The Legal News.

Vol. IV. MAY 21, 1881. No. 21.

JUDICIAL REMUNERATION.

It was generally believed that the salaries of judges of the Superior Courts would have been re-adjusted during the recent session of Parliament, but, unfortunately, the wise counsel tendered by Lord Dufferin (see 1 Legal News, p. 469,) has not yet been heeded. We are reminded of this subject by the following letter from an English barrister, which appears in the *N. Y. Herald* of May 8th :—

ROCHESTER, N. Y., April 18, 1881.

To the Editor of the "Herald,"

The following information may interest some of your readers :—"Barbour's Supreme Court Reports" from 1847 to 1877, contain 11,616 reported cases or thereabouts. Volume 67, as those of your readers who are lawyers will know, contains a list of Barbour's cases—appealed, as affirmed, approved, modified, overruled or reversed. On totalling up this list, I find that the whole number of the above decisions appealed from is 1,020, of which number 428 cases, or nearly fifty per cent, were either reversed or overruled. Comment is needless. The "people" imagine that they are very economical in underpaying the judges, and also in not trusting them with office during life or good behavior. A blessed state of ignorance, truly! It is not too much to say that the majority of the judges are shamefully overworked, and the wonder is that they perform their duties so well. It is like as if a doctor was crowded with patients from morning to evening, and only allowed one minute to each patient and to have to work evenings as well, and yet to be expected to make miraculous cures, the patients, of course, to be allowed their privilege of grumbling all the time. It was only the other day that Judge Choate, of New York, resigned because he declined, and most properly, as I hold, to have the life's blood drained out of him for $4,000 per annum. A man of ability owes some duty to his family after all. He cannot afford to allow himself to be killed. Again, the very idea of a man being called upon to decide cases involving thousands of dollars, upon a salary of $4,000 a year smacks of absurdity. It is safe to say that for every dollar the people save in salaries under the present system, they pay at least five in other and roundabout ways, the uncertainty of the law being one great luxury for which they pay pretty heavily. Why a lawyer who has or who can get a fair-sized practice should ever consent to become a judge in New York State is more than I have ever been able to discover. The people of this country are fond of comparing it with monarchies and aristocracies to the disadvantage of the latter, and no doubt in many respects it may be so favorably compared; but there are two qualities in which those "effete" systems are at present decidedly superior—namely, in giving credit for good intentions, and in generosity to public servants.

The "people" are mean and the "people" are cowardly—that is all there is in it. They are mean because while claiming and getting the utmost fraction of wages and the utmost value of products for themselves, they underpay and overwork those men of education into whose hands are necessarily committed their highest interests. And why? Because they are jealous of them—meanly jealous of them. They are cowardly because having given a trust they are afraid to trust wholly, but give a niggardly, half-hearted confidence. What sacrifice of power can the "people" possibly make in appointing them judges for life or good behavior? Let any one show one valid reason based on popular liberties for the present limitations. In case of misbehavior brought before the Legislature, can the people not cancel at any time the appointment of any judge? As regards despotism, I fail to see that it makes any difference whether the despot is personal or impersonal. The "people" or the "machine" called "the people" are here the despots, and they require slaves for their service. The boasted maxim of "Live and let live" is all very well so long as the people are on the "living" side of the contract, but when it comes to "letting live" those they employ it is quite another affair altogether.

W. H. BARLOW, Barrister-at-Law,
Middle Temple, London, England.

P.S.—The profession should do as their betters do—go in for a little trade unionism. They should strike and let all the business of the State come to a standstill for want of judges. This is a mere matter of organization.

THE LATE CHIEF JUSTICE DUVAL.

We conclude, in the present issue, the reproduction of a very interesting, and at the same time very truthful account of the late Chief Justice Duval. We regret that the author's name is not appended. The production is generally ascribed to an eminent ex-judge. We must add, from our own recollection of this important character in Canadian history, that Judge Duval, though generally correct in his appreciation of the evidence, did not always satisfy his hearers that he had read it carefully; and he was frequently undignified in his style of rendering judgment. For example, we have heard him say, "*This will teach the appellant a lesson not to rush into Court with such a case again,*" when one or more of the judges sitting by him dissented from his view of the case, and were of opinion that the appellant was well founded in his pretention.

TO CORRESPONDENTS.

