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NEW PHASES OF CRIME.

In an article on "La criminalité moderne," which appears in *L'Opinion Publique*, Mr. J. A. N. Provencher notices some of the more recent developments of the criminal passion. The most important of these is the crime of wrecking railway trains, by placing obstructions on the track. "Avec les changements d'affaires," says the writer, "les naufrageurs ont modifié leur mode d'action; les chemins de fer ont remplacé la navigation, ils se sont fait naufrageurs de trains. Ceci nous parait le comble de la lâcheté, de la mesquinerie dans le crime, de l'absence de tout sens de moralité.

"Il se présente de curieuses coincidences, des traits intéressants, des variétés d'immoralité, dans ces classes criminelles; mais ce qui domine généralement, c'est la lâcheté. Les peuples du midi, dont le sang bout plus vite, dont les haines sont plus vivaces, dont les rancunes sont plus durables, dont les vengeances sont plus artistiques, ont conservé l'usage du poignard. Ils frappent dans le dos, c'est vrai, mais ils ont du moins la satisfaction de sentir la chair se crispant sous le fer; à mesure que l'arme pénètre, la vengeance se satisfait. On la touche de la main, on la sent, on compte les pulsations de la victime, on mesure son agonie.

"Aux peuples du nord sont inconnues ces jouissances qu'ils ne sauraient apprécier; le courage leur fera défaut. Ils ne peuvent tuer qu'à distance.

"Alors se manifeste leur faiblesse de sentiment, et leur défaut d'équilibre moral: ils ne veulent pas voir souffrir la victime. Le reste leur importe peu.

"Tel individu qui ne voudrait pas égorger un poulet ira, sans remords, enlever un rail du chemin de fer, et risquer la mort d'une dizaine d'individus; après avoir préparé son embuscade, il s'en ira tranquillement dormir.

"C'est un singulier phénomène que ce mépris de la vie des autres, quand on ne sait pas d'avance quelles seront les victimes. L'opinion publique n'aura pas assez d'expressions violentes pour condamner un meurtre prémédité contre une personne en particulier, et on ne frappera que d'une condamnation anodine un attentat qui, suscité par une absurde et mesquine rancune contre un gouvernement, une compagnie, un être impersonnel, aura tué vingt personnes.

"Et ici, il faut s'arrêter sur un détail important. De temps à autre, on apprend qu'un train a déraillé parce qu'il y avait des pierres sur la voie, ou qu'un rail avait été enlevé; alors l'opinion publique s'émeut, et on demande une punition exemplaire. Ce qu'on ne sait pas, c'est que dix pour une de ces tentatives ne sont pas connues du public. Les inspecteurs de la voie ou les cantonniers éloignent simplement l'obstacle, le train passe, et les passagers ne se doutent de rien."

The writer is in favor of greater severity in the punishment of crime, by way of deterring from the commission of it. We think he might have gone even farther. A crime such as an attempt to throw a train from the rails should be stamped with infamy, and when committed by an accountable being, should be punished with the lash, in addition to the ordinary sentence of imprisonment. If the crime of the garrotter was appropriately punished by corporal pain, still more does that of the train wrecker deserve the acutest and most disagreeable sensation that the "cat" can inspire.

SENTENCE.

In the case of *Ex parte Lefevre*, on p. 253 of this volume, reference was made to a case of *Ex parte Cherel*, decided in January last by Mr. Justice Monk, in a contrary sense. We give, in the present issue, a note of that decision, condensed from a report which appeared in *La Minerve*, and which seems to have been prepared under the supervision of the counsel concerned in the case. We regret that it is not more complete in its reproduction of the observations of the learned judge, for the report, as it stands, leaves us still under the impression that the decision in *Ex parte Lefevre* is sound law, though the judgment in *Ex parte Cherel* is said to have been concurred in by the other members of the Court (the Chief Justice and Justices Cross and Baby). We may say that the Recorder, since the decision in *Ex parte Lefevre*, has wisely determined not to add the punishment of hard labor where fine and imprisonment are ordered.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Sept. 7, 1881.

