in reference to those and kindred subjects. I have not failed to notice the comprehensiveness of the provision, including as it does *procedure* in civil matters in those courts. These words, I hold, must be considered with the context and with the objects and other provisions of the Act, and common sense and reason suggest how inartificial and incomplete the legislation must be that would confer unlimited power on the Dominion Parliament to deal with a subject such as the trial of contested elections, and leave the necessary *procedure* to give effect to its legislation to Local Legislatures which one or more might not enact at all, or in such a way as to be useless, or by such measures as would, in one Province, be essentially dif-

1879

VALIN v. LANGLOIS

ferent from those in others. To contend that such was intended by the Act would, in my opinion, be a libel on the intelligence of the British Parliament. Although the contention against the right of the Dominion Parliament to provide for the procedure in contested election cases would apparently involve the absurdity I have just stated, such a position could not arise ; for, in cases where the machinery in the Provincial Courts is defective for the trial of contested elections, the Local Legislature has clearly no power to supply it. The right, therefore, to provide for the *procedure* in contested election cases is a necessary adjunct to the right to legislate at all in respect to them.

Parliament, then, having, as I have endeavoured to maintain, plenary powers over the whole subject, had it the power to impose on the Provincial Courts the duty of trying contested elections?

Section 129 of the Imperial Act, before mentioned, provides for the continuance of laws as existing at the union. The only law then existing in regard to the trials of contested elections, resulted from the inherent parliamentary right of the House of Commons to deal with them. No statute had then been passed to delegate the authority to a committee of the House or any other court. The right of the House of Commons to receive petitions against the returns of its Members, and deal with them, was, nevertheless, as effectual as any statute could have made it, and was such a law as, under the provisions of the latter clause of the section, might "be repealed, abolished, or altered by the Parliament of Canada." By the provisions of that section, as well as by the first clause of section 91 and section 41, the Dominion Parliament derived full authority to deal with the trial of contested elections. When having so dealt with the subject, no person, high or low, can violate its legislation. Every one is bound by its provisions and pre-

scriptions, unless, indeed, they conflict withthe Imperial Act, by usurping the powers of the Local Legislatures. I have shown that the Local Legislatures have no power over the subject, and therefore in that respect no such usurpation nor conflict could arise; but the contention is, that as the constitution, maintenance and organization of Provincial Courts with the procedure therein in civil matters is given by sub-section 14 of section 92, the Dominion Parliament cannot, directly or indirectly, add to their functions or duties, or in any way add to the scope of their jurisdiction. I cannot draw any such conclusion from the Imperial Act. In the legislation as to the large majority of the subjects comprised in the 29 specifically and unquestionably given by section 91 to the Dominion Parliament, the power is found of directly adding to the functions, duties and jurisdiction of those courts; and, as the power to legislate in regard to contested elections is just as fully given by the Imperial Act, why should any distinction be drawn or attempted? The only difference that I can discover is in the *manner* in which the power has been given, while none appears in substance.

If, in one case, the power exists why not in the other? If there is no *incompatibility* in the Provincial Courts in the one case, and none has been found or suggested, I am at a loss to discover why there should be any in the other. The Local Legislatures, even had they the power, have intervened no prohibitory legislation. The courts entertain, and adjudicate on, all matters presented to them under the common law and local statutes, and until it is shown that, whilst so doing, the additional duty of trying contested elections is incompatible with their other duties and obligations, I have no difficulty in arriving at the conclusion that they are equally authorized, as well as bound, by the provisions of the

1879

VALIN v. LANGLOIS.

Dominion Acts, which are, in this case, objected to as *ultra vires*.

The Dominion Parliament, in the exercise of its plenary powers, had the right to impose the duty in question, the exercise of which, as far as I have been able to discover, does not in the slightest degree trench upon the legislative rights of the Local Legislatures, or conflict with the position of those courts in relation to their duties in regard to the other subjects, which by the constitution the Local Legislatures can impose on them.

