

n'aurait pas dû, tout de même, laisser échapper cette parole, parce qu'un homme de police doit être plus vertueux que tout autre. Ce n'est pas le temps de savoir si le constable a arrêté le prisonnier de la manière qu'il aurait dû le faire.

" Cette question regarde un autre tribunal, mais dans le cas où une arrestation est faite illégalement, il ne s'en suit pas que le prisonnier ne soit pas coupable.

" Un homme commet un meurtre, on l'arrête d'une manière illégale, est-ce à dire que le meurtrier doit être acquitté ?

" L'accusé est coupable, et parce qu'il est un *gentleman*, ce n'est pas à dire qu'on ne devait pas l'arrêter. S'il fallait laisser dire à la police de 'telles insolences,' il n'y aurait plus moyen de faire respecter l'autorité; et en dépit de ce que peuvent dire certains journaux, je ne ferai pas de différence entre les *gentlemen* et les simples ouvriers; tous les journaux de Montréal et du monde entier ne m'empêcheront pas de faire mon devoir.

" Je vous trouve donc coupable, M. Forman, mais, eu égard à l'avertissement un peu rude du constable, je ne vous punirai pas aujourd'hui et je suspendrai la sentence."

ELECTION COURT.

AYLMER (dist. of Ottawa),
November 26, 1888.

Before WURTELE, J.
SÉGUIN v. ROCHON.

Evidence—Statement made by witness after examination.

Held:—*That evidence of a statement or declaration made by a witness subsequently to his examination, for the purpose of contradicting or invalidating his testimony, is inadmissible, until such witness has been recalled and examined upon the point, and an opportunity has thus been furnished to him of giving such reasons, explanation or exculpation as he may have.*

Dr. Routhier was examined as a witness on behalf of the petitioner on the 13th September last, and Mr. Edouard Landry, an alderman of the city of Hull, was produced as a witness on behalf of the respondent to impeach Dr. Routhier's credit as a witness

by proving a statement or declaration made by him some time subsequent to his examination, which, it was contended, was inconsistent with the truth of his testimony. On being asked to repeat the statement or declaration, the petitioner objected to the question and contended that such evidence could not be put in until Dr. Routhier had been first examined upon the point. The respondent maintained that this rule only applied to statements and declarations made by a witness before his examination.

PER CURIAM:—The rule of evidence is clear and positive, that a contradictory or inconsistent statement or declaration made by a witness previously to his examination cannot be proved by independent evidence for the purpose of impeaching his credit, until he has first been questioned with respect to such statement or declaration and allowed an opportunity to explain it. This is generally done in cross-examination; but when it is only discovered after a witness has been examined that his testimony differs from some previous statement or declaration, he may be recalled and further cross-examined, in order to lay a foundation for impeaching his credit by producing witnesses to contradict him, or to invalidate his evidence.

The Court in such cases has to consider in the first place whether the witness ever used the words alleged, and in the next place, if he has done so, whether his having done so impeaches his credit or is capable of explanation. It is only common justice to give the witness whose veracity is to be impeached by contrasting his testimony with some statement or declaration supposed to have been previously made by him, an opportunity of either admitting or denying that he made such statement or declaration, and if he admits that he did, then of explaining under what circumstances, from what motives and with what design it was made. Besides, the witness produced to shake another's testimony, may only have partially heard the statement or declaration, or may have misunderstood it, or may have forgotten its precise tenor, or may intentionally misrepresent it; and it therefore becomes necessary that both should give their testimony, and that the two should be contrasted and fully