

bring back his own money that he took to England, nor had he accounted for it. He put his wife's money instead of his own into this investment of belting. It seemed strange that Mrs. Campbell should purchase in England goods which had been exported from Canada, and which might much more cheaply have been purchased here, and then bring them back here, paying duty on them. His Honor thought the Court below judged rightly in saying that Campbell, in purchasing these goods in England, purchased them with his own money. If Campbell had brought back or accounted for the \$30,000, the Court might have been disposed to accept the view that he used his wife's money for the purchase of these goods. But he had not done so, and on his return he became insolvent. The judgment declaring the seizure good must be confirmed

*Gilman & Holton*, for Appellant.  
*Geoffrin, Rinfret & Archambault*, for Respondent.

SUPERIOR COURT.

Montreal, June 12, 1878.

PAPINEAU, J.

*Ex parte MALHOT et al.*, Petitioners, and BURROUGHS, Expropriated.

*Practice—Taxation of costs—Quebec Railway Act*, 1863, s. 9, ss. 10.

*Held*, that the taxation of a bill of costs by a Judge in Chambers, under the authority of the the Quebec Railway Act, 1869, s. 9, ss. 10, is not subject to revision by another Judge sitting in banc.

PAPINEAU, J., referring to the terms of the Act above cited, remarked that it gives power to a Judge to tax the bill of costs without giving the Court power to revise it. The common law gives no power to revise the judgments of another Judge, except in the cases mentioned in the code of Civil Procedure, which did not include the present case.

*De Bellefeuille & Turgeon*, for Petitioners.  
*Joseph & Burroughs*, for party expropriated.

DISPUTED QUESTIONS OF CRIMINAL LAW.

- I. Basis of Punishability.
  - II. Obscene Indictments.
  - III. Uncommunicated Threats.
  - IV. Defendants as Witnesses for themselves.
- I. *Basis of Punishability*.—President Woolsey, in his late admirable work on Political Science,

devotes a chapter to the examination of the various theories of the punitive power of the State. The question is one of such great importance to the lawyer, underlying as it does our criminal jurisprudence, that it will not be out of place in these columns to give a sketch of President Woolsey's exposition. Until we know what is our object in punishing, we can neither give a just adaptation to our sentences nor a philosophic construction to our jurisprudence.

President Woolsey begins by pointing out the distinction between Punishment and Redress, the one being called for as something due to the State, the other as something due to the Individual. "There are various wrong acts," he proceeds to say, "which excite no apprehension in society that the interests of the whole are in jeopardy, such as are breaches of contract, and many wrongs done in the way of business. On the other hand, there are wrongs done to society which do not affect any individual in particular. These arise in importance from petty disorder, which a single policeman can control, through all the grades of evil, to high treason, or the attempt to destroy the very existence of the State."

He proceeds to notice the variety of views entertained as to what he calls the "incidence" of forbidden actions—that is, "whether in particular cases they affect individuals only, or a community and individuals, or a community only." In imperfect states, he reminds us, homicide has been considered mainly in the light of an injury to individuals; and even among comparatively civilized communities (e. g., Greece and Rome) theft was treated primarily as a breach of obligation. To this it might be added that even at the present moment the states in the North American Union differ as to how far embezzlement by trustees is a criminal offence punishable by the state, and how far it is to be regarded simply as a tort, to be prosecuted exclusively by the parties injured, in a civil court. Within the last few months we have witnessed in Massachusetts the failure, from want of due statutory provision, of a criminal prosecution against a defaulting trustee, under circumstances which, in New York or Pennsylvania, would have ensured a conviction. And in England, until recently, while the smallest larcenies were punished