By this conclusion effect is given to the spirit and, I think, also, the letter of the Imperial Statute in question, which a contrary one would not give. I do not forget that under the Imperial Statute the Dominion Parliament might establish independent tribunals for the trials of election contests, as was done on one occasion in *Nova Scotia*, under the Act of 1873, but, although I acted as one of the judges of the special court at that time, I was not insensible to the objections which might be raised to such a tribunal, appointed *ad hoc* by the Government of the day to try the merits of a contest between a Government supporter and an opponent. To give public satisfaction in such, as in all other cases, the judicial tribunal must be free even from the slightest suspicion of weakness or bias. I have been gratified to witness the success that has been achieved in this respect from the transfer to the ordinary legal tribunals in *England*, and in this country, of the trial of election contests; but, at the same time, would not give my sanction to an Act which is *ultra vires*. I am glad, therefore, to be able to decide that the one in question is not so, and, consequently, I am of the opinion the appeal herein should not be allowed, and that the judgment herein of the learned Chief Justice of the Superior Court of *Quebec* should be affirmed with costs.

1879

VALIN v. LANGLOIS.

TASCHEREAU, J:

Upon the Respondent's motion to quash this appeal, I am of opinion that the appeal lies, and that this motion must be dismissed. The preliminary objections would, if allowed, have been final and conclusive, and have put an end to the petition, and the appeal has been duly filed before the Act of last Session came into force (1). So that, under section ten of the said Act, the appeal stands, and the motion to quash must be dismissed.

Upon the abstract question submitted to us in this case, whether the Dominion Controverted Elections Act of 1874 is *ultra vires* or not, I am of opinion that the said Act is not *ultra vires*. This question has been so fully and ably discussed, not only by my brother judges who have just delivered their opinions, but also in the Provincial Courts by so many of the learned judges thereof, that any attempt on my part to review all the points raised in the different causes where the question has been mooted, would not, I feel, throw any new light on the subject, and could not but be as tedious as of doubtful usefulness. I will therefore give as briefly as possible the reasons upon which I base my opinion that the said Dominion Controverted Elections Act of 1874 is constitutional.

It is admitted, and is beyond doubt, that the Parliament of *Canada* has the exclusive power of legislation over Dominion controverted elections. By the *lex Parliamentaria*, as well as by the 41st, 91st and 92nd sections of the *British North America Act*, this power is as complete as if it was specially and by name contained in the enumeration of the federal powers of section 91, just as promissory notes, Insolvency, &c., are. It is also admitted that if this Act of 1874, like

(1) 42 Vic., chap. 39 D.

1879

VALIN v. LANGLOIS.

the one of 1873, has created a new Dominion Court in each Province for the trial of controverted elections, its legality is unimpeachable. The learned chief justice of the Superior Court of the Province of *Quebec*, whose judgment is now submitted to us, has declared the Act constitutional, and within the powers of the Dominion Parliament, chiefly, as it appears to me, upon the ground that such a new Dominion Court is virtually created thereby. The Appellant contends that such is not the case, and that it is upon the Provincial Superior Courts as they are established, that this Act imposes the duties of trying the Dominion controverted elections. He contends that Parliament had not the power to do this, and has thereby encroached upon the privileges of the Provincial Legislatures, to whom alone, he alleges, is given, by the *British North America Act*, the right to legislate upon the administration of justice, and the constitution, maintenance and organization of Provincial Courts. I will not consider whether or not the Controverted Elections Act creates a new court in each Province for the trial of election petitions; for me, the question is of no importance, as I am of opinion that Parliament had the right to impose this duty upon the Provincial Courts as they exist. I say that if it has created new courts, the act is constitutional, and this is admitted; but I go further, and I distinctly base my judgment on the question upon this broader ground, that, admitting for the sake of argument, that it has not created new courts, but has given these trials to the Provincial Courts, as they are constituted, it had the power to do so.

Great stress is laid by the Appellant, in support of his contention, on the 101st section of the *British North America Act*, by which the Dominion power is authorized to create additional courts for the better administration of the laws of the Dominion. But I do not

