

difference whether you say, "Behold also the gallows which Haman has made," or, "On no account look at the gallows which Haman has made." It is sometimes said that, as a man must be held to intend the natural consequences of his acts, and as the natural consequence of the censure of a dead man is to exasperate his living friends and relations, and so to cause breaches of the peace, attacks on the dead must be punishable as libels, because they tend to a breach of the peace, whether they are or are not intended as an indirect way of reflecting on the living, unless, indeed, they are privileged as fair comments on matters of public interest or the like. My brother Wills, in charging the grand jury in this case, seemed to take this view. I have the most unfeigned respect for whatever falls from him, but I cannot agree to this in its full extent. It seems to me that if it were correct, Lord Coke's view would be correct. But the case of *Rex v. Topham* distinctly holds that it is not, for in that case judgment was arrested, because no intention to injure the family was alleged. This shows that the intent to injure the family was a fact requiring proof and necessary to be found by the jury, and not an inference by which they were bound from the terms of the writing reflecting on the dead man. I wish to add that I regard the silence of the authorities and the general practice of the profession as a more weighty authority on this point than the isolated statements of Lord Coke and the few unsatisfactory cases referred to in *Rex v. Topham*. I am reluctant in the highest degree to extend the criminal law. To speak broadly, to libel the dead is not an offence known to our law. If an extension of it is required, it is for Parliament and not for the judges to extend it. I think it is a fatal objection to several of the counts of the indictment that they aver only a tendency and not an intention to injure and to excite a breach of the peace. To define the crime of libel with reference to the tendency of the matters written, and not by the intention of the writer, might or might not be an improvement of the law; but, if it is, it must be effected by the Legislature and not by the judges. For these reasons, I think that, as it

is not and cannot be suggested that the observations made on the late Mr. Batchelor were intended to injure and bring contempt on his family, but only to injure the character of the late Mr. Batchelor himself, the defendant must be acquitted.

The jury returned a verdict of not guilty.

APPEAL REGISTER—MONTREAL.

Tuesday, March 15.

The Queen v. Cole and Bowen.—Two reserved cases; continued to 23rd inst.

Bondy v. Valois; and *Falardeau v. Valois*.—Motion for appeal from interlocutory judgment. C. A. V.

Laurier v. Legris.—Motion for leave to appeal from interlocutory judgment, rejected with costs.

Cie Minière de Colrairie & McGawron.—Heard *de novo* on merits. C. A. V.

Lebeau & Poitras.—Heard on interlocutory appeal. C. A. V.

Canadian Pacific Railway Co. & McRae.—Heard. C. A. V.

Garth et al. & La Banque d'Hochelaga, & Taillon, & Mercier.—Petition for *reprise a'instance*; granted by consent.

Wednesday, March 16.

Lancot & Ryan.—Heard on motion for leave to appeal from interlocutory judgment. C. A. V.

La Cie. de Navigation de Longueuil & Les Commissaires d'Ecole de la Ville de Longueuil.—Heard on motion for appeal from interlocutory judgment. C. A. V.

Fellows Medical Co. & Lambe.—Motion that Mr. Beausoleil be substituted for Messrs. Lacoste & Cie. Mr. Brosseau asks for production of authority for substitution. C. A. V.

Lapalme & Barré.—Heard on motion to quash writ. C. A. V.

Judah & Boxer et al.—Heard on motion to quash writ. C. A. V.

Goodall & Exchange Bank.—Heard on merits. C. A. V.

Bryson & Cannavon.—Part heard on merits.

Thursday, March 17.

Bryson & Cannavon.—Hearing concluded. C. A. V.

Benoit & Benoit.—Heard. C. A. V.