Before TORRANCE, J.

LEFAIVRE v. BELLE.

Séparation de corps—Pleading—Reciprocity of wrongs.

In an action of separation, for adultery, the defendant cannot plead in bar acts of adultery on the part of the plaintiff.

The demand was for *séparation de corps*, with forfeiture of matrimonial rights, by husband charging wife's adultery. The case came up on an answer in law to a portion of defendant's plea, which alleged neglect, misconduct and ill-treatment by plaintiff.

PER CURIAM. The case of *Brennan* v. *McAnnally*, 21 L.C.J. 301, appears to be in point, that a reciprocity of wrongs is no answer to the action. Our code is very clear. C.C. 211. "For whatever cause the separation takes place, the party against whom it has been declared, loses all the advantages granted by the other party." The answer in law should be maintained.

Answer maintained.

Judah & Branchaud for plaintiff.

B. C. Maclean for defendant.

SUPERIOR COURT.

MONTREAL, Sept. 7, 1881.

Before TORRANCE, J.

In re ROBERT J. HOPPER, insolvent, petitioner, and ELLIOTT, contesting.

Security for costs—Insolvent—Contestation of petition for discharge.

A foreign creditor is not bound to give security for costs, to an insolvent whose petition for discharge he is contesting.

The petitioner applied for his discharge under the insolvent act, after giving the usual notices to his creditors. One of them, Archibald Elliott, resident in Ontario, appeared in due course, and asked delay to file a contestation. This delay was granted, and the petitioner then moved the Court that all proceedings be stayed on the part of the contestant until he should have given security for costs, under C.C. 29, as a non-resident.

PER CURIAM. The question here is whether the petitioner or the contestant is prosecuting a right or initiating a proceeding. The petitioner began by his petition asking for a discharge. He had to give notice under sec. 53 of the Insolvent Act, and the creditor could appear and oppose. The creditor is on the defensive so far as the discharge is concerned, and it would appear strange that he could not exercise his right of defence against the liberation of his debtor without first giving security, on a proceeding not initiated by him, but by the petitioner, who has forced him to intervene and show cause, if he could, against the discharge, or be for ever silent. Pothier, Des Personnes, p. 577, says: "Cette caution n'est due par l'étranger, que lorsqu'il est demandeur, et non lorsqu'il est défendeur; parce que, s'il comparait en jugement, ce n'est que parce qu'il y est forcé."

Motion rejected.

T. & C. C. DeLorimier for petitioner.

Macmaster, Hutchinson & Knapp for creditor.

SUPERIOR COURT.

MONTREAL, Sept. 9, 1881.

Before TORRANCE, J.

Ex parte LAMOUREUX, petitioner for *certiorari*, and LUTTRELL et al., respondents.

Commissioners' Courts—Opposition—Procedure—C.C.P. 1206, 1208, 1214.

An opposant in a case before a Commissioner's Court is not bound to proceed to proof on the return day, but is entitled to have a subsequent day fixed for trial.

PER CURIAM. This was an application for a writ of *certiorari*. The applicant was an opposant *à fin de distraire* to withdraw certain movables from a seizure in the Commissioner's Court.

The Court sat on the 1st August, and the opposant not appearing, the opposition was forthwith dismissed. The petitioner claimed that he had a right to another day, and that his opposition should not have been dismissed summarily. In support of his petition, petitioner called attention to C.C.P. 1206, 1208, 1214. The Court would also call attention to the C.S.L.C., cap. 94, s. 33 and s. 43. Section 33 says: "Except as hereinafter excepted, the

witnesses in any suit shall not be summoned to attend on the day of return," &c.; and s. 43 makes the rules the same for oppositions as for suits. It would appear, therefore, that the witnesses for the proof of the opposition should not have been required for the return day, but another day should have been fixed for proof.

The writ will be ordered to issue.

Mireault for petitioner.

SUPERIOR COURT.

MONTREAL, Sept. 9, 1881.

Before TORRANCE, J.

MATHIEU v. TREMBLAY et al., and LIONAIS, petitioner.