see how that clause can be construed as restricting in any way the rights which the Dominion power has under the other parts of the Act. This right to create courts, it seems to me, is only a discretionary power, to be exercised when thought needful or necessary, but not at all obligatory on the Dominion. It does not follow that because it has the right to create new courts, it cannot have resort to the courts already established, for the execution of its laws. The Dominion from 1867 to 1875 did not exercise that power, except in 1873, as regards controverted elections. Yet, can it be pretended, that from 1867 to 1875 there were no tribunals to execute each and everyone of the Dominion laws. I venture to think, that if the Imperial authority had had the intention to free the local courts from all federal authority in the manner contended for by the Appellant they would not have left the Dominion for a single instant without its tribunals, and would have created federal courts by the B. N A. Act itself, or they would, at least, have commanded the creation of these courts, and not left it as a mere discretionary power. I do not see more force in the Appellant's contention that, because in 1873 Parliament created a special tribunal for the trial of election petitions, it has granted that such a course was necessary, and admitted that it had not the right to impose this duty on the Provincial Courts. This, it seems to me, is not an argument at all on the question. First. I do not see such an admission in the fact of creating a new court. It might do so, without admitting that it was obliged to do so, and then, admitting that there was such an admission, supposing the admission even to have been in clear and unequivocal terms, I do not see what effect it could have on my judgment in this case. An interpretation by the Parliament of Canada of the B. N. A. Act is surely not binding on this, or on any court of justice. It is for the

1879

VALIN v. LANGLOIS.

judicial power to decide whether the interpretation put on the Constitutional Act by either the Parliament of the Dominion or the Legislatures of the Provinces is correct or not, and it is so whether they read the law as granting them a right, or read it as refusing them such a right. I do not see how a court of justice can admit its right to say that the Parliament was wrong in assuming a certain power, and at the same time draw an inference that the Parliament had not this or any other power, simply because it denied to itself that power. In either case, whether the Parliament was right or wrong, is to be decided by the courts of justice.

Now, as to the question itself:

In my opinion, for the administration of its laws, Parliament can either have recourse to the Provincial Courts already in existence, or create new courts, as it chooses. But, says the Appellant, the administration of justice, including the constitution, maintenance and organization of Provincial Courts, in virtue of section 92 sub-section 14, of the B. N. A. Act, is vested in the exclusive powers of the Provincial Legislatures, and under that section, the Dominion Parliament cannot in any way increase or decrease, give or take away from, or in any manner interfere with the jurisdiction of the Provincial Courts. This, in my opinion, is a radically and entirely false and erroneous interpretation of this sub-section 14 of section 92 of the Act, and I think that it is an interpretation altogether opposed to the other parts as well as to the spirit of the Act, and which, if it was to prevail, would lead to serious consequences; I think that to decide that the Federal Parliament can never or in any way add to or take from the jurisdiction of the Provincial Courts, would be curtailing its powers to an extent, perhaps, not thought of by the Appellant, and that it would destroy, in a very large measure, the rights and privileges which are given to the federal power by

sections 91 and 101 of the Act. I take, for one instance, the criminal law. The constitution, maintenance and organization of Provincial Courts of criminal jurisdiction is given to the Provincial Legislatures, as well as the constitution, maintenance and organization of courts of civil jurisdiction, yet, cannot Parliament, in virtue of section 101 of the Act, create new courts of criminal jurisdiction, and enact that all crimes, all offences shall be tried exclusively before these new courts? I take this to be beyond controversy.

Yet, would not that be altering, diminishing, in fact, taking away all the Provincial Criminal Court's jurisdiction?

Could not the Parliament, as it has done, declare that such and such offences shall be triable before the Courts of Quarter Sessions, or that such and such offences shall be triable only before the Superior Courts of Criminal Jurisdiction? Can it not alter these laws and say, for instance, no larceny under ten pounds shall be tried at Quarter Sessions? Is this mere procedure? Does not that affect the jurisdiction of the courts? Cannot Parliament, as it has done, authorize, in certain cases, a change of venue, and say, for instance, that an offence otherwise triable at *Quebec* shall be tried at *Montreal*? How to do so, is procedure, but the change of venue itself, the taking away from one court the right it had to try such offence, the giving to another court the right to try such offence, does not that affect jurisdiction? Cannot Parliament enact that such an offence heretofore indictable shall hereafter be tried under the Magistrate's summary jurisdiction? or take away from the Magistrate's jurisdiction whatever offence it pleases? Surely all this would affect jurisdiction. Yet, I think that Parliament has the right to so legislate and order; —and, as it has been remarked by Mr. Justice

1879

VALIN v. LANGLOIS.

