

PROGRESS.

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DEFIES ALL TRADITION.

THE LAW AS TO NEGLIGENCE IN RESPECT TO THE STREETS.

Important Decision by the Supreme Court of Canada in the Campbell Case—The City Not Liable For Failure to Keep the Streets in Good Order.

Very brief mention has been made by the daily papers of the final judgment in favor of the city of St. John in the suit brought against it by Mrs. Jane Campbell, about eighteen months ago. It is, however, in many respects the most important decision that has been given for many years in regard to the liability of a city for accident resulting from alleged negligence. It declares, in effect, that there is no such liability where streets and other public works are not kept in repair, provided that they have been properly constructed in the first instance.

This will seem novel law to the thousands who have had an idea that if they injured themselves on a defective sidewalk or fell over some obstruction which had no right to be in the way, they had but to prove the fact to be entitled to damages, yet the decision is not only that of the supreme court of Canada, but it is in line with decisions of the Privy Council of England. There is no doubt of it being sound law, though Judge Landry seems to have been the only one of the justices of the supreme court of New Brunswick who thought so from the first, with the exception of Chief Justice Allen, who took no part in the hearing.

On the 24th of August, 1894, Mrs. Jane Campbell in walking on an asphalt sidewalk at the corner of King street and Market Place, Carleton, fell and injured herself. The sidewalk here had a slope, and rain and other action of the weather had caused an abrupt break, from six to nine inches deep, which break had existed for two years, growing deeper and more dangerous all the while. Mrs. Campbell struck her foot against this obstruction, and thus received the fall which caused the injury. She thereupon placed the matter in the hands of Mr. George A. Davis, who brought suit against the city, the case coming up at the November circuit 1894.

The trial was before Judge Landry. Recorder Jack being ill, Hon. Wm. Pugsley and Mr. Baxter appeared for the city. From first to last both sides have been well represented, but in addition to Mr. Davis, who is now in Honolulu, the plaintiff had had Hon. C. N. Skinner and Messrs. Currey and McKeown.

The plaintiff was nonsuited at the trial on the ground that the accident really occurred on private property, which the city had asphalted, and thus invited the public to use as part of the street. There was a strip eighteen inches wide between the street line and the house. The judge held that there was no evidence of the city's negligence to leave to the jury. While this was the ground of nonsuit, however, it was by no means the great point at issue. That was that, even admitting the city to be liable for the property it had asphalted, it would not be liable for mere neglect to repair a defect which had not existed when the work was done.

This was a point that was discussed in the appeal to the supreme court at Fredericton. The chief case on which reliance was placed was that of the Municipality of Pictou against Geldert, where it was laid down that corporations were not liable for failure to keep roads and bridges in repair unless the legislature specially created a liability. This was the view of the Privy Council. On the other hand, however, there were St. John cases where the supreme court decisions in past years had been directly to the contrary.

The judges at Fredericton held that there was evidence on which the case should have gone to the jury, and ordered a new trial. They were strongly pressed by Mr. Baxter, who appeared with Mr. Pugsley, to decide the point that the city was in no case liable for mere non-feasance, and each of them had something to say on this question.

Judge Barker said he did not feel called on to express an opinion on this point, or as to whether the Geldert case conflicted with the decisions of the New Brunswick court. He thought it better to adhere to the latter decisions, confirmed as they had been by the supreme court of Canada. The point was not new, it had been raised in several cases, but with one or two exceptions it had not received much consideration. In one case which had been carried to Ottawa the court of appeal had given a plain expression of opinion in favor of the city's liability. He held in Mrs. Campbell's favor on the abstract question of the city's liability.

Judges Hanington and Vanwart concurred in the opinion of Judge Barker.

Judge Tuck said that "for this court to declare now that the city of St. John is not liable for injuries sustained by its streets being out of repair would, in my opinion, be to overrule the decision in Gordon vs. The Mayor of St. John, and to deny to be good law the principle upon

which this court has acted in like cases for the last thirty years." He added that he could not overrule a long established doctrine unless it was shown to be in conflict with a decision of the Privy Council directly overruling the judgements of the supreme court of New Brunswick.

