The Legal News.

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APPEALS TO THE PRIVY COUNCIL FROM THE SUPREME COURT.

Some months ago (5 Legal News, p. 401), we noticed an expression of opinion by the Judicial Committee of the Privy Council, in *Bank of New Brunswick* v. *McLeod*, to the effect that the Committee would not recommend the exercise of the prerogative of the Crown to grant special leave to appeal "except in cases of general "interest and importance, and then only when "it manifestly appears that the Court below "have erred in a matter of law." In a more recent case, *Canada Central Ry. Co.* v. *Murray*, in which judgment was rendered in May last, this rule has been reiterated. In the case mentioned, an application was made for leave to appeal from a judgment of the Supreme Court of Canada, but their lordships found that the questions raised involved no issue except one of fact, and they held that an appeal would not be allowed where the only issue raised is one of fact. The concluding observations of the Judicial Committee are deserving of attention:— "Their lordships are also "desirous in this case to lay down the rule, "that they will in future expect parties who "are petitioning for leave to bring an appeal "before this Board, to state succinctly, but fully, "in their petition the grounds upon which they "make that demand. They will certainly ex-"pect that parties will confine themselves in "future to the petition, and will not wander into "extraneous matter, such as the record and pro-"ceedings in this case, over which the Board "until an appeal is permitted and brought, "have no control whatever, and which they "cannot accept on an *exparte* statement which "an application of this kind is."

AMERICAN BAR ASSOCIATION.

The sixth annual meeting of the American Bar Association will be held at Saratoga Springs on the 22nd, 23rd and 24th days of August. Among the features of the meeting will be the address by the President of the Association, Alex. R. Lawton, of Georgia; a paper by R. G. Street, of Texas, on "How far considerations of Public Policy may enter into judicial decisions;" a paper by Simon Sterne, of New York, on "Slipshod and Corrupt Legislation, and the remedy;" the Annual Address by J. W. Stevenson, of Kentucky; a paper by S. E. Baldwin, of Connecticut, on "Preliminary Examinations in Criminal Proceedings," and a paper by J. M. Shirley, of New Hampshire, on "The Future of our Profession."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, September 20, 1882.

DORION, C. J., MONK, RAMSAY, CROSS, and BABY, JJ.

SAUVÉ (deft. below), Appellant, and BOILEAU (petr. below), Respondent.

Election of School Commissioner—Demand of Poll.

It is necessary that five electors should demand a poll, in the case of the election of a School Commissioner.

Where an election of School Commissioner has been held under circumstances which are unusual and which lead the Court to believe that there has been a surprise of the electors, and that they have been debarred from exercising their right to vote, the election will be annulled.

The judgment appealed from in this case was rendered by the Superior Court, district of Terrebonne, Bélanger, J., on the 14th of December, 1881, declaring the election of the appellant, Joseph Sauvé, to the office of School Commissioner to be null, and holding that Antoine Ladouceur was duly elected.

The complaint was that the appellant, Joseph Sauvé, had usurped the office of School Commissioner of the parish of St. Placide, to which Antoine Ladouceur was properly entitled, and the petitioner Boileau asked that Sauvé be dispossessed of the office in favor of Ladouceur. The question was whether Ladouceur or Sauvé had been legally elected. It was claimed that Ladouceur was duly elected School Commissioner at a meeting held at the church door of the parish. It appeared, however, that at the time the notice for this meeting at the church door was given, notice of another meeting for the same purpose was given, to take place at the residence of Ephrem Raby. An effort was made to combine the meetings, and have one at the church door, but some of the electors met at Raby's and Sauvé was elected, a poll demanded in favor of Ladouceur being refused by the chairman. The meeting at Raby's was called by C. Raby, the newly appointed Secretary-Treasurer of the Commissioners. The other meeting was called by one Leroux, who had ceased to be Secretary-Treasurer on the 7th

February preceding, when he was removed from office.

Pagnuelo, Q.C., for the appellant, submitted that the election of Sauvé could not be attacked by reason of defect in the title of the person who presided, when he was openly exercising his office. His title could not be attacked incidentally. It was also urged, among other reasons, that the respondent could not question the title of Raby, because he had acknowledged him as Secretary-Treasurer by paying taxes to him.