Johnston, in *Ryan vs. Devlin*, (1) the Parliament can add a new offence to the criminal laws, and leave the trial of it to the Provincial Courts. It has done so by the Post-Office Acts, by the Banking Acts, by the Railway and Customs Acts, by the *Blake* Act, by the Criminal Acts of 1869, and various other Acts, and it had the right to do so. It had the right, and it has done so, to make corrupt practices, under the Election Act, indictable offences, and to enact that such offences should not be triable at Quarter Sessions. It may amend all these laws, and, for instance, say that such corrupt practices will be triable at Quarter Sessions. But, says the Appellant, Parliament has all these powers because it has complete and exclusive jurisdiction over criminal law and procedure in criminal matters. But, may I ask him, is not its jurisdiction over the House of Commons controverted elections and all proceedings incident thereto as complete and exclusive ? And, if I pass to the civil laws, that is to say, other laws than the criminal laws, I see in the B. N. A. Act many instances where Parliament can alter the jurisdiction of the Provincial Civil Courts. For instance, I am of opinion, that Parliament can take away from the Provincial Courts all jurisdiction over bankruptcy and insolvency, and give that jurisdiction to Bankruptcy Courts established by such Parliament ; I also think it clear, that Parliament can say, for instance, that all judicial proceedings on promissory notes and bills of exchange shall be taken before the Exchequer Court or before any other Federal Court. This would be certainly interfering with the jurisdiction of the Provincial Courts. But, I hold that it has the power to do so *quoad all matters within its authority*. So it has the power, and it has done so by the Public Works Acts, to enact that the monies due on

(1) 20 L. C. J. 84.

expropriations by the Crown shall be deposited in the Provincial Courts, and to order and regulate how these courts are to distribute such monies. I read sub-sect. 14 of sect. 92 of the B. N. A. Act as having no bearing on the jurisdiction of the courts in the matters not left to the Provincial Legislatures. Strictly speaking and read by itself, without reference to the other parts of the Act, it may not clearly be so restricted, but, if the Appellant's contention was to prevail and his interpretation received, the powers of the Federal Parliament under sections 41, 91, 101 and others of the Act, would not be so complete as, I believe, the Imperial authority has intended them to be. The authority of the federal power, it seems to me, over the matters left under its control is exclusive, full and absolute, whilst, as regards, at least, some of the matters left to the Provincial Legislatures by sect. 92, the authority of these Legislatures cannot be construed to be as full and exclusive, when, by such construction the federal power over matters specially left under its control would be lessened, restrained or impaired. For example, civil rights, by the letter of sub-sect. 13 of sect. 92, are put under the exclusive power of the Local Legislatures, yet this cannot be construed to mean "all civil rights," but only those which are not put under the federal authority by the other parts of the Act.

So, the administration of justice is given to the Provinces, it is true, but that cannot be understood to mean all and everything concerning the administration of justice. Parliament, for instance, has the right, as I have said, to establish a Bankruptcy Court for a Province, yet, that would concern the administration of justice in such Province.

If, for instance, this Controverted Election Act had been passed before Confederation, if, when the Confederation Act came into force, the courts had had the trial of the House of Commons elections, can it be

1879

VALIN v. LANGLOIS.

pretended that Parliament would not have the power to take away that jurisdiction from the Provincial Courts and give it to the House of Commons itself, or to any special court created under sect. 101 of the Act? Yet, would that not be interfering with the administration of justice, or with the courts in the Provinces? Certainly, it would. But, *quoad* a matter put under its authority, and in that way, Parliament has such a right. And sect. 129 of the B. N. A. Act puts it beyond doubt, in my opinion, when it says that all Courts of civil and criminal jurisdiction in *Ontario*, *Quebec*, *Nova Scotia* and *New Brunswick*, existing at the union, can be abolished or altered by the Parliament of *Canada* or by the legislature of the respective Province, according to the authority of the Parliament or of that legislature, under the Act.

The clause, it is true, says: "except as otherwise provided by this Act," but I fail to see where it is otherwise provided by the Act so as to affect the question now before us. A distinction is made by the Appellant, which seems to me to arise from a confusion or misconstruction of terms. The learned chief justice, whose judgment is now before this court, is of opinion, that had the House of Commons simply resigned its jurisdiction over controverted elections, without substituting any court in its place for trying such elections, the Civil Courts would have been *de facto* invested with complete jurisdiction over these election petitions. I entirely agree with this opinion. The Superior Court for the Province of *Quebec*, for instance, having superior original jurisdiction over all civil pleas, causes and matters (1) would have had, in that case, to try these petitions. "But," says the Appellant, "that could not be, because the right to sit in the House of Commons is a political right; it is not a civil right; it does not fall

(1) C. S. L. C. Ch. 78.

under civil law." The answer to this is, it seems to me, easily found. The *Quebec* Statute does not say that the Superior Court has jurisdiction only in matters falling under the civil law, but it says that it has jurisdiction over all civil pleas, causes and matters *whatsoever*, using clearly, as well remarked by Chief Justice *Meredith* in this case, the terms "civil pleas, causes and matters" in contradistinction with criminal pleas, causes and matters.

