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*Adam & Duhamel, avocats des demandeurs.
Monk & Raynes, avocats du défendeur.*

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 2 mars 1889.

Coram CHAMPAGNE, J.

BOUTON v. LALLEMAND.

Assaut—Dommages—Poursuite criminelle.

Le défendeur a assailli le demandeur, et pour cet assaut il a été poursuivi en Cour de Recorder et condamné à une amende de \$5. Le demandeur, subéquemment, a intenté une action en dommages contre le défendeur pour le même assaut.

Jugé:—*Que le demandeur ayant porté une plainte à la Cour du Recorder pour assaut simple contre le défendeur qui a payé \$5 sur condamnation, ne peut être poursuivi civilement en dommages pour la même offense.*

Action renvoyée avec dépens.

*Scotte & Chauvin, avocats des demandeurs.
Lavallée & Olivier, avocats du défendeur.*

(J. J. B.)

PARLIAMENTARY DIVORCE.

To the Editor of the LEGAL NEWS:

SIR,—A telegraphic communication received from Ottawa and published in the Montreal newspapers a few days ago, has revealed the alarming fact of an increase of petitions for legislative interference in divorce matters when the next session opens at Ottawa. In the face of such information it will be interesting to examine the comments of the correspondent "M. M.," who gives in the *Legal News* his appreciation of a book published by Mr. John A. Gemmill, solicitor, on "Parliamentary Divorce." As I do not know the book in question, it is impossible for me to pass judgment on its merits. But it is quite a different thing with the personal opinions of the correspondent. They furnish serious grounds for criticism, as they are susceptible, if acted upon, of materially affecting the law of the country on matters pertaining to di-

vorce, and indirectly the relations of Church and State, on such a momentous question. Under those circumstances, the legal community is interested in having a fair discussion on the subject.

After having commented upon the fact that divorce is not popular in Canada, as compared with more advanced countries, the author of the article seems to admit that this state of things is due, for the greater part, to the influence of the Catholic feeling predominant in the Parliament of Canada.

Coming from a Protestant, that admission is worthy of notice. But apart from such a declaration, the rest of the article is clearly written in a spirit of hostility against the traditions and belief of the Catholic Church. As every man's conscience is free in questions of creed or faith, I will refrain from trespassing upon the religious rights and liberty of the correspondent.

In order to support his argument "M. M." addresses himself to the authority of public law, *id est*, to the omnipotent power of the State. True it is, that the right to enact general laws on marriage and divorce has been vested with the Parliament of Canada by the B. N. A. Act of 1867. Catholics, guided and encouraged by their devoted clergy, have loyally submitted to the new constitution, although it contained arbitrary and unjust provisions, repugnant to their religious feelings. It is an accomplished fact. But there exists a concurrent power which is rooted in every man's conscience; it is the law of nature and justice. Although we must obey the laws of the country, we must look to their sanction in a spirit which should be in accord with reason and the general good of society. The power to grant divorce is a constitutive part of a general Act sanctioned by Imperial authority, and consequently it is public law. Nevertheless, as far as individuals are concerned, the right to obtain divorce is optional and depends on a quasi-judicial intervention. Now, Catholics and Protestants alike have an equal duty to protect themselves; they have the same interest in the question of divorce. If the rights of consorts under their marriage contract are ruled by private legislation in each province of our Dominion, and if such rights are, by constitution, placed beyond the