Judge Landry, who dissented on other grounds from the rule ordering a new trial, expressed his opinion that the rule should be refused on the authority of the Geldert case, "an authority which I believe this court is bound by."

He was right. The new trial ordered by the court never took place, for an appeal was made to Ottawa and the decision given this week is that the appeal of the city is allowed with costs. Mrs. Campbell, who is a nurse by occupation will hardly be in a position to pay the latter, but it is possible the city may feel satisfied with the decision and be very willing to pay its own bills.

In the future fewer claimants for damages from the city in consequence of accidents will send letters to the council. It must be borne in mind, however, that there is none the less a liability for accident where a sidewalk, street, etc. has been defective in the first instance. Where there has been proper construction, the city is not liable for subsequent defect. It is responsible for the way the work is done, but not for what happens through no original defect at a later date.

Thus are the precedents and traditions of our supreme court for a generation past set aside as if they had never been.

The Exhibition Next Year.

St. John people who are interested in having an exhibition next year are beginning to inquire what preparations are being made for it. From what PROGRESS can learn there is no doubt but that the people expect an exhibition. The success of the last one, the re-election of the same energetic management and the fact that there is no lack of buildings and nothing to interfere with an exhibition naturally leads them to think that there would be no hitch in having one for another year. But it is understood that the management, while hopeful of success, and indeed, more than hopeful, almost confident, do not see their way clear to undertake it without some promise of assistance from the provincial and the city governments. Whether they propose to ask that this shall take the form of grants or guarantees PROGRESS is not prepared to say, but it is not unlikely that they will ask for both a small grant and a small guarantee. Considering what a benefit the fair was last year, not only to St. John but to the whole province, the government will probably favorably entertain any reasonable request, and the city can hardly fail to do so.

Give the Local Men a Chance.

The decision of his Worship the Mayor to allow prize fighting exhibitions in the Mechanics' Institute again has occasioned considerable surprise to those who have from time to time been urging that he give his consent to such affairs. Perhaps Mayor Robertson did not intend it as such, but the fact that a few pugilists from Boston could come to St. John and secure permission over the heads of the local people has called in question that reputation for fairness with which he was credited with possessing in no ordinary degree. The pugilistic exhibition was billed to take place last evening, and no doubt did so after this paper went to press. The friends of Connolly in St. John, and he has a great many, were glad of an opportunity to see him and to give some evidence of their appreciation of his own line by attending at the Institute. But it should be borne in mind that when our local people wish an exhibition of the same sort that His Worship the Mayor should be quite as willing to extend the privilege to them as he has been to the visitors from Boston.

Women's Council Meeting.

The annual meeting of the Women's Council will be held in the church of England Institute room, Germain street, at three o'clock Monday afternoon. Presidents are requested to notify delegates. The order of business is as follows: Reading of minutes; presidents remarks; annual reports of classified sections; i. e. a condensed report, or a few facts concerning the years work from each society; paper by Miss M. B. Smith, subject, Development of national literature in Canada; roll call and silver collection; paper by Mrs. Macmichael, subject, Rescue Work; election of officers. The public are cordially invited to attend the meeting.

Central and Well Supplied.

The attractive store of Mr. T. A. Crockett, located at the corner of Princess and Sydney streets, is always supplied with the requisite stock necessary to fill any and every kind of prescription. At present it is worth while for those passing this store to glance at his window and note the display made there. Anything in this line of his business can be well supplied by Mr. Crockett.

AT HALIFAX HOSPITAL.

COMPLAINTS THAT MATTERS ARE BADLY MANAGED.

Grave Charges Against the Superintendent, and Head Nurse—Financial Matters Somewhat Muddled—A Commission Appointed by Premier Fielding.