It can surely not be pretended that an election petition is a criminal plea, cause or matter. Then, it is a civil plea, cause or matter. It must be the one or the other. I do not see why the Appellant speaks of civil law. He cannot find that word once in sect. 92 of the B.N.A. Act, defining the powers of the Provincial legislatures. I doubt if it can be found in the whole Act. Civil rights is the word used. Well, civil rights, sometimes with us called the liberties of the subject, do not all arise from the civil law. For instance, the right of the subject accused of a crime to be tried by his peers is a civil right, yet the exercise of that right falls under the criminal, not the civil law. So, a political right, whatever the Appellant means by these words, is a civil right, though not an ordinary civil right. It is a civil right, springing from the public or the constitutional law.

The civil law does not include all the civil rights of the subject, whilst the civil rights of a subject include, amongst others, the civil law, the right to be governed by that law. But, enough about civil rights and civil law; they have, it seems to me, very little to do with the case supposed, which, I take it, depends on what is meant by the civil jurisdiction of the Superior Court. Now, I repeat it, when the Quebec Statute gives jurisdiction to the Superior Court over all civil pleas, causes and matters *whatsoever*, it intends to give it jurisdiction

1879

VALIN v. LANGLOIS.

over all cases where the means taken to recover or obtain justice is not a criminal proceeding, or a procedure under the criminal law of the land. And, I say it again, an election petition is not such a criminal law proceeding. It seems, therefore, to me clear that, had Parliament abandoned its privileges over controverted elections, without referring them specially to any court, they would have fallen on the civil courts of ordinary jurisdiction, because the trial of a political right on an election petitions is a civil plea, cause or matter, just as much as the trial on a controverted municipal election, for instance, for a municipal election, like an election for the House of Commons, is not a part of the civil law.

By renouncing its privileges over the controverted elections of its members, which, it is granted, they had a right to do, the House of Commons has made of election petitions and of the trial of these controverted elections, an ordinary civil plea, cause or matter, which it would always have been had it not been for these privileges The Appellant sees another objection to the proposition, that, without special legislation upon the mere giving up of these privileges by the House of Commons, the civil courts would have had to try the election petitions. He says that it would have been impossible for the courts of justice in that case to execute their judgments. That does not seem to me to be an argument. If the House of Commons, even now, chose to disobey a judgment of an election court, I do not see how the court could enforce its judgment ; of course, it cannot be presumed that the House of Commons will act against the law, but the presumption would have been the same, for what would, in that case, have been the law ?

The last contention of the Appellant is based upon the words of sub-section 14 of the 92nd section of the B. N. A. Act, which give to the Provincial Legislatures

the exclusive control over procedure in civil matters in the Provincial Courts. Upon this, I have nothing to add to what has been said in this case by the learned Chief Justice of the *Quebec* Superior Court, who held that these words must be understood to mean procedure in civil matters *within* the *powers of the Provincial Legislatures*. Section 41 of the Act specially gives to the federal authority the right to legislate upon the controverted elections of the House of Commons, and the *proceedings incident thereto*. Thus, the laws made by Parliament on the proceedings on election petitions are binding on the Provincial Courts. They cannot be deemed to be an interference with the powers of the Provincial Legislatures, since these legislatures have no power, no control over these proceedings, or the procedure on these petitions.

For all these reasons, I am of opinion, that the judgment appealed from, declaring the Controverted Elections Act of 1874 constitutional, is right, and that this appeal must be dismissed with costs. I need hardly say that if, in my remarks, I appear to have had the Province of *Quebec* more particularly in view, it is because the case submitted to us comes from that province, but my remarks on the B. N. A. Act must be taken as applying generally to all the provinces.

