JUDGE PALMER'S PERIL,

OR HIS VINDICATION INCASE THE CHARGES ARE FALSE.

Proceedings May Be Taken to Impeach Him—How the Charges Would Be Made—The Story of a St. John Newspaper Man in a Celebrated Case.

The charges of gross misconduct in office preferred by the Globe newspaper against Judge Palmer have been the subject of much comment and speculation among newspaper readers and citizens generally. They have attracted great attention throughout Canada and bid fair yet to form a *cause celebre* in the annals of the judiciary of this province. The principal charges are two, one being a charge of nepotism in extending such undue favors to his son and his nephew that litigants are compelled or induced to employ one or the other of them in prosecuting or defending their causes before the equity court. The other and even more serious charge is that of having received a large sum of money from one of the parties to a suit pending before him under conditions which indicate that it might be a bribe.

PROGRESS has nothing to say as to the truth or falsity of these charges beyond that all good citizens are bound to believe the judge innocent until the charges are proven, or at least until an opportunity is offered for that purpose. Such an opportunity might have been offered by Judge Palmer prosecuting Mr. Ellis, as a responsible editor of the Globe, or the entire proprietorship of the Globe for criminal libel: or by Judge Palmer entering a civil action for defamatory libel and claiming damages therefor.

Or again proceedings might have been taken for contempt of court. There can be no doubt, at least, to the lay mind, that the charges so explicitly made and so circumstantially stated in the Globe constitute a much more flagrant contempt of court than the reflections upon Judge Tuck, published in the Globe and for which Mr. Ellis is now suffering fine and imprisonment. But Judge Palmer has not entered either a criminal or civil action to punish either Mr. Ellis or the Globe publishers for the libel if libel it was, nor has the judge or either of his associate judges, or any person in their behalf taken steps to bring the writer or the publishers of the charges to account for the contempt of court thereby committed.

So far, it will be seen, no opportunity has been offered to the party making the charges to prove them before a court of law. Nor has there been a public and authoritative denial of the charges in question much less any effort to disprove them. The community is thus confronted with a condition of things in regard to the judiciary of the province such as has not been met in the century of our provincial history. It is inevitable that not only Judge Palmer himself, but the entire supreme bench of New Brunswick, suffers in the public estimation from the existence and continuance of this state of affairs.

But the remedy is not easy, although it is a maxim of law that "there is no wrong without a remedy." Judges of the superior courts of the several provinces and of the supreme court of Canada hold their offices by a peculiar tenure, wisely designed to place them above intimidation by the crown and equally above the influence of popular clamor. They are appointed by the crown, that is by the governor general of Canada on the recommendation of his ministers. But the general principle which applies to all other appointed officials, that "the power which appoints has the power to dismiss," does not apply to supreme court judges. They and they only (with the single exception of the auditor general of Canada, who is protected by a special statute) cannot be removed from office by the power which appoints them to office.

The lieutenant governor of a province is a high official, with a salary equal to that of two of our supreme court judges, but the federal government can dismiss him at any time for a reason, and they need assign no better reason than that given by Sir John Macdonald for the dismissal of Lieutenant Governor Letellier de St. Just, of Quebec, some fifteen years ago, that "his usefulness is gone." On such a flimsy pretext, or practically at their own pleasure, the government at Ottawa may remove a lieutenant governor from office. Or they may remove a county court judge in a similar way, but they are powerless to remove a supreme court judge.

If to-day one of the supreme court judges were proven to have abused his office by taking a bribe from one of the suitors before him, or had done any other act of malfeasance in office, neither the governor in council at Ottawa, the privy council of England, nor the Queen herself could dismiss him from office. No one or other of these high authorities could so much as suspend him from the exercise of his office. Nor could parliament itself suspend the payment of his salary, for a judge's salary is not voted annually, as the salaries of other officials are, but is fixed by statute.

What, then, is the remedy for gross misconduct by a judge in the discharge of his office, and how can he be removed from office if proven guilty of such abuse or misconduct? The remedy lies in impeachment before parliament, and his removal from office can only be effected by securing a joint address of both houses of parliament recommending his dismissal. On receipt of such joint address the governor general in council may dismiss the accused judge from office and appoint his successor. It is only in this way that a supreme court judge can be removed from his official position.