Champagne, for the respondent, contended that Leroux had not been legally removed from office, and even if his removal was legal, the appointment of C. Raby was illegal, not being made at a regular meeting. Further, even supposing the meeting held at C. Raby's had been lawfully convened, yet a poll was demanded by a sufficient number of electors, and was improperly refused. Three electors could demand a poll, and in this case a poll was demanded by five. The pretended election of Sauvé was therefore illegal, and the judgment maintaining the election of Ladouceur was correct.

RAMSAY, J. This case arises out of misunderstandings and difficulties of a Municipal Council. We have not to decide on the merits of the disagreement, but whether the appellant, Joseph Sauvé, was duly elected a School Commissioner of the Parish of St. Placide, or whether he has usurped the office to which one Antoine Ladouceur was duly elected.

The suit began by a proceeding in the nature of a *quo warranto* promoted by the respondent, who declares himself an elector, and qualified to vote for School Commissioners, and setting forth that Antoine Ladouceur was duly qualified to be elected, and was elected.

Both the quality or capacity of the Respondent and of Antoine Ladouceur—one as elector and the other as being eligible for election—were expressly denied, and it may be well to dispose of these questions at once. It is argued that Respondent is only the *prête-nom* of two persons, G. Raymond and Damase Leroux, who themselves participated in the proceedings attacked, and because he recognized the validity of the proceedings in paying the Secretary-Treasurer, whose nomination as Secretary-Treasurer he now impeaches; that Raymond and Leroux have not paid their taxes, that Ladouceur was ineligible because neither he nor his proposers had paid their taxes.

I see no evidence to disqualify these parties. Those whose names are on the voters' list are entitled to vote unless it can be shown positively that they are subject to a disability. The evidence of this is on the party alleging the incapacity.

Substantially there is little difference as to the facts of the case. On the 7th February, 1881, it seems that there was a special meeting of the School Commissioners called to decide as to whether the Board should resolve to settle the claim of the former Secretary-Treasurer, Mr. Barnard. At that meeting circumstances came to the knowledge of the Commissioners which induced them to concur in a resolution to dismiss the then Secretary-Treasurer on the spot.

The resolution to dismiss the Secretary-Treasurer was adopted unanimously. It is unnecessary for us to form, much less to express any opinion as to whether this act of rigour was justifiable or not. It is sufficient to say that the dismissal was accomplished, and that the former Secretary-Treasurer fully understood that he was dismissed. That the Commissioners had the power so to deal with their officer appears to be beyond all doubt, according to law. C.S.L.C. 15, 60, § 4. Before the dismissal one Anthime Pilon was appointed Secretary-Treasurer *pro tempore* Leroux, the former Secretary-Treasurer, then retired, and Pilon continued to take the minutes. Mr. St. Jacques, the Chairman of the School Commissioners, who did not approve of these proceedings, declared he would not sign the minutes, and withdrew, refusing to take any further part in the meeting. The remaining Commissioners then appointed one of themselves, Mr. H. Pilon, to act as Chairman in the absence of St. Jacques (sec. 58), and the meeting then adjourned till the 19th February. This would have been entirely within the powers derived from the common law, but it appears that the duty of the Commissioners was to proceed to the appointment of a Secretary-Treasurer, who should give security before acting. Another complication was created by the fact that the meeting of the 7th had taken place in the former Secretary, Leroux's house, and the Commissioners could not decently meet there again.

By the adjournment they had fixed no other place of meeting. The three remaining Commissioners agreed, however, to meet at the house of Cyprien Raby, and the chairman *pro tem.* and the secretary *pro tem.* sent Mr. St. Jacques and Mr. Lalonde notice of the adjournment, and that the sitting would be held at Raby's. Neither St. Jacques nor Lalonde attended; and it is contended that this is not a properly adjourned meeting, and that it is not a special one. If it was not a properly adjourned meeting, all that was done at it, in the absence of two of the Commissioners, was radically null. There would be no protection for the public if a portion of their representatives can bind them at hole and corner meetings, and it seems to me to be a dangerous irregularity to alter the place of meeting. We must not, however, sacrifice substance to form, void of any real interest. It is proved that Lalonde could not be present, and it is to be presumed that St. Jacques purposely abstained from attending, for he had a special notice to tell him where the meeting was to be held. Again, there is nothing in the law to declare a meeting to be absolutely null because there was no Secretary-Treasurer. It is true that the form indicates that the Secretary-Treasurer should sign the notice, and that is the usual course, but how were these Commissioners to act? The chairman abandoned his functions, and the secretary-treasurer was dismissed. Was the school municipality of St. Placide to become helpless? I think, therefore, the notice given by Antime Pilon was sufficient, that the adjourned meeting would be held at Raby's. If that meeting was lawfully held, then Mr. Raby was duly appointed to the vacant office of Secretary-Treasurer, and he was the proper person to sign the summons for the public meeting for the election of a Commissioner. In any case Mr. Damase Leroux had no authority, or color of right to call the meeting. The question, therefore, becomes narrowed down to this, whether the meeting at Raby's on the 4th July was regular, and whether it was fairly and honestly held. As to its regularity, it is maintained that it was not called by the officer qualified, Mr. Raby,—that even if he had a right to call the meeting a poll was regularly demanded, and refused on the ground that it was demanded by five electors,—that it only requires three electors to demand a poll; that in effect five electors did demand a poll.