Alimentary allowance—Judicial surety.

A judicial surety in gaol is not entitled to an alimentary allowance.

The petitioner asked for an alimentary allowance under C.C.P. 790. He was a judicial surety in gaol.

PER CURIAM. The article 790 applies to a debtor confined under a capias. It was decided in *Cramp* v. *Cocquereau*, 3 Legal News, 332, that the judicial surety was not entitled to the allowance.

Loranger, Loranger & Beaudin for plaintiff.

Descarries for petitioner.

SUPERIOR COURT.

MONTREAL, Sept. 9, 1881.

Before TORRANCE, J.

DUPRAS es qual. v. SAUVÉ et al.

Judicial sureties—Contrainte par corps.

Judicial sureties are not entitled to a delay of four months before becoming contraignables par corps.

The demand here was for *contrainte par corps* against judicial sureties.

Doutre, Q.C., for the sureties, alleged, 1st, that there had been no commandment to pay; and, 2nd, that the four months' delay had not expired. Ord. 1667, Tit. 34, Art. 10 and 11, and the case of *Blais* v. *Barbeau*, 1 Rev. Crit. 246.

Pagnuelo, Q.C., for plaintiff. There had been commandments to pay by the seizure and sale of movables under an execution. As to the delay of four months, it did not apply.

The COURT was with the plaintiff. The code allowed four months to tutors and curators in default. *Vide* Pothier, Proc. Civ. *Contrainte par Corps.* The reference to *Blais* v. *Barbeau* was too brief in the Revue Critique to allow the Court to appreciate its applicability to the present case.

Petition granted.

Pagnuelo, Q.C., for plaintiff.

Doutre & Joseph for sureties.

SUPERIOR COURT.

MONTREAL, September 14, 1881.

Before TORRANCE, J.

In re REMI GOHIER, insolvent and petitioner for discharge, and PERKINS, assignee, contestant.

Costs of previous contestation—Identity of cause and parties.

Costs due in respect to a former contestation, must be first paid before a petitioner for discharge in insolvency can proceed, where the causes of both proceedings are identical, and the parties are also identical.

PER CURIAM. This was a demand for payment of costs incurred. The petitioner was seeking his discharge in insolvency. Arthur M. Perkins, assignee, appeared in answer to the notice of the application for discharge, and intimated his intention to contest the application, but asked that the costs awarded him, on the contestation of a previous application, be first paid him. The rule is laid down in *Lalonde* v. *Lalonde*, 1 L. C. Jur. 290. The persons and the cause of action must be identical. It was a pure rule of equity which justified the order, and there appeared to the Court no reason here why the order should not be given. The application was now renewed with better hopes of success, in consequence of the act of Canada, 44 Vic., cap. 27, A.D. 1881, removing a barrier to the discharge which existed previously.

Motion granted.

T. & C. C. Delorimier, for assignee.

R. & L. Laflamme, for petitioner.

CIRCUIT COURT.

MONTREAL, January 26, 1880.

Before MACKAY, J.

DANSEREAU et al., appellants, and THE CORPORATION OF THE PARISH OF ST. ANTOINE, respondents.

Appeal to Circuit Court—Examination of witnesses.

On an appeal to the Circuit Court from the decision of a Municipal Council, revising an assessment roll, the appellants are not entitled to examine witnesses.

Per Curiam. This appeal is taken from a certain decision pronounced 29th July, 1879, by the Municipal Council of the parish of St. Antoine, sitting in special session, by which it revised and altered the assessment roll then in force in that municipality. The appellants or petitioners did not attend the meeting of 29th July, and nobody there made complaint, written or verbal, against the Council's proceedings or decision. The appellants come to the Circuit Court, therefore, not so much as appellants as complainants; as if the Circuit Court were a Court of first instance they make complaint and ask that the amendments made by the local Council to the assessment roll, whether by adding names to it, or striking off names, be declared irregular, null and void.