PROGRESS is advised that at the next session of parliament proceedings will be taken for the impeachment of Judge Palmer, in which case an opportunity will be afforded to prove what has been alleged against him publicly, together with such new matter as may be brought forward. It is not yet known, and perhaps not yet decided, in what manner the proceedings will begin. "The proper and most convenient course," says Bourniot, "is for the persons who feel called upon to attack the character of a judge to proceed by petition in which all the allegations are specifically stated, so that the judge may have full opportunity of answering the indictment presented against him. But the action of parliament may originate in other ways if the public interest demand it, and there is no objection to any member formulating charges on his own responsibility as a member of the legislature having a grave duty to discharge."

No doubt one or other of these two methods will be taken. The charges thus formulated and presented to parliament will then be referred to a small select committee made up of the most eminent lawyers in the commons, the minister of justice not being one, but attending upon its proceedings. They will at once summon the judge to attend. He may appear personally or by counsel. Witnesses may be compelled to attend and all testimony will be taken under oath. But only such charges will be entertained as would, if proved, justify the removal of the judge from office. The proceedings may possibly never get farther than the committee stage. In fact that is as far we have ever gone in Canada in impeaching our judges. In only three instances have impeachment proceedings been undertaken in Canada. These had to do with charges against Judge Lafontaine in 1868—9, Judge Loranger in 1877, and Chief Justice Wood, of Manitoba, in 1882. In the latter case a committee was asked for but never appointed. In the two former cases committees were struck and evidence taken, but the proceedings never got beyond the taking of evidence. Judge Lafontaine, against whom much was proved, was superannuated while the proceedings were pending, and so escaped from his accusers to enjoy a liberal pension for the rest of his days. From all this it will be seen that a supreme court judge is very firmly seated, and there are apparently some easy ways for a friendly government to help a judge out of the impeachment trap, even when it seems about to close upon him.

Referring to the above cited case of the impeachment proceedings taken against Judge Lafontaine. Mr. J. E. B. McCready, who was officially connected with the committee as its clerk furnishes the subjoined reminiscences of the proceedings:

I was a clerk in the committee department of the house of commons from the 6th November, 1867 to July 1872. It was in 1868, if I remember rightly, that the charges were laid against Judge Lafontaine of the superior court of Quebec, a position corresponding to that of a judge of the supreme court in this province. He presided over the judicial district of Ottawa, and resided at Aylmer, some 10 miles from the capital.

The charges were referred to a select committee of whom Hon. John Hilyard Cameron, then the foremost lawyer in Canada, was chairman, with Edward Blake, Hon. L. S. Huntington, A. W. Savary, (now judge) Alonzo Wright, Hon. Stewart Campbell and others as members. I was instructed by the clerk of the commons to call the committee together, but had no desire or expectation of being its permanent clerk. The proceedings in impeachment were so novel, delicate and important and involved such nice points of procedure that I took it for granted that when once the committee met one of the many officials of the house who had a legal training would be assigned to the work. But events determined otherwise.

Promptly on the hour the members of the committee assembled in room 33. Before proceeding to organize Mr. Blake came over to my desk and inquired courteously whether I was a professional man, or had studied law? I told him I was professional only in the sense of being a newspaper man, and had not studied law. He then said that as the proceedings would be intricate and important the committee thought if I "had no objection" as he kindly put it, that one of the lawyers in the service of the house had better be made clerk to the committee. I was more than pleased to be relieved and said so. Hon. Mr. Cameron then asked me to send for the clerk of the house, Mr. Lindsay, and I despatched a messenger for him. The messenger returned saying, Mr. Lindsay was at his lunch, but would attend presently. The notables of the committee were offended at this delay. "Go and tell Mr. Lindsay to attend at once," said Mr. Cameron shortly. I went and delivered the message and the clerk, Mr. Lindsay, who was a stout man and a little irascible too, dropped his knife and fork and came puffing up stairs. Mr. Cameron rebuked him sharply for not coming promptly when first summoned, to which he merely bowed. All hands round appeared angry. They told Mr. Lindsay he should have given them a lawyer as clerk. He curtly replied "I have given you as good a man as I have. If Mr. McCready fails you in any way I will be responsible." They took him at his word, I was simply appalled at the prospect for I felt that the committee would now seek to prove me incompetent and compel the chief to give them another clerk.