The appellant contends that Raby was duly appointed Secretary-Treasurer; that at any rate he held the office *de facto*; that five electors are required to demand a poll effectively, and that only four did, in effect, demand a poll.

The nomination of Raby has already been dealt with. The difficulty as to whether five or three electors are required to demand a poll arises in this way:—By Sect. 37, C. 15, C.S.L.C., it is provided: "Si le choix des dits commissaires d'école est contesté, trois des électeurs présents pourront demander un poll, lequel devra être tenu suivant les règles établies par la loi *alors* en force pour l'élection des conseillers municipaux."

The 41 V., c. 6, s. 29, then adds: "La section 37 du dit chap. 15 se terminera comme suit:

Et d'après le mode prescrit pour les élections des conseillers municipaux, *par* les articles 308, 309, 310, 311, 312, 313, 314, 315, 317, 318, 319, 320, 321 and 325 du code municipal, *lesquels sont déclarés faire partie du dit acte*," etc.

The article 311 of the Municipal Code then formally declares that five electors must demand a poll, otherwise it is the duty of the President to declare the person elected who has the show of hands. This is of course directly contradictory to the provision of Sec. 37, C.S.L.C., and it comes to be a question whether a demand of three electors is sufficient. I think the evidence fails to establish that more than four electors demanded a poll. The official return so states the fact, and it is perfectly proved that this was the pretension of the presiding officer at the time. It was no afterthought. It was then for Respondent to prove that really five electors demanded a poll, and this I think he has failed to do, his testimony being contradicted in the most positive way. We are, therefore, obliged to decide the effect of Sect. 37, C.S.L.C. and art. 311 M.C.

It seems to me impossible to arrive at any other conclusion than this, that it requires five electors to demand a poll, whatever rule of interpretation we apply. First, it was evidently intended to assimilate the election of Commissioners to the election of Municipal Councillors. Second, the five are mentioned in an amendment made to a portion of the former act,

and which naturally over-rides the first enactment. And as a third reason the poll is a privilege or exception to the ordinary mode of election by show of hands, and therefore the presumption is in favour of the greater restriction. I think, then, that these objections are unfounded.

But another question arises, and that is whether in carrying out the law there has been good faith, or rather, I should say, whether owing to the contentions of the members of the council, rendered embarrassing by irregularities, there has not been what amounts to a surprise of the electors which has had really the effect of depriving them of their right to vote.

I am very far from wishing to impute to the contending parties the malice they readily attribute to one another. It is easy to understand how mistaken zeal influences people perfectly honest, and who are in an instant converted into blind partizans. This has probably been the case here. The majority of the Councillors felt naturally aggrieved at Mr. St. Jacques' conduct—they had excellent reason to be still more annoyed at Mr. Leroux—and they thought themselves justified in adopting every opportunity of upsetting their plans. So far they might be justified, but they could not be justified in dealing in such a way as to prevent the electors from exercising their right of vote. This they in effect did. The meeting at Raby's in July was unusual, and particularly inexpedient under the circumstances. Then, the want of a fifth to demand the poll was a quibble for the president of the Raby meeting knew perfectly well that a crowd of electors was in the vicinity, come expressly to vote. It was his duty, therefore, to have used a little discretion, and to have avoided the mystery in which he evidently intentionally indulged. I am therefore to reverse and that without costs. My reason for not allowing costs is that which formerly prevailed in Parliament. A contest of this sort is *pro bono publico*, if not malicious; and in this case I think there was probable cause for the institution of these proceedings and for the defence.

The judgment of the Court is as follows:—

"La Cour, etc.