Upon the appeal the respondents did not appear, and the appellants were proceeding *ex parte* and had their witnesses in attendance on the 20th and 21st instant, when the respondents asked to be allowed to cross-examine witnesses, at the same time protesting that the Circuit Court could not examine witnesses, none having been examined before the local Council, and no *plainte* having been made before it. (1071, C. Mun.) I allowed the plaintiff's case to be gone into with the examination of all his witnesses in attendance, reserving to pass afterwards upon the question raised by respondents. The plaintiff having concluded his case in chief I can now easily dispose of this appeal.

Upon appeals such as the present one to the Circuit Court, I hold that appellants have not right freely to call and examine witnesses. Art. 1071 is clear as to that. The Circuit Court has not power to administer oath to new witnesses (*nouveaux témoins*). None of the appellants' witnesses examined before me had been examined before. The appellants say that they had not means to make a *plainte* before the local Council, but I do not see this. The amendments were made upon deliberation, and after resolution proposed, and seconded, and agreed to. I see no complaint yet, but the one made in this Circuit Court by the appellants, who did not attend the local Council meeting of July. The appellants do not complain of having been refused a hearing in the local Council. The articles of the Municipal Code to be considered in this case are 734 to 738 and 746 A. and (as regards particularly appeal) 1061, 1071. The Court has nothing to do with old article 927 of the Municipal Code, repealed in 1878 by the 41-42 Vic., c. 10. Article 927 is to be treated as having never existed; the Municipal Code as it stands to-day is to be read as one settled, original law; under it, from the local council's proceedings altering an assessment roll, the only appeal is to the Circuit Court; but subject to the conditions and limitations enacted, among them those of 1071. It seems to me that appeals are surrounded with difficulties, but these may be diminished by complaints in writing being made early, before the local Councils, and with tender of witnesses. Such complaints and tenders the local Councils would have to attend to. (See last paragraph of 1061, as it now reads.) As to its being almost impossible, in the hurry and suddenness of the proceedings at the local Council's meetings, to formulate complaints, I would say for myself that I would not be exacting as to form, provided the complaint contained a substantive particular protest and complaint, with offers to prove it or support it by proofs, and with names of witnesses and prayer to have them summoned. Holding as I do that I had no right to examine the witnesses who have been examined for appellants, their case fails, and the appeal is dismissed, without costs.

Geoffrion & Co. for appellants.

Lacoste, Globensky & Bisaillon for respondents.

SUPERIOR COURT.

Montreal, Sept. 9, 1881.

Before Taschereau, J.

Dillon v. City of Montreal.

Corporation—Obstruction on sidewalk—Damages.

This was an action against the city of Montreal, by which the plaintiff, a shoemaker, claimed the sum of $5,000 damages.

It appeared that on the 10th February, 1879, about six o'clock in the evening, while Dillon was going home from work, as he was passing along the north-west side of Notre Dame street, he struck his foot against a lump of snow or ice on the sidewalk, and fell with great violence to the ground. The accident was not attributable to any carelessness on the part of the

plaintiff, but was caused by a dangerous accumulation of ice or snow on the sidewalk. The fall caused fracture of the thigh, and the plaintiff, who was 66 years of age, was permanently weakened and made lame by the effects. The court allowed $2,000 damages.

The judgment was as follows :—

" La cour etc....

" Considérant que le ou vers le 10 fèvrier 1879, en la cité de Montréal, le soir et dans l'obscurité, le demandeur passant sur le trottoir qui longe le côté nord-ouest de la rue Notre-Dame de la dite cité, heurta accidentellement du pied, et sans avoir pu l'éviter, une accumulation de neige ou de glace qui se trouvait sur le milieu du dit trottoir, et tomba violemment, la dite chute lui causant une fracture de la cuisse par suite de laquelle le demandeur est depuis resté permanemment infirme et incapable de gagner sa vie ;

" Considérant que l'obstacle dangereux qui a causé la dite chute du demandeur existait au dit endroit depuis un temps assez considérable, par suite de la négligence de la corporation défenderesse ou de ses employés, et que la défenderesse est passible des dommages réels et continus éprouvés par le demandeur, et qui s'élèvent à au moins $2000 :

" Rejette les défenses et condamne la défenderesse à payer au demandeur la dite somme de $2000, avec intérêt," &c.