I have only one word to add. It has been said, that, if this Act is constitutional, the control of the Local Legislatures over the Provincial Courts is reduced to a very small compass. Well, in the first place, I do not think so; then, I may call the attention of those who should be inclined to think too much of the powers of the local legislatures, under our Constitutional Act over the Courts of Justice, to the fact that, by simply refusing to name and pay the judges, the federal authority can, when it pleases, virtually

1879

VALIN v. LANGLOIS.

abolish any of the Superior Courts in any of the Provinces, or can control any changes in the constitution and organization of these courts which the Local Legislatures would be inclined to enact as regards the number of their judges. Yet, by the strict letter of subsect. 14 of sect. 92 of the B. N. A. Act the constitution and organization of these courts is put under the exclusive power of these Local Legislatures. This, again, shows that this clause cannot be read by itself, and that, for a sound interpretation of its terms, the whole Act must be taken into consideration.

GWYNNE, J.:

I concur in the opinion of the learned Chief Justice *Meredith*, to the effect that the 13th and 48th sections of the act constitute the court for trial of the election petitions a separate and distinct court from the courts of superior jurisdiction in the provinces. The 67th section of the act supports this view, and by force of the 3rd section, which declares that in the act, and for the purposes thereof, the expression "the court" shall mean, not only the courts of superior jurisdiction afternamed, but also "any of the judges thereof," whenever a judge sits in a matter arising under the act, he sits as a court constituted by the act; but it is by no means necessary, as it appears to me, for the determination of this case, that these points should be established so to be.

It cannot, in my opinion, admit of a doubt, that the Dominion Parliament can, in respect of all matters within their control, impose judicial duties upon the judges of the superior courts in the several provinces in excess of those exercised by them in the discharge of their ordinary functions, and their so doing constitutes no invasion of the rights of the local legislatures.

1879

VALIN
v.
LANGLOIS.

I am of opinion, also, that it is incorrect to speak of the transfer by the Dominion Parliament of the right to hear and determine all questions arising upon election petitions to the courts of superior original civil jurisdiction, existing in the several provinces, as constituting an enlargement of the jurisdiction of those courts, in the sense of being an interference with the special jurisdiction given by the *British North America Act* to the local legislatures to constitute and organize provincial courts. Such transfer is but the adding an additional subject to those entertained by the courts in the exercise of their ordinary jurisdiction, and which subject, the exclusive jurisdiction of the House of Commons over it being removed, fell naturally within the competency of courts of superior and original civil jurisdiction to entertain, from the very nature of their institution as courts of original jurisdiction. And, finally, I am of opinion, that the prescribing the manner in which the jurisdiction so transferred shall be exercised, that is to say, prescribing the procedure to be adopted, constitutes no invasion of, nor any interference whatever with, the powers and jurisdiction conferred by the *British North America Act* upon the local legislatures.

Upon these latter points I should not have thought it necessary to add anything to what fell from me in the *Niagara case*, in the Court of Common Pleas, in *Ontario* (1), if it was not for the disapproval of that judgment expressed by several of the learned judges in the other provinces, before whom the same question has arisen. The objections urged to that judgment are, that the trial of an election petition is not a civil matter at all, that the rights thereby brought in question are not civil rights at all, that, in contradistinction, they are purely political rights and matters. That the Courts of superior original civil jurisdiction, even in *England*, would

(1) 29 U. C. C. P. 268.

1879

VALIN v. LANGLOIS.

not have competency to entertain or assume jurisdiction in these mattters, as was suggested in the judgment they would have, if the Parliament had passed an act merely abandoning, on behalf of the House of Commons, the exclusive jurisdiction it had asserted and maintained over the subject matter.

With the greatest respect for the opinions of those learned judges with whom I have the misfortune to differ, I am unable to see that a right is less a civil right, because it is connected with that particular part of our civil polity which relates to the protection of the citizen in his rights arising out of our system of parliamentary representation. "The right to offer oneself as a candidate—the right to be placed on the voters' list—the right to vote—the right, in fact, to enjoy political rights," are all admitted, in one of the judgments to which I refer, to be civil rights, and so, I presume, the wrongful assertion of, or the interference with the rightful exercise of any of these rights is a civil wrong.