"Considérant que l'assemblée tenue à la porte de l'église de la paroisse de St. Placide, le 4 juillet 1881, n'a pas été duement convoquée par aucune personne autorisée à ce faire, et, qu'en conséquence, la prétendue élection du nommé Antoine Ladouceur, pour agir en qualité de Commissaire d'Ecoles pour la dite paroisse, est nulle et illégale;

"Considérant que l'assemblée tenue dans la maison de Ephrem Raby, le même jour de la même année, a été duement convoquée, et que les électeurs ont été induits en erreur par le fait que les deux assemblées ont été convoquées simultanément, et pour le même but, et ont été, en conséquence de cette erreur, privés de l'exercice de leur droit de voter à l'élection d'un Commissaire d'Ecoles;

"Et considérant que l'élection de Joseph Sauvé comme Commissaire d'Ecoles pour la dite paroisse de St. Placide a été faite par surprise, et en violation des règles de l'équité et de la bonne foi, qui doivent être observées en semblable cas;

"Et considérant qu'il y a erreur dans le jugement rendu en chambre à Ste. Scholastique 14e jour de décembre 1881, qui déclare le dit Antoine Ladouceur dûment élu, renverse le dit jugement;

"Et prononçant le jugement que le dit juge aurait dû rendre, déclare l'élection du dit Antoine Ladouceur et du dit Joseph Sauvé irrégulière, nulle, et de nul effet, et la casse et met à néant, chaque partie payant ses frais, tant en cette cour que dans la cour de première instance; et en outre, cette cour, en vertu des pouvoirs qui lui sont conférés, par acte passé dans la 44e et 45e année du règne de Sa Majesté la Reine Victoria, ch. 19, ordonne qu'une élection ait lieu samedi, le 7me jour d'octobre prochain, étant le quinzième jour juridique, à compter de la date de ce jugement, suivant la loi pour élire un Commissaire d'Ecoles pour la dite paroisse de St. Placide, pour remplacer le dit Sauvé dont l'élection est annulée, et que Zotique Lalonde, écuier, maire de la municipalité de la dite paroisse de St. Placide, soit nommé, ainsi qu'il l'est par le présent jugement, pour présider à la dite élection."

Judgment reversed.

Pagnuelo & St. Jean, for appellant.

Prévost & Champagne, for respondent.

COURT OF QUEEN'S BENCH.

(In Chambers.)

MONTREAL, July 14, 1883.

Ex parte WILLIAM CAMPBELL PHELAN, Petitioner for *Habeas Corpus.*

Extradition—Procedure—Evidence.

Held, 1st. *That since the Imperial Order-in-Council of* 28th *December*, 1882, *(published in the Canada Gazette of the* 3rd *March*, 1883) *the operation of the Imperial Extradition Act of* 1870 *has been suspended in Canada quoad the extradition of fugitive offenders from the United States, and the Dominion Act,* 40 *Victoria, chapter* 25, *is applicable in such case, to the extent, at least, of the extradition arrangement in force with that country.*

2nd. *That alleged irregularity in the proceedings for his arrest, cannot on an application for Habeas Corpus avail a prisoner committed for extradition. It is sufficient that being under arrest before proper authority, a case has been made out against him sufficient to justify his commitment.*

3rd. *That an affidavit sworn to before a commissioner of the United States, proved to be a magistrate having authority in the matter according to the law where taken, may be received, if properly proved, as evidence against the prisoner on proceedings for extradition.*

4th. *That, provided there has been adduced legal evidence applicable to the case, and a prisoner has thereon been committed for extradition, a Judge on an application for Habeas Corpus will not be disposed to weigh or appreciate that evidence with a view to giving the prisoner the benefit of a doubt as to its preponderance.*

CROSS, J. The prisoner is brought before me on an application for Habeas Corpus, to enquire into the legality of his commitment for extradition to the United States of America under a warrant issued by the Chief Justice of this Court, which, after setting out the offence charged, adjudges the evidence adduced here "sufficient according to the laws of the Dominion of Canada, to justify the apprehension and "committal for trial of the said William Campbell Phelan for the said crime in case the "same had been committed in the Province of "Quebec, Dominion of Canada," and it proceeds: "Forasmuch as I have determined that the "said William Campbell Phelan should be "surrendered in pursuance of the said Act, he "is committed to gaol until he shall be thence "surrendered pursuant to the provisions of the "said treaty between Her Majesty and the "United States of America, and the Act of the "Dominion Parliament in force, and known as "'The Extradition Act, 1877,' or until dis-"charged according to law."