Lacoste, Globensky & Bisaillon, for plaintiff.

R. Roy, Q.C., for defendant.

SUPERIOR COURT.

MONTREAL, Sept. 9, 1881.

Before TASCHEREAU, J.

STARR v. McDONALD et al.

Trustee of Church—Letter of guarantee.

This was an action by a livery stable keeper for $273, amount of an account for hire of horse and buggy, etc. The debt was incurred by one Maynard, and the question was as to the personal responsibility of the two defendants, Messrs. McDonald and James, who were trustees of the Protestant Union Church and school house at Cote St. Luc, for whom Maynard was acting. The demand was based chiefly on the following letter written by the defendants to the plaintiff:

" MONTREAL, July 27, 1878.

" DEAR SIR,—By a motion passed at a meeting of the trustees of the Protestant Union Church and school house at Cote St. Luc, it was proposed by Mr. James, seconded by Mr. McDonald, that Mr. Maynard is hereby instructed to open an account with Mr. Starr for hire of horse and buggy, Mr. Starr being requested to include the account already incurred by Mr. Maynard in that against the trustees. In the face of this resolution we hereby request that you will supply Mr. Maynard with a suitable horse and buggy at the rate already agreed upon, the payment of your account being made by the trustees about the middle of September next, when the collection of the subscriptions will be made."

The letter was signed by the defendants, without any addition to their names.

The defendants pleaded that they were not personally responsible, but one of them, McDonald offered $60 in settlement of the matter.

The judgment was as follows :—

" La cour etc....

" Considérant que les défendeurs n'ont pas encouru de responsabilité personnelle à l'égard du demandeur relativement au compte de ce dernier contre le nommé George Maynard ;

" Considérant que bien que les défendeurs fussent deux des syndics formant une corporation connue sous le nom de " The trustees of the Protestant Union Church and School House at Cote St. Luc," et que la dite corporation syndicale ait garanti le paiement d'une partie de la réclamation du demandeur , les défendeurs ne sont pas par là devenus responsables personnellement envers le demandeur ;

" Considérant que par leur lettre en date du 27 juillet 1878, les défendeurs n'ont fait que communiquer au demandeur la résolution de la dite corporation à cet égard, et n'ont assumé par la dite lettre aucune obligation personnelle ni donné aucune garantie quelconque ;

" Considérant qu'en admettant même que les défendeurs soient devenus personnellement responsables, ils ne pourraient l'être que chacun pour une part égale (savoir un cinquième) avec les autres syndics, et sans solidarité ;

" Considérant que le défendeur Hugh McDonald a offert avant l'action, pour éviter un procès, et a consigné devant cette cour la somme de $60 ;

"Considérant que par les termes de la dite résolution et de la dite lettre le demandeur ne pourrait réclamer en tout des dits syndics que les articles de son compte antérieurs au mois de septembre 1878, et que la dite somme de $60, offerte et consignée, fait plus que couvrir les parts réunies des deux défendeurs dans le montant total pour lequel les dits syndics, savoir: les deux défendeurs, et trois autres personnes, seraient responsables envers le demandeur;

"Maintient les défenses, déclare les offres et la consignation faites en cette cause bonnes, valables et suffisantes, et partant renvoie l'action du demandeur avec dépens," etc.

Kerr, Carter & McGibbon, for the plaintiff.

R. & L. Laflamme, for the defendants.

SUPERIOR COURT.

MONTREAL, Sept. 9, 1881.

Before TASCHEREAU, J.

BANK OF MONTREAL v. RANKIN.

Cheque—Overdraft—Stamps.

This was an action for the amount of a cheque.

On the 21st October, 1879, the defendant gave his cheque on the Bank of Montreal for $20,689.85, payable to bearer. It was presented the same day, and on presentation the Bank paid the money. The defendant had not at the time a sufficient sum on deposit to cover the cheque, but the Bank paid the full amount, and entered it to the debit of defendant in a special account.

