Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition for leave to Appeal in the case of Théberge v. *Laudry, from Canada; delivered Tuesday, November 7th*, 1876.

Present:

THE LORD CHANCELLOR.
SIR BARNES PEACOCK.
SIR ROBERT COLLIER.
SIR HENRY KEATING.

THE Petitioner in this case states that he was a candidate at an election held in July 1875, in the Province of Quebec, for the office of member to represent the electoral district of Montmanier in the Legislative Assembly of the Province, and that he was declared duly elected; but that after the election a petition was presented by certain electors against the return of the Petitioner, alleging that he had been guilty of corrupt practices by himself and his agents, and praying that the seat might be declared vacant, and the Petitioner declared disqualified, in accordance with the provisions of the Quebec Controverted Elections Act. He then states that the petition was tried according to the Act before the Court, and that the Court pronounced a sentence against the Petitioner, declaring the election null and void, and declaring him guilty of corrupt practices, both personally and by his agents. The petition states certain objections which the Petitioner makes to the decision of the Court, and prays that Her Majesty in Council will be graciously pleased to order that the Petitioner shall have special leave to appeal from the

40474. 125.—11/76. Wt. 6305.

Judgment of the Superior Court for the Province of Quebec of the 29th May 1876, that is to say, from the judgment declaring the election of the Petitioner to be null and void.

The Act of Parliament in question is the Quebec Controverted Elections Act of the year 1875. That Act repealed an Act of the Quebec Legislature of the 36th year of Her Majesty's reign, that is, in 1872, which was entitled "An "Act to provide for the Decision of Contro- "verted Elections by the Judges, and to make "better provision for the Prevention of Corrupt "Practices at Elections." That Act of 1872 appears to have been the Act which, in Quebec, transferred to the Court the decision of controverted elections, which before that time was vested in or was retained in its own hands by the Legislative Assembly of the Province. By the force of the two Acts of 1872 and 1875, in Quebec, as in this country, the decision of questions of that kind has now become vested in the Supreme Court. The 89th section of the later of these two Acts, the Act of 1875, provides that the Superior Court sitting in review shall determine,—first, whether the member whose election or return is complained of has been duly elected or declared elected; second, whether any other person, and who, has been duly elected; third, whether the election was void; and fourth, all other matters arising out of the petition or requiring its determination. Then the 90th section enacts, "Such Judgment shall not be "susceptible of appeal."

Now, upon that 90th section it is contended on behalf of the Petitioner that it does not take away any prerogative right of the Crown; that the Crown and the prerogative of the Crown is not specially or particularly mentioned; and that the general rule is, that the prerogative of the Crown cannot be taken away except by a specific

enactment. It is said that this section may be satisfied by holding that the intention of the Legislature was that there should be no appeal from a Superior Court to the Court of Queen's Bench in the Colony, which was the kind of appeal that existed in Civil cases in the Colony, and that the prerogative of the Crown is not in any way affected.

Their Lordships wish to state distinctly, that they do not desire to imply any doubt whatever as to the general principle, that the prerogative of the Crown cannot be taken away except by express words; and they would be prepared to hold, as often has been held before, that in any case where the prerogative of the Crown has existed, precise words must be shown to take away that prerogative. But, in the opinion of their Lordships, a somewhat different question arises in the present case. These two Acts of Parliament, the Acts of 1872 and 1875, 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 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. Accordingly we find, on