It is admitted that the crime with which the prisoner is charged is one for which the surrender of a fugitive criminal could be claimed in virtue of the Treaty between Great Britain and the United States, but it is contended that no case for extradition has been made out against him.

The applicant by his petition raises the following objections to the validity of his commitment:

1st. That the manner of the prisoner's arrest was illegal, the original warrant of arrest and the commitment for preliminary examination being irregular.

2nd. That all the proceedings leading up to the commitment, and the final commitment itself are null and void, inasmuch as they are based upon the Dominion Act, 40 Vict. C. 25, which is not in force in Canada, *quoad* the extradition of fugitive offenders from the United States.

3rd. That the documentary evidence in the case is illegal and inadmissible, and neither that nor the oral evidence are sufficient to justify the committal for extradition.

4th. That the prisoner should not be committed for extradition, inasmuch as the prosecution have failed to establish that, if extradited, he could not be detained or tried in the United States for any offence prior to his surrender other than that on which the surrender is grounded.

It will thus be seen that the petitioner invokes the insufficiency of the evidence as well as alleged illegality of the proceedings.

It has been much disputed whether a judge should on Habeas Corpus in a like case examine the sufficiency of the evidence. While I hold that he may decide as to the legality or admissibility of any particular evidence adduced, or examine whether there may not be an entire absence of evidence on any essential point, I think he should refrain from such

criticism as merely called in question the weight or preponderance of proof, conceding that its appreciation should be accepted as found by the judge making the preliminary enquiry.

It was contended that Weber, the party who claimed to have been defrauded by the passing of the counterfeit money, should have been produced as a witness, but his affidavit and the evidence of the detective McIlrath identified the prisoner sufficiently. Objections were further made that Weber's affidavit was taken, *exparte*, after the arrest and was sworn to before a commissioner in place of a Justice of the peace. These are answered by the rulings in the cases of *Martin*, U. C. L. J. for 1868, p. 124, and of *Counhaye* 8 L.R., Q.B. p. 410. The affidavit is only required to be made before a party authorized to receive it, not necessarily by a Justice of Peace, and it is proved that Henry H. Hallett was vested with the powers of a Magistrate and was duly authorized to take this evidence. I must hold it well taken.

The next objection is as to the finding of the Grand Jury. There would appear to be sufficient evidence without this document. No necessity therefore exists for a formal ruling as to its admissibility. Judge Ramsay in the case of *Rosenbaum*, 18 L. C. J. 200, seemed to have inclined to consider it not legal evidence, and excluded it, I think, rather on the principle that it was the safest course, than from any very decided opinion that it was wholly inadmissible; and in the case of *Regina* v. *Brown*, 31 U. C. C. P. R., p. 484, it was held admissible by Chief Justice Wilson (confirming Judge Armour's opinion and also as auxiliary evidence by Mr. Justice Galt. I myself lean to the opinion of its admissibility on the ground that it is a statement on oath, that is, on the oath of the jury who held the inquest, although hearsay as regards the evidence taken before them, and also on the ground that it is the finding of a competent foreign tribunal having jurisdiction over the subject matter with which they dealt. The finding of a grand jury in this Province would of course be a full justification for committing and putting the accused party on his trial (32-33 Vic. cap. 30, sec. 4 and 5. It is not disputed that the document is sufficiently authenticated.

These objections being disposed of I come to deal with the law of the case.

As to the pretended irregularity of the arrest, the party accused was in custody before a tribunal competent to inquire into the demand for his extradition, witnesses were examined in his presence and cross-examined by him, and after a protracted enquiry he was committed for extradition. It is not competent for him to pretend that he was wrongfully taken into custody. It is enough that being in custody a sufficient case was made out against him to justify his commitment for extradition. It was so held in *Martin's* case, U. C. L. J. for 1868, p. 124.

As to the form of the commitment: It is the one appended to the Dominion Statute of 1877, and ought to be sufficient if that statute be in force, although for my own part I do not think it well framed or well conceived to carry out the spirit of the law. Had it not been made a statutory form I should scarcely have been disposed to hold a committal good that did not contain a declaration by the committing judge, that the evidence adduced was sufficient according to the laws of the Domiuion of Canada, or the Province thereof where he was committed, to justify the apprehension and committal of the prisoner for the crime of which he stood accused. I am not prepared to say a commitment would of necessity have to be declared bad, although it invoked as part of the judge's authority a statute which was not in force, or even adopted a form given in that statute, provided it otherwise contained all the essential averments to meet the necessity of the case according to the treaty and the law of extradition, then actually effective. In such case I think the reference to a statute not in force might be considered mere surplusage, but I make no express ruling on this point, I do not consider it necessary.