They then proceeded to appoint Hon. John Hilyard Cameron chairman and to deliberate as to the procedure. I got from the library all the books bearing upon impeachment cases, among them Mr. Alpheus Todd's then comparatively new work. While looking over these Mr. Cameron turned to Mr. Blake, and said, "Blake, we think we know something of law, and yet I believe we would be at a loss how to proceed in this case but for this work, written by a layman." I felt that there was some comfort in this for the lay clerk to the committee. As Mr. Blake and others assented, I felt that at least some men on the committee would give me a fair show. But the chairman remained obdurate. The day's proceedings were the preparation of a summons to the judge, and for the numerous witnesses, and then the committee dispersed, the chairman alone remaining. He addressed me:—"Here is the summons for Judge Lafontaine. Have a fair copy made of it and of the charges. Have them both translated into French. Remember they must be accurate to the letter. You will make personal service on the judge. As for the witnesses you will be responsible for the service upon them but may deputize others to serve them."

And I had never served a legal process in my life! He turned to go, half angrily, I thought. I feel that I must gain tim and get more instructions some way. I plunged in with a question—

"About attesting the service?—

"Of course you will attest to your service."

"Stating the day"—

"The hour, the minute!"

I could see that he was becoming more angry and impatient. He was already in the door of the committee room when I blurted out—

"Suppose, sir, that the judge is not at home?"

"Go till you find him!"

And he was gone. For the next hour I was busy transcribing, first that summons outlined by Chairman Cameron, written in the smallest and most crooked penmanship and quite as illegible as one of Judge Palmar's most hurried efforts at chirography. How differently they write, those great lawyers! Sir John Macdonald's handwriting, easy, flowing and always neat. Blake's large and bold, as if he had dipped a crowbar in ink. I remember once, he was writing, something for this same committee, in his then style of half-inch letters. He was writing on foolscap. He began the line with the word "investigation" and only got the first four syllables in that line, carrying the "tion" on to the next line, But this by the way.

By half past two o'clock I had the papers ready, with their translations and was in a coach on the way to Aylmer. Shortly after five I was at the judge's handsome residence and waiting for him in the drawing-room. He kept me waiting for some time, but at length appeared. I briefly explained my errand and handed him the papers. I remember that he did not seem at all alarmed, or even very greatly impressed with my mission.

"And is that all?" he asked.

"That is all, Judge."

He followed me to the door, where we courteously took leave of each other. I returned and made affidavit that I had duly served the summons and copies of the charges upon Judge Lafontaine at his residence at 25 minutes past five o'clock, on the day named,

When the committee again met the members appeared reserved, but not angry. I reported what I had done. They smiled at the details of the hour and minute of service. I said that I had followed my chairman's instructions. Other members looked at him and he said, "That is so." From that moment I had the confidence of the committee.

The Judge did not appear personally, but was represented by a strong array of counsel. On the other side there was an equal array. Then began a legal battle. All sorts of objections were made to the charges and to the methods of procedure. Lafontaine, before his appointment as judge, had been a crown land agent. The charges included much relating to that period, chief among which was that he had taken the money of scores of the settlers and had not paid it over to the government, but put it in his pocket. Hence the settlers could not get their grants, or "patents" as they call them.

The judge's counsel sought to have all this ruled out as having nothing to do with his conduct as judge. But after hearing counsel on both sides, the committee decided that the evidence should be taken, as it might show he was a person unfit to have been appointed a judge. This is an important point, showing that a judge's antecedents may form the subject of inquiry and even of impeachment.

As to his conduct as judge, it was alleged in the charges that Lafontaine had violated almost all the canons governing the office of judge. He had in one case even refused to hear counsel for the defence in behalf of a criminal whom he sentenced to death! It was alleged that in this case he simply bade the prisoner's lawyer "Sit down. He beat and killed the man,—what's the use. The sentence of the court is," &c., &c.

The proceedings dragged along slowly till the prorogation, and were continued the following session, and in the end the judge was superannuated and the impeachment dropped. He was probably 65 to 70 years of age at the time.

The above is given from memory, and after twenty-five years some things become misty and indistinct, but I have among my papers a brief testimonial from Hon. John Hilyard Cameron, stating that I had served as clerk to the special committee on the administration of justice in the district of Ottawa, to the entire satisfaction of the committee and of himself as chairman.

I am aware that there is a great deal of the personal element in the story above related, but it may be of interest as showing the relation of a St. John newspaper man to the first impeachment of a judge in the Dominion of Canada.