The defence to the action was, first, that the order in question was not really a cheque, not being against money on deposit, but was in the nature of a note, and was invalid without stamps. Want of consideration was also pleaded. And, further, that the cheque was given as a compromise of a criminal prosecution brought against defendant and six other directors of the Consolidated Bank, for making false and fraudulent returns; that the Bank paid the money to Mr. John Monk aud his representative, Mr. Ritchie, who were bringing the prosecution, and that this took place with full knowledge by the Bank of all the facts, and that they could not recover on the cheque.

The Court found that the money was paid under the circumstances above stated, but the Bank had no knowledge of the alleged compromise. The personal knowledge of the President, Mr. George Stephen, of the circumstances of the compromise could not be opposed to the Bank, as the latter was not bound by the acts of Mr. Stephen in his individual capacity, and had no cognizance of the pretended compromise at the time the money was paid. As to the alleged necessity for stamps on the cheque, the Court did not consider the pretension tenable. Every order in writing on a bank for the payment of money is a cheque, and as such did not require to be stamped. The pleas of the defendant must be overruled, and judgment must go in favor of plaintiffs for $20,689.85.

The judgment is as follows:

"La cour etc....

"Considérant que tout ordre par écrit sur une banque pour le paiement d'une somme d'argent, est un chèque, et comme tel n'est pas assujetti à la nécessité d'être timbré;

"Considérant que le mandat à ordre allégué en l'action est un chèque qui n'avait pas besoin, pour sa validité, d'être revêtu d'un timbre;

"Considérant que les allégations de l'action sont suffisantes en loi;

"Renvoie et rejette la dite exception à la forme avec dépens.

"Et procédant à adjuger sur le mérite de la cause;

"Considérant que le 21 Octobre 1879, le défendeur a émis son chèque ou mandat à ordre sur la demanderesse pour le paiement de la somme de $20,589.85, payable au porteur du dit chèque, et que sur présentation d'icelui le même jour, la demanderesse paya la dite somme au porteur du dit chèque et la porta au débit du défendeur;

"Considérant que le dit jour le défendeur n'avait pas à la dite banque demanderesse un dépôt suffisant pour couvrir tout le montant du dit chèque, mais qu'à sa demande spéciale, la demanderesse paya tout le dit montant, lequel montant elle a subséquemment, encore à la demande du défendeur, entré dans ses livres au débit de ce dernier, dans un compte spécial;

"Considérant que le dit chèque a été par la dite banque remis au défendeur qui l'a produit avec ses défenses;

"Considérant que la dite banque a payé le montant du dit chèque dans le cours ordinaire de ses opérations journalières de banque, de bonne foi et dans l'ignorance de la destination du produit du dit chèque;

"Considérant que le défendeur n'a aucunement prouvé la participation de la banque demanderesse dans le prétendu compromis allégué avoir eu lieu entre le dit défendeur et le nommé John Monk ou ses agents, en exécution duquel le dit chèque aurait été émis, et qui aurait été entaché d'illégalité et de nullité, d'après les défenses ;

"Considérant que la connaissance personnelle que le nommé George Stephen, Président de la dite Banque, a pu avoir du dit prétendu compromis, ne peut être opposée à la demanderesse, qui n'est pas liée par les actes du dit Stephen, et qui ne les connaissait pas lors du paiement du dit chèque ;

"Considérant que quelque soit la nature et le caractère du dit compromis, il ne peut aucunement être opposé à la demanderesse ni l'empêcher de recouvrer la dite somme de $20,689. 85 ;

"Rejette les défenses, et condamne le défendeur à payer à la demanderesse la dite somme de $20,679.85 avec intérêt à compter du 21 Octobre 1879, et les dépens."

W. F. Ritchie, for plaintiff.

Girouard & Wurtele, for defendant.

W. H. Kerr, Q.C., counsel.

CORUT OF QUEEN'S BENCH.

[In Chambers.]

Before MONK, J.

Ex parte GUSTAVE CHEREL, petitioner for writ of Habeas Corpus.