HALIFAX, Feb. 20.—A year ago PROGRESS let in some light on troubles that existed at the Victoria General Hospital, and in no other way could the public at that time become aware of what was going on. The troubles now have broken out afresh, and people generally are talking of them. The question has been partially threshed out in the house of assembly, and Premier Fielding has this day appointed a commission to thoroughly inquire into the whole matter.

The charges made are three-fold. First, that the superintendent Dr. Reid, is inefficient; secondly, that the superintendent of nurses, Miss Elliott, is tyrannical and arbitrary and injurious to the best interests of the hospital; thirdly, that the dispenser, bursar and steward, Mr. C. E. Puttner, has been careless if not worse, in the discharge of his duties. Another way of summing up the charges is that there are too many heads to the hospital, which is the way of saying there is no head to it.

The medical administration of the hospital is tested in a committee of physicians called the medical board, composed of the following named: Doctors Fitch, Cowie, Tobin, Dodge, Ternan, Oliver, Wickwire, Farrell, Black, McKay, Almon, Campbell, Chisholm, Trennam and Curry. These men serve without reward beyond the prestige which a position on the medical board gives them, and the small fee they receive out of the sick mariners' fund. Dr. Reid is superintendent of the hospital. He takes his orders in general from the board and is, or should be, the executive head of the hospital. The board, however, have memorialized the government to make a change, alleging that Dr. Reid is inefficient and unqualified in every particular to hold the position he occupies. The facts pointed to that Dr. Reid was superintendent of Mount Hope insane asylum, where he proved a failure, and that the government removed him to what they considered a less responsible position at the Victoria hospital, in the hope that there he would give better satisfaction. Dr. Reid's opponents allege, besides, that his temper and habits unfit him for the superintendency of the hospital. At the insane asylum he had a more supreme command, with no medical board in charge and now, they say, in the hospital he is too much of an autocrat to make it possible for such a body of men as the medical board to get along with him. In addition to this the statement is made that Dr. Reid is too deeply interested in an invention on which he is at work, and in fruit farming, etc., to permit of his successfully discharging the duties of superintendent. That the medical board is solidly against Dr. Reid, there is no doubt, and one thing in particular the royal commission will have to find out will be what ground in fact, there is for their hostility.

One strong argument put forward against the present management of the hospital is its increased cost compared with the time when Dr. Jacques was superintendent only a few years ago. Then the cost per patient was 96 cents per day and the service, it is claimed, is not so good. Such charges are made as this, that the quality of the food is inferior; that the butter, for instance, is rancid, and that, in increased cost per day just mentioned was because of the reason, only the charge for paying patients—privileged to have the services of their own doctor, in preference to the medical staff of the institution,—should be raised from \$7 per week to \$9 per week. Dr. Slayter's private hospital in this city can take paying patients at \$7 per week; the Halifax infirmary at the same or even a lower figure. The government institution, maintained at a large expenditure of public money, thus costs more than private hospitals that have no subsidy whatever. The medical board and those who are agitating for a reform point to Dr. Reid and ask, "Why should these things be?"

Another evidence that matters are not right at the hospital is, that few house surgeons have, since Dr. Reid's regime, been found willing to finish out their term. Dr. McCauley was suspended by the superintendent in connection with the old nurse trouble, and Drs. Cogswell and Murphy have both gone before their time was up. One of the great causes of the difficulties which prevail is the arbitrary rule of Miss Elliott, the superintendent of nurses, and the character of that rule, the opponents of the hospital say, is possible only because of the inefficiency of Dr. Reid. Not long ago, in all this immense hospital with from 120 to 150 patients, there was only one fully qualified nurse available. The nurses will not stay in the hospital one day after graduation for love or money. One of the nurses who some