It is urged that the Chief Justice exceeded his authority by including in the commitment the words following: "And forasmuch as I have determined that the said William Campbell Phelan should be surrendered in pursuance of the said Act for the causes aforesaid," and the case of *Zink*, 6 Q.L.R., p. 260, was cited to show that the committing Judge has no power to decide that the extradition should take place. I would have so held in this case were it not that I find that the commitment in this respect follows the form appended to the Dominion

Extradition Statute of 1877, which was put into force since that case was decided.

A further argument is made for the prisoner based on Section 4 of the Dominion Extradition Act of 1877, which reads as follows: "In "the case of any foreign state with which there "is at or after the time this Act comes into "force, an extradition arrangement, this Act "shall apply during the continuance of such "arrangement. Provided that the operation of "the Act of the Parliament of the United King- "dom passed in the year of Our Lord one thou- "sand eight hundred and seventy, and entitled: "*An Act for amending the law relating to the "Extradition of Criminals*," shall have ceased or "been suspended within Canada in the case of "that state."

Previous to the 28th Dec. 1882, the necessary measures had not been adopted to suspend the operation of the Imperial Extradition Act of 1870, and to bring into force the Dominion Extradition Act of 1877, to which end provision had been made in these two Acts. By Imperial order-in-council of that date, published in the *Canada Gazette* of the 3rd March 1883, the Imperial Act of 1870 was suspended within the Dominion of Canada so far as it related to any foreign state in the case of which it then applied. It did then apply and had been acted upon with regard to the United States, but independently of certain limitations and restrictions to which Her Majesty's Government desired it should be subjected, and which were provided by treaty or otherwise in the case of other governments.

The suspension of the Imperial Act of 1870, therefore, was operated by the order in council of date the 28th Dec., 1882. But it is argued that subsection 3 of sec. 4 of the Canadian Act of 1877 shows that the application of the Imperial Act of 1870 to the United States in virtue of section 27 was a conditional and qualified one, the Act having been applied so that the Canadian Act 31 Vic. chap. 94 should form part of it, and hence the Canadian Act of 1877 could only be applied to the United States by the Governor General's Order in Council subject to the same conditions and qualifications in virtue of section 27. But section 27, after repealing previous legislation, provides that the Act shall be in force with the exception of anything it contained inconsistent with the treaties to which it referred, in the same manner as if an Order in Council referring to such Treaties had been made, and had directed that every law or order once in force in any British possession formed part of the Act. It follows that the Statute of 1870 came in force as regards the United States without any Order in Council, but that restrictions and limitations or additional provisions beyond what was contained in the Treaty with the United States were not in force as regards that country.

Therefore the extended schedule of crimes attached to that statute, and the conditions therein stated which by orders in Council came to be applied in the case of Treaties with other States, did not apply to the United States and could not be applied by any Canadian order in Council. Sub-Section 3 of section 4 of the Dominion Act of 1877 imposed it as a duty on the Dominion Governor in Council, in cases where the Imperial Act of 1870 had been or should be applied with restrictions and limitations, to direct by their order like restrictions and limitations. This explains the exception made of the United States in the despatch of Lord Derby to the Governor General Lord Lorne, of date the 7th February, 1883. The Imperial Act of 1870 never having been with its restrictions and limitations applied to the United States, was only in force as regards them to the extent of the actual Treaty stipulations, and needed no Canadian Order in Council to put it in force as regards restrictions and limitations, because they did not apply.

I have only to add that the Canadian Act 31 Vic. chap. 94, was repealed by the Dominion Act of 1877, 40 Vic. chap. 25, coming into force.

I think a fair case has been made out for the prisoner's extradition, and he has failed to show any illegality in his detention or commitment. I order him to be remanded for extradition according to the exigency of the commitment by which he is held. In my opinion Treaty regulations between States should be executed in good faith in a liberal spirit with a disposition to facilitate the obtainment of justice.

The order of commitment for extradition is confirmed.