Summary conviction—32-33 *Vict. c.* 32, *s.* 17—*Sentence.*

In cases tried under 32-33 *Vict. c.* 32, *s.* 2, *ss.* 3, 4, 5 *and* 6, *if the prisoner be condemned to fine and imprisonment, hard labor may be added to the sentence of imprisonment.*

Le requérant avait été condamné par M. le Recorder de Montigny (sur conviction d'avoir tenu, sur la rue Vitré, à Montréal, une maison de prostitution), 1o à un emprisonnement de six mois aux travaux forcés ; 2o à une amende de cent dollars, y compris les frais, et 3o à un emprisonnement additionnel de six mois, sans travaux forcés, si cette amende n'était pas payée à l'expiration du terme en premier lieu mentionné.

Le requérant avait subi son procès en vertu du chapitre 32 de l'acte de 1869 (32-33 Victoria) sec. 2, sous sec. 6. Il avait été condamné en vertu de la section 17 du même acte, laquelle permet au magistrat devant qui la cause a été instruite et qui trouve l'accusation fondée, de condamner l'accusé et l'incarcérer dans la prison commune ou autre lieu de détention, pour y être détenu "avec ou sans travaux forcés," pour une période de pas plus de six mois, ou à payer une amende n'excédant pas, avec les frais, la somme de cent piastres, "ou à une amende et un emprisonnement" n'excédant pas la période et la somme susdites.

M. A. P. Globensky, avocat du requérant, prétendait, en s'appuyant sur un jugement rendu par Son Honneur le juge Ramsay (*re May Somers*, terme criminel de septembre 1875, à Montréal) que les mots "avec ou sans travaux forcés" auraient dû être répétés après le mot "emprisonnement," dans la dernière partie de la clause ; qu'au moins on aurait dû expliquer clairement que l'emprisonnement en dernier lieu mentionné devait être de la même nature que celui en premier lieu indiqué ; que le statut devait être interprété strictement et ne pas permettre le sous-entendu : que l'emprisonnement tel que prévu par le législateur, s'entendait, en langage légal, sans travaux forcés : que le Recorder, en imposant les travaux forcés, avait excédé sa juridiction : que par conséquent la conviction rendue par lui, et le *commitment* émis en vertu d'icelle, étaient nuls, devaient être cassés et le requérant remis en liberté.

M. Aldéric Ouimet, C.R., pour la Couronne, soutint que les procédés du Recorder étaient parfaitement réguliers sous tous les rapports. Il est évident, dit-il, que le législateur n'a pu avoir en vue, en déclarant que le magistrat pouvait condamner et à l'amende et à l'emprisonnement, un autre mode de punition que celui déjà mentionné à quelques lignes d'intervalle plus haut dans la même clause : que l'espèce d'emprisonnement pourvu, était aux travaux forcés, ou sans travaux forcés, à la discrétion du magistrat. Il fallait lire le statut criminel, comme les statuts civils, et leur donner une interprétation que la loi, qui voulait punir le genre d'offense commis par le requérant, d'une façon exemplaire, avait eu en vue. A l'appui de sa proposition, M. Ouimet produisit plusieurs autorités tant anglaises que canadiennes, sur la question d'interprétation des statuts. Il fit aussi allusion à la cause de *Williams* rapportée dans le 19e volume du Jurist, dans laquelle une question de ce genre avait été

soulevée, et décidée par la Cour d'Appel, dans un sens contraire aux prétentions du requérant. Il termina par quelques remarques sur la gravité de l'offense commise et la nécessité de mettre un frein à des crimes du même genre.

Le tribunal après avoir délibéré sérieusement sur la demande du requérant, rendit son jugement. L'Honorable juge Monk, parlant en son nom et en celui de ses honorables collègues, déclara que les juges présents étaient unanimes à décider que les procédés du Recorder étaient conplètement en règle, que celui-ci avait le droit, d'après la clause 17 du chapitre 32 de l'acte de 1869, d'ordonner l'emprisonnement avec ou sans travaux forcés, que la demande du requérant devait être rejetée, le writ d'*habeas corpus* cassé, et Gustave Chérel remis entre les mains du geôlier, pour subir la peine à laquelle il avait été condamné.