time ago graduated and promptly left was known to be in the city. This lady and Miss Elliott had been opposing leaders in the battle of a year ago. But on one occasion recently Miss Elliott found herself so short-handed in nurses that she brought her old opponent to come to the hospital and help her tide over a pressing emergency, and with christian-like spirit she acceded to the request. An instance of Miss Elliott's arbitrary dealing was furnished in the case of Miss Graham, a graduating nurse. Like the others she would not stay in the Victoria hospital and asked Miss Elliott for a certificate to enable her to obtain a position in another hospital. This, on some pretext, was refused, and Miss Graham therefore is said to have lost the position she aimed at. There is no bond of union between Miss Elliott and the young ladies who are studying the nurse's profession except force. Their only object seems to be to put in the time, become qualified as nurses, and go elsewhere as quickly as possible, with the consequence, as already stated, that on a recent occasion, there was only one qualified nurse in the building beside the superintendent.

The actual trouble which has brought about the present crisis was caused through the present by C. E. Puttner, the hospital dispenser, bursar and steward, and Dr. J. N. Murphy the house surgeon. There were complaints of the quality of the food for which it seems Mr. Puttner is the responsible official. Errors and discrepancies in the hospital accounts were pointed out and irregularities generally were charged. Other alleged abuses it would not be fair to Mr. Puttner to mention till he has had a chance to set himself right. But one specific charge which Dr. Murphy lodged with the medical board was that trugs and delicacies sent to patients by friends never reaches their destination. Mr. Puttner was blamed for this. Dr. Murphy says that to make certain of what he charges he himself sent some of these things to patients, which owing to Mr. Puttner's intervention, were never seen by the patients. There is much more in the same line, but this will give an idea of some of the things the commission will be called upon to inquire into.

The commission on humane institutions began an investigation, but they saw it was useless for them, with the short time at their disposal, to go into the matter as thoroughly as the condition of affairs demanded they should do. So they withdrew from the task, contenting themselves, in effect with reporting progress, and asking that one of the royal commission to be appointed should be a member of their committee.

The recent order which permitted paying patients to avail themselves of the services of physicians outside the medical board gave members of the board an idea of its reality the other day. Dr. H. H. Read (homeopathist) was the first surgeon to operate under the new rule, and he took up the hour, and the accommodation, hitherto at the sole disposal of the hospital surgeons accustomed to work. That mid-day hour was lost to the regular staff on this occasion.

The commission was appointed by the government today, and consists of Francis H. Bell, chairman, Frank J. Phelan, and Dr. John Stewart. Alderman Geldert will be stenographer, and S. S. Scott will be the accountant to examine the book.

The World's Fair Car.

Since the accident to the passenger train of the C. P. Ry. a new passenger car has been running between Montreal and Halifax, which in the language of the road is called "The World's Fair Car." It is certainly an ideal car to travel in, and it is not to be wondered at that the judges at the World's Fair gave it a first place in the awards. To describe it in any short space would be impossible, but it has that which is lacking on all of the C. P. R. trains in this section of the country,—a smoking compartment at each end of it. Perhaps if both of the smoking compartments were in one it would be an improvement as many ladies do not wish in passing in and out of a car to go through the smoker. But the appointments within, the finish, the conveniences and everything that can possibly be imagined are all of such a nature to make travelling in it truly a comfort.

Serving Science in His Death.

HALIFAX, Feb. 20.—The triumphs of science are greater than those of war. They are indeed, if the experience of Daniel O'Connell O'Leary is a true example. Poor O'Leary went through the Crimean campaign and won medals at Alma, Inkerman, Sebastopol and other engagements. He won promotion in the 63rd regiment, came to Halifax and was honorably discharged. For thirty years he lived in this city and then met the tragic death of which the whole country knows. Science scored its victory when the poor withered remains of the body were taken to the dissecting room of a medical college. Friendless and destitute, O'Leary added to the valorous deeds of his youth by an involuntary sacrifice of his bones for the advancement of medical science, and possibly they have not yet ceased to do duty in this respect.

NOT ALL OF ONE BELIEF.

THE WOMEN DIFFER IN REGARD TO THE CURFEWLAW.