If the right to offer oneself as a candidate be a civil right, the right of a qualified candidate to exclude a disqualified one must surely be equally so, and so must, likewise, be the right to exclude a person from voting who has not the legal qualification, or, having it, has corruptly sold it. For my part, I cannot permit myself to doubt that to return, as elected, a person not qualified by law, or who has not, in fact, had a majority of legal votes, is a civil wrong, or that, *ex converso*, the right of a legally qualified candidate to enjoy the fruits of his candidature and to take the position to which he has been legally elected, and to call in question all illegal votes, and to exclude from the position to which he has legally been elected a person who has wrongfully been returned as elected, is a civil right; and these are the rights which form the subject of enquiry upon an elec-

tion petition. But it is said that we are concluded by authority, and that the Privy Council in *England*, by their judgment in *Landry vs. Théberge* (1), has clearly and fully pronounced these rights to be political and not civil.

There is nothing in that case, in my judgment, to support this contention. The question there was, whether the *Quebec* Controverted Elections Acts, of 1872 and 1875, which enacted that judgment upon the trial of controverted elections rendered by the authorities to which those acts transferred the right of trying such cases should not be susceptible of appeal, ousted the prerogative jurisdiction of the Privy Council in appeal? And the court held that the appeal was well taken away, upon the ground that, as these acts dealt not with mere ordinary civil rights and privileges, but with rights and privileges of a peculiar character, namely, the rights and privileges, not only of candidates, but of electors and of members of the Legislative Assembly, which rights have always, in every colony, following the example of the Mother Country, been jealousy guarded by the Legislative Assembly in complete independence of the Crown, it was quite competent for the legislature to delegate the authority formerly exclusively exercised by the Legislative Assembly to Her Majesty's courts of civil jurisdiction, or to any of the judges thereof, to the exclusion of all appeal to the Crown in Council, the court saying :

> It would be singular if the determination of these cases in the last resort should no longer belong to the Legislative Assembly, nor to the court which the Legislative Assembly had put in its place, but belonged to the Crown in Council.

There is not a word here about the rights dealt with not being "civil rights," nor anything from which it can be collected that the Privy Council was of opinion

(1) L. R. 2 App. Cases 102.

1879

VALIN v. LANGLOIS.

they were not. There is no contrast whatever made or alluded to, as between "civil" and "political" rights, but there is, as it appears to me, a contrast plainly enough drawn between mere ordinary civil rights, as to which a question could fairly arise as to the power of a provincial legislature to exclude the right of appeal, and those peculiar civil rights over which the Legislative Assembly, in imitation of the British House of Commons, has asserted and maintained exclusive control in complete independence of the Crown, which exclusive control it was held to be competent for the Legislature to delegate, and to assert for the substituted authority equal independence of the Crown.

The Parliament, having transferred this subject, over which the House of Commons formerly exercised exclusive control, to the cognizance of civil tribunals, seem to me, if it were necessary to appeal to such an argument, to indicate that they entertained no doubt that the rights over which control was so transferred were civil rights, for it is the pride of our constitution to keep our civil courts, and the judges thereof, aloof from all interference in political subjects and discussions, and it is scarcely to be conceived that the parliament would transfer the investigation of those rights from the political to a civil tribunal, if it had thought that the subject matter placed under the cognizance of the civil tribunal did not involve any enquiry into civil rights.

In support of the proposition, that courts of original jurisdiction, even those courts in *England*, could not assume or exercise jurisdiction of the rights in question, even though Parliament should, by an Act of Parliament, merely abandon and disavow all exclusive and every jurisdiction of the House of Commons over the subject matter, *Rowland's* manual of the constitution has been referred to. The following extract, however,

from that work, in which the author gives an account of the manner in which the exclusive control of the House of Commons was assumed, asserted and vindicated, until it became embodied in the constitution, seems to me to lead rather to a contrary conclusion. He says at pp. 203-4-5 :

The power to decide in controverted elections was exercised by the Crown up to the reign of *James First.* In his first Parliament the Commons entered into a contest with him, asserting their own right to decide upon election returns. *James* convoked the Parliament by a Royal Proclamation, in which he admonished the electors that the Knights for the counties should be selected out of the principal Knights or gentlemen of sufficient ability, and for Burgesses that choice he made of men of sufficiency and discretion. He commanded that express care be taken that there be not chosen any bankrupts or outlawed, but such only as were taxed to the subsidies and had ordinarily paid and satisfied them. That sheriffs do not direct any precepts to ruined and decayed boroughs, and that the inhabitants of cities and boroughs do not seal any blanks, leaving to others to insert the names, but do make open and free elections according to law. He notified that all returns should be brought into chancery, there to be filed of record, and if any be found contrary to the proclamation they were to be rejected as unlawful and insufficient, and the city or borough was to be fined for the same, and if it be found that they had committed any gross or wilful default or contempt in their election return or certificate, that then their liberties were to be seized into his hands and forfeited. If any person take upon himself the place of a knight, citizen or burgess, not being duly elected, returned and sworn, then every person so offending to be fined and imprisoned for the same.