L'honorable juge fit connaître toutes les difficultés qui surgissaient dans l'interprétation d'une telle clause. Il a signalé les jugements dans la cause de Williams et dans celle de Somers. Dans le premier une disposition à peu près identique, contenue dans un statut postérieur, a une autre disposition avec laquelle elle était déclarée comprendre les travaux forcés par trois sur cinq juges de la Cour du banc de la Reine. Lui et l'honorable juge Ramsay ont différé de la majorité composée des honorables juge-en-chef, Sanborn et Taschereau.

Mais la conciliation des deux textes de loi mis en question dans la cause de Williams est réellement plus difficile que dans ce cas présent, où la disposition à interpréter est dans la même section que celle avec laquelle il s'agit de la concilier. La version anglaise——or to both fine and imprisonment, not exceeding the said period and sum——ne laisse pas de doute que le législateur a entendu infliger le même mode d'emprisonnement, dont il a parlé plus haut, surtout quand on le compare à ceux infligés pour la même offense dans le chap. 28 qui est le statut définissant l'offense en question.

A. P. Globensky, for the petitioner.

Aldéric Ouimet, *Q.C.*, for the Crown.

RECENT ENGLISH DECISIONS.

Criminal law—Forgery—Inchoate instrument.—The prisoner was indicted in the first count for forging and uttering an indorsement on a bill of exchange, in the second count on a paper writing in the form of and purporting to be a bill of exchange, and in the third count on a certain paper writing. The facts were these: The prosecutor wrote the body of a bill of exchange, but without signing the drawer's name, and sent it to the prisoner, who was to accept it and procure an indorsement by a solvent person, and return it to the prosecutor. The prisoner accepted it, and forged the indorsement of another person's name, and returned it. *Held*, that the prisoner could not be convicted upon this indictment, as the document was only an inchoate instrument of no value when the prisoner forged the indorsement. Cases cited: McCall v. Taylor, 34 L. J. 365; Stoessiger v. South-East R. Co., 3 El. & B. 549. Crown Cas. Res., May 21, 1881. *Regina* v. *Harper*. Opinion by Lord Coleridge, C.J., 44 L. T. Rep. (N.S.) 615.

Collision—Compulsory Pilotage.—A tug belonging to the respondent was engaged to tow a ship belonging to the appellants to harbor. The ship was in charge of a pilot compulsorily employed. The tug attempted to tow the ship across a bank, instead of going round it, and the ship struck on the bank and sustained damage. In an action brought by the shipowners against the owner of the tug, it was proved that the pilot signalled to the tug to change her course, but did not cast off the tow rope on finding his signals disregarded, and in the opinion of the nautical assessors he was "negligent, supine and inactive." *Held* (reversing the judgment of the court below), that this did not amount to contributory negligence on the part of the ship, and that her owners were entitled to recover for the damage sustained. The Julia, Lush. 224; 14 Moo. P. C. 210, approved. Other cases cited, The Diana, 1 W. Rob. 131; The Duke of Manchester, 2id. 470; The Clyde Navigation Co. v. Barclay, 1 App. Cas. 790; 36 L. T. Rep. (N. S.) 379; Bland v. Ross, 14 Moo. P. C. 210; Quarman v. Burnett, 6 M. & W. 509; Smith v. St. Lawrence Tow Boat Co., L. R., 5 P. C. 308; 28 L. T. Rep. (N. S.) 885; The Energy, L. R., 3 A. & E. 48; 23 L. T. Rep. (N. S.) 601; Thorogood v. Bryan, 5 C. B. 115; Davis v. Mann, 10 M. & W. 546; Ashby v. White, Sm. Lead. Cas. 300. House of Lords, March 7, 1881. *Spaight* v. *Tedcastle*. Opinion by Lord Chancellor Selborne, 44 L. T. Rep. (N. S.) 589.