Several Bodies Connected With the Local Council of Women Do Not Want any Such Law—The Petition Embodying the Ideas of Those Who Favor It.

The dear women of St. John are not all of one mind in regard to the proposed Curfew law. It will be remembered that the idea first came to the front through the medium of the Local Council of Women at the instance of the King's Daughters. As PROGRESS understands, the Local Council of Women is a sort of grand lodge in which all the women's organizations are represented, and an action by it would seem to imply a consensus of opinion by all the bodies. All the organized women of St. John, therefore were supposed to be in sympathy with the one idea. It now appears that many of them are not.

As PROGRESS has pointed out, the proposed law is one not likely to pass, and if it did pass the chances are it would raise questions which would subject the city to litigation. Very many of the ladies take the same view, and there has been no little talk over the Local Council having been led into committing itself to the project when a majority of the bodies represented in it were of a different opinion. At a meeting of the Local Council held last week four of the societies asked that body to reconsider the action it had taken, which meant that it should withdraw its endorsement and let the King's Daughters bring forward the measure on their own responsibility. The bodies asking this were the Women's Auxiliary of the S. P. C. A., the Women's Committee of the Protestant Orphan Asylum, the Girls' Alumnae and the Women's Home Missionary Society of St. John Presbyterian church.

When the request for reconsideration came before the Local Council, that body gave the matter a favorable consideration, but deferred dealing with it until a later date. The annual meeting will be next Monday, but it is understood it will not come up then, but whether it is ever reconsidered or not, enough has transpired to show that the movement in favor of a curfew law is by no means as general among the women, as the public have been led to suppose.

The petition which has been drawn up to be presented to the legislature purports to come from the local council, and it is a somewhat interesting document. It reads as follows: "We, the Local Council of Women of St. John do hereby humbly petition the local legislature, now in session in Fredericton, to pass an act to be known as the Curfew Bell Act, whereby the municipal council of the city of St. John shall cause a bell or bells to be rung, to be known as the Curfew Bell, the said bell to be rung at the hours of 7 p. m. in the months of December, January and February, and at the hours of nine p. m. March, April, May, June, July, August, September, October and November, after which all children under the age of 14 years, unaccompanied by parents or guardians, found habitually loitering, idling, or playing on the streets without any apparent purpose, shall be warned by a constable or peace officer to go home, and after such warning, if the child be found loitering on the streets such child shall be taken by such constable to his home. Any parent or guardian may be summoned for permitting his child to habitually break the said by-law after having been warned in writing, and may be fined for first offence \$1, without costs; second offence \$2 and for third or subsequent offences \$5."

The framers of this petition put a good deal of work on the brains of the police in leaving them to decide whether a child is "habitually" abroad or only periodically so, and they put a good deal more labor on the legs of the police in asking that they catch the children and walk home with them. If a kid from Fort Howe the Marsh Bridge or even from Carleton Heights is found around Union street or King square, the policeman will have a long walk to see him home. The policeman could go free on the cars, it is true, but he would have to pay car fare for the kid, and there seems no provision for any fund for this purpose. If there were several stray kids, all living in different parts of the city, just as many policemen would be required to escort them, and when the tired cops got back to their beats they would find another batch waiting to be seen home. It would be great fun for the boys, for it would be playing "gettin' took up," without any unpleasant consequences.

With the police force turned into a juvenile escort, there would be lots of fun for the real law breakers. It has been suggested, however, that much time would be saved by the employment of the patrol wagon, which could course rapidly through the streets, while a policeman with a lasso or net could pick up the fleeing kids as they catch stray dogs in some of the American cities. This would make lots of

fun both for the police and the boys. The chief would be in his glory.

It will be seen that the law purposes to get at the parents by fining them, under certain conditions, and thus the time may come when we shall see the record of Mr. S's end-so charged with allowing a boy to run at large, just as there is now an occasional charge against a citizen for allowing a horse or a cow to run at large.

The law has not been passed yet, however, and when it does they will be time enough to tremble for its results.