The Commons lost no time after the meeting of Parliament in questioning the right assumed by the king in his proclamation to have the returns of members decided in chancery.

Sir *Francis Goodwin* was elected for *Bucks,* but his return was refused by the Clerk of the Crown because he was outlawed. On a second election Sir *J. Fortescue* was elected. A motion was made in the House that a return be examined and *Goodwin* be received as member. The Clerk of the Crown attended at the bar by order of the House with the return, and the House resolved, after debate, that *Goodwin* was lawfully elected and returned. The Clerk of the Crown was ordered to file the first return, and *Goodwin* took the oath of supremacy and his seat.

1879

VALIN v. LANGLOIS.

The Lords desired a conference which the Commons declined, and sent a message that in no sort should they give account to the Lords of their proceedings.

The Lords replied that, acquainting His Majesty with the return, His Highness conceived himself engaged and touched in honor that there might be some conference of it between the two Houses. Upon this message, so extraordinary and unexpected, the House appointed a committee to consider what should be delivered to His Majesty, and through the Speaker, the House represented to the King that the Sheriff was no judge of the outlawry, neither could take notice it was the same man; and, therefore, could not properly return him outlawed. The King reminded the Commons that he had no purpose to impeach their privilege. The difficulty was, after considerable discussion, solved, on a conference held in the King's presence, and, by his command, with the judges, who, conceding that the Commons was a court of record and judge of returns, although not exclusively of the chancery, suggested that both *Goodwin* and *Fortescue* should be set aside, and a new writ be issued.

This compromise was joyfully accepted by the Commons, and no attempt was afterwards made to dispute their exclusive jurisdiction over the returns of their members.

Now, the House of Commons, having in this manner, as a court of record, and as a compromise with the King's courts, acquired the jurisdiction it assumed, until in 1770, by the *Grenville Act*, the jurisdiction was conferred by the legislature upon a committee of 11 members, can it be doubted that, if the British Parliament should pass an act of Parliament, whereby, upon behalf of, and in the name of the House of Commons, it should abandon, abjure and disavow, all further control over the return of its members, the right to enquire into those returns would revert to the King's courts?

With great deference, I think there can be no doubt that it would, and I am of opinion that, under a like act of the Dominion Parliament, the courts of superior original jurisdiction in the several provinces of the Dominion would, from the nature of their institution as courts of original jurisdiction, have the like power, and therefore these courts had competency to accept cognizance of the matter.

In fine, I entertain no doubt that the right to enquire into the legality of the returns of members of the House of Commons, not relating to a matter over which any jurisdiction is conferred upon the local legislatures, but to civil rights, which, by the constitution, were wholly under the exclusive jurisdiction of the House of Commons, it was competent for Parliament to transfer to the civil tribunals in the several provinces, having superior original jurisdiction, cognizance of all rights arising out of election petitions, and that so doing constitutes no invasion of, or encroachment whatever upon, the rights conferred upon the local legislatures, and that, inasmuch as parliament may transfer such cognizance absolutely, it may do so qualifiedly, or *sub modo*, by defining the mode in which the cognizance shall be exercised, which, by prescribing the mode of procedure, is what has been done. Neither is such prescribing of the mode of procedure an invasion of, or encroachment upon, the rights of the local legislatures, for the 14th sub-section of sec. 92 of the *British North America Act* must plainly be read as conferring upon the local legislatures the right to prescribe procedure in civil matters, only in respect of these matters, which, by the 13th subsection, were placed under the exclusive control of the local legislatures.

To hold that the local legislatures could prescribe, or in any respect interfere with, the *manner* in which a *matter* over which they have no jurisdiction whatever, shall be conducted or enquired into, involves, in my opinion, a manifest contradiction in terms. I am of opinion, therefore, that the act is not in any particular *ultra vires*, and that the appeal, which calls in question its validity, should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for Appellant: *H. Cyrias Pelletier.*

Solicitor for Respondant: *Jean Langlois.*