C. P. Davidson, Q.C, and *Selkirk Cross* for the United States Government.

E. W. P. Guerin and *Eugene Lafleur* for the Petitioner.

ENGLISH CRIMINAL LAW.

Open and public place.— A railway carriage, while on its journey, is within the definition of "an open and public place, to which the public have or are permitted to have access," in a statute forbidding gaming in such places. —*Langrish* v. *Archer*, L. R., 10 Q. B. D. 44.

Rape.—The statute 38 & 39 Vict. ch. 94, sec. 4, which enacts that "whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve and under the age of thirteen years, whether with or without her consent, shall be guilty of a misdemeanor," etc., does not operate to prevent a conviction for felony, under 24 and 25 Vict. ch. 100, sec. 48, of a person committing a rape upon a girl between those ages.—*Reg.* v. *Ratcliff*, 10 Q. B. D. 37.

GENERAL NOTES.

The following is probably intended as a satire upon the "small type" conditions of which common carriers are so fond :—

"A few Saturdays ago a Philadelphia fish dealer departed for a railroad station a few miles out, to spend Sunday with some friends. After the cars had started he found on looking at his return ticket that 'in consideration of the reduced rates,' etc., the ticket was good only till the day following; so on his return, Monday, he had to buy another ticket to come home on. A day or so afterward a leading official of the company bought a couple of early shad of him. They were delivered, and on opening the bundle was found a card stating that 'in consideration of the low price charged, the shad would not be good after two hours.' The fish had to be thrown away, and that official has been in a brown study ever since."

THE MONTREAL POLICE FORCE.—Thirty years ago there were but two police stations, the population being about 60,000, whereas now there are eleven stations for a population of about 150,000. The following table will give an idea of the comparative strength of the force for the last thirty years:—

Year.	Chiefs.	Sub-Chiefs.	Sergeants.	Detectives.	Men.	Appropriation.
1854	1	2	4	2	75	$30,000
1856	1	2	4	2	100	36,000
1862	1	2	6	2	125	48,000
1866	1	2	12	4	125	60,000
1870	1	4	16	4	125	78,200
1872	1	4	20	4	150	100,128
1876	1	2	24	6	162	134,500
1880	1	2	20	6	162	131,289
1882	1	2	33	8	209	160,000

The large increase of expenditure is due chiefly to the expense of building or renting and maintaining station houses rather than for the pay of policemen, whose numbers have not increased in proportion; but that the ratio of police protection to population has improved and is nearer to what it should be, viz., at least 1 policeman to 500 people, will be gathered from the following comparisons:—

	Population.	Police.	Ratio.
1854	60,000	75	1 to 800
1870	108,000	125	1 to 864
1880	143,000	168	1 to 851
1883	150,000	215	1 to 697

The annual revenue from fines in the Recorder's Court may be regarded as a criterion of public morality; these have lately fallen off in a marked degree, as a few figures taken at random from the City Treasurer's books show:—

1866	$14,050
1867	17,328
1870	15,442
1872	18,027
1876	15,998
1881	12,665

The death of Mr. James Cockburn, Q.C., one of the commissioners appointed to consolidate the Statutes of Canada, occurred on the 14th August.

The *Canada Gazette* contains the appointment of William Twining, Esq., of Halifax, barrister-at-law, to be Marshal of the Court of Vice-Admiralty at Halifax, *vice* Joseph Bell, deceased.

The cat had a good friend in Mrs. Ellen M. Gifford, of Boston. In her will she left $25,000 to establish a home for friendless or disabled cats. But the will, it is stated, is to be disputed on the ground that there is presumptive evidence of insanity in any person who will "die and endow a college for a cat."

A solicitor complains, in the columns of the *Law Times*, that "solicitors were forgotten in the festal tribute" to Mr. Benjamin, although they are the persons "whose patronage made both bench and bar." The *Law Times* answers that "solicitors cannot secure to counsel that eminence which is the prize alone of learning and ability to which solicitors contribute nothing."

A new system of postal notes is to come into operation in the United States on September 3, by which the sender can transmit any sum from one cent to five dollars. The New York *Tribune* illustrates the convenience of the new arrangement by stating that "a lady living out of town who wants to send $3.79 to a drygoods store in New York will hand that sum, and three cents fee, to the postmaster. He will give her an order with the figure three punched in the dollar column, the figure seven in the column of dimes, and the figure nine in the column of cents. This is simple and easy, and offers no chance for fraud."