looking at the Act of Parliament, that after providing by the 89th section as to the matters which the Superior Court is authorised to determine, the 91st section declares that a certified copy of the judgment shall be transmitted without delay to the Speaker, and another to the prothonotary in the district in which the petition was presented, and then the 118th section provides:—"The Speaker shall, " at the earliest practical moment after having " received the judgments and reports, adopt " all the proceedings necessary for confirming " or altering the return of the returning officer, " or for the issuing of a new writ for a new " election within 30 days, or for otherwise " carrying the final judgment into execution, " as circumstances may require. He may, for " the issuing of such writ of election, address " his warrant under hand and seal to the Clerk " of the Crown in Chancery." Then the 119th section is:—"The speaker shall without " delay communicate to the Legislative Assembly " the judgments and the reports received, and " his own proceedings thereon." And the 120th section is:—"When a special report has been " received, the Legislative Assembly may make " such order in respect of such special report as it " may deem proper." The whole scheme, therefore, of the Act of Parliament is that, once the action of the Superior Court takes place, and the decision of the Superior Court arrived at, the machinery is to go on just as it had formerly gone on inside the Legislative Assembly;—writs are to be issued, seats are to be taken, other proceedings are to be had, as would have been the case before the Court was called into operation, and when the Legislative Assembly decided these matters by its own authority.

Stopping there, it would be very difficult to do otherwise than conclude, from the character of

these enactments, that the object which the Legislature had in view was to have a decision of the Superior Court, which, once arrived at, should be for all purposes conclusive.

But there is a further consideration which arises upon this Act. If the judgment of the Superior Court should not be conclusive, of course the argument is that the power which is to be brought to bear to review the judgment is the power of the Crown in Council.

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.

These are considerations which lead their Lordships not in any way to infringe, which they would be far from doing, upon the general principle that the prerogative of the Crown,

once established, cannot be taken away, except by express words; but to consider with anxiety whether in the scheme of this legislation it ever was intended to create a tribunal which should have, as one of its incidents, the liability to be reviewed by the Crown under its prerogative. In other words, their Lordships have to consider, not whether there are express words here taking away prerogative, but whether there ever was the intention of creating this tribunal with the ordinary incident of an appeal to the Crown. In the opinion of their Lordships, adverting to these considerations, the 90th section, which says that the judgment shall not be susceptible of appeal, is an enactment which indicates clearly the intention of the Legislature under this Act,—an Act which is assented to on the part of the Crown, and to which the Crown, therefore, is a party,—to create this tribunal for the purpose of trying election petitions in a manner which should make its decision final to all purposes, and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative.

In the opinion, therefore, of their Lordships, there is not in this case, adverting to the peculiar character of the enactment, the prerogative right to admit an appeal, and therefore the petition must be refused.

It is, of course, in this view of the case, unnecessary to consider whether, if there had been a right to admit an appeal, it would have been a case in which, in the discretion of this tribunal, an appeal should be admitted. On that point their Lordships have never entertained any shadow of doubt. They clearly are of opinion that, even if there was the power of admitting an appeal, this is not a case in which an appeal ought to be admitted; but, in their

opinion, it is not a case in which it was ever contemplated or intended that there should be a power to admit an appeal on the part of the Legislature.

Their Lordships were in one part of Mr. Benjamin's argument pressed with another matter, that even if an appeal should not be here admitted generally, yet that there was in the finding of the Judge a subordinate part, which ought to be brought by way of review before this tribunal. Mr. Benjamin said that the Judge had found that the petitioner was personally guilty of corrupt practices; and then he said that the Quebec Election Act, by a particular section, the 267th, provided that if it is proved before the Court that corrupt practices have been committed by or with the actual knowledge or consent of any candidate, not only the election shall be void, but the candidate shall, during the seven years next after the date of such decision, be incapable of being elected to and of sitting in the Legislative Assembly, of voting at any election of a member of the House, or holding an office in the nomination of the Council of the Lieutenant Governor of the Province. Mr. Benjamin contended that the Act of Parliament, so far as it engrafted on the decision of the Judge this declaration of incapacity, was *ultra vires* the power of the Legislature of the Province. Upon that point their Lordships do not think it necessary to express any opinion whatever. If the Act of Parliament was in this respect, as contended, *ultra vires* the Provincial Legislature, the only result will be that the consequence declared by this section of the Act of Parliament will not enure against and will not affect the petitioner; but it is not a subject which should lead to any different determination with regard to that part of the case.

Upon the whole, their Lordships will humbly advise Her Majesty that this petition be dismissed.