JUDGES SPOKE PLAINLY.

One Had an Opinion of Another and that One Had an Opinion as Well.

A little incident, and it is only one of many occurring every day, that happened recently would seem to indicate that one of our institutions, which has always been regarded as the bulwark of our national honor and safety, and the personification of all that is fair and just and above reproach among men, has become the home of much small mindedness, petty jealousies and bitterness of feeling. Those of us who were taught from boyhood to look up to the judges of the land as something above the ordinary man, as beings whose integrity and honor were above suspicion, and the mention of whose very names inspired awe, will be slow to believe the report that the calm, judicial mind that should rule the bench is often ruffled and disturbed by the open and apparently unchecked display of temper, of feeling and of spite and of petty jealousies.

It was at Fredericton during Hilary Term. Judgment was being delivered in Lee and Wallace, and one of the judges, who took no part, had left the Bench and retired to the judges' room which is situated right across the narrow passage-way. He neglected to shut the door, and soon the sound of his voice arose on the air and was wafted into the court room. He was talking loudly. He no doubt acquired this habit from his strenuous endeavors to keep up his end of the talking and questioning and running comment and ruling, with the learned judge who sits to his right, or in trying to drown out the weaker voice of the learned judge who tries to hold down the far end of the bench, and whom he is said to look upon through inverted glasses. He was talking with, or rather at, some legal gentleman, who had taken advantage of his being off the bench to get some business attended to. The name of the address passed judge, who sits at the extreme end of the bench, was mentioned. To mention this judge's opinion or decision in connection with his own, seemed to strike His Honor as both highly absurd and deeply amusing.

"Judge—," said he, stretching forth his arms and assuming his most sarcastic look, "of course I know all about it. But he's a small, narrow, contracted bust. Look at the build of him. I know, built on a small scale, a regular bushman. Just got about enough brains to deal with the like of that," and he threw the papers he held in his hand contemptuously on the table.

The learned judge's extra judicial deliverance on the general make up and average ability of his brother judge was heard by many in and around the court room, for, as it is said, he spoke loudly and with more or less dramatic effect. Of course it reached the ears of the learned judge who indignantly sized up. His rejoinder is said to have been brief and characteristic. Giving his shoulder a hitch and his head a jerk, he is said to have remarked:

"Well, I never was accused of running into a man of war, or of coming on the bench with my face covered over with scabs and sticking plaster."

And now the lawyers are laughing or looking grave over the affair, just as fancy suggests or feelings dictate. But what about the man who is beginning to be persuaded even against tradition that things are not what they seem?

Attending The Sessions.

An old legislator speaking in Fredericton a few days ago remarked how eager some of the present members were to get into the house of assembly, and yet how indifferent they were in their attendance while the house was in session. Some of them for example, were present at the opening of the house, and it has been a difficult matter to get a glimpse of them since. On the contrary there are other members who are so regular in their attendance that it is a matter of surprise when not found in their seats, when the speaker takes the chair. The leader of the house has been there for sixteen sessions, and in that time has not missed a sitting except once during a brief but severe illness of a day or two. This is perhaps an unexampled record, and explains why one who has always been in his place and heard the debates should be so thoroughly conversant with every matter whether trivial or important that comes before the members.

IN THE WORLD.
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Daniel Ellis, 40.
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Susan Porter, 80.
Mary Small, 84.
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16, Louisa Sawyer.
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Mary J. Ferris, 99.
Mr. R. D. G. Harris.
Mrs. Julia Brown, 62.
Andrew McDonnell, 65.
Charles Antworth, 30.
Donald McPee, 16.
wife of John Walsh, 32.
Mrs. Françoise Pothier, 65.
wife of James Hadley, 65.
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A. Gibson formerly of N. S.
Mary, wife of Albert Taylor
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19, James Henry Clarke,
Mrs. Edward Randall of
Mary M., wife of John
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Melaine Elza, wife of H. B.
son of the late Andrew
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