We would beg our French correspondents to write to us in their own language. Although the *Legal News* is issued by English publishers, we have equal facilities for printing the contents in either language, and correspondence, articles, or other contributions, will be equally welcome, whether the manuscript be in French or English.

NEW PUBLICATION.

STEPHENS ON THE LAW AND PRACTICE OF JOINT STOCK COMPANIES.

In this work, which is issued by Carswell & Co. of Toronto, we have the first attempt, in Canada, to treat in a brief and comprehensive form the law upon the important subject of Joint Stock Companies. The author is already favourably known to the bar as the editor of a Digest of the decisions of the Province, and the present work places his reputation as a legal writer upon a more solid basis as the annotator of an extremely important text of law. The work consists mainly of a commentary on the Joint Stock Companies Act, 1877, but in connection with this Act, the author has collated all the decisions, English and United States, as well as Canadian, which bear upon the subject. The work is preceded by an introduction which is alike interesting and instructive, presenting an admirable view of the law relating to associations in the Roman and modern systems. Mr. Stephens has treated the theme in a manner which will be appreciated by readers who desire to obtain in brief compass a lucid statement of the development of the law on this subject. He has also shown great industry and thoroughness in his examination of decided cases, English and American, as well as Canadian. The work will add greatly to his reputation as a legal writer, and should find a place in every Canadian law library. The book is admirably printed and bound. We regret only that the proof-reading has not been more carefully done; such errors as "Code Civile" and "Société" offend the eye too frequently. But apart from this minor defect, which can hardly be obviated in a new country, the book is a credit to the legal profession of Canada, and we hope that the author will meet with such encouragement as will induce him to issue new editions as occasion arises for them. In a recent issue, we published a letter from Mr. Stephens, on the subject of the Bar secretaryship. The present work shows, we think, that while he well deserves any compliment which his *confrères* have it in their power to bestow, his time has been more advantageously employed than in the duties of an office which are largely of a routine character.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, November 30, 1880.

Before JOHNSON, J.

LA COMPAGNIE DE NAVIGATION UNION v. CHRISTIN, and LEFEBVRE et al., intervening.

Incorporated Company—Liquidation—Sale of assets.

The sale of all the assets of an incorporated company, authorized by the majority of shareholders present at a meeting duly called for the purpose, held valid, where such proceeding was not prohibited by the charter of the company.

PER CURIAM. I kept this case before me under the impression that the parties were not properly before the Court; but I must now dispose of it, as I find on examination I was in error. The plaintiffs claim from the defendant $1,448.04, balance on his subscription of $2,000 of the stock of the Company. The defendant admits having subscribed, but says he did so under a promise from some of the directors that he might pay in soda water and other things that he manufactured. At the same time, the defendant not feeling very sure, I suppose, about such a defence as that, took an action *en garantie* against the persons who had made the promise. In that action he failed here and in appeal. So that the first plea is dropped.

After the dismissal of the action *en garantie*, the defendant put in a supplementary plea to the effect that the plaintiff's company was no longer existing, having allowed three years to elapse without availing itself of its charter, which had therefore expired; and further, that the company had dissolved by consent of its members, and there was no board of directors or any other officer. On the day of the filing of the supplementary plea an intervention by way

of *reprise d'instance* was also filed by the intervening parties, M. H. Lefebvre et al. By this intervention it is alleged that by deed executed before L. A. Desrosiers, notary, on the 27th March, 1879, the company plaintiff sold and transferred for value, to the said intervening parties, amongst other claims, the one sued for by the plaintiff in the present cause, with authority to continue the present suit against defendant, either in plaintiff's name or in the intervening parties' own name. A copy of the deed of sale was filed with the intervention.

To this intervention defendant has answered that the deed of sale or transfer filed by the intervening parties is null and illegal, as having been made when the company was no longer in existence, and in view of the liquidation of the affairs of said company; that a company can liquidate its affairs only through a curator; that the said transfer comprises all the assets of said company, which could not be sold *en bloc;* that the transfer has not been legally authorized; that all the shareholders have not concurred in the same; that the meeting at which the said transfer was authorized was illegal, and that such meeting had no right to authorize such transfer; that a certain number of shareholders have protested against said transfer, and that the same was made in fraud of the rights of the shareholders and specially of the defendant. To this answer as well as to the supplementary plea above mentioned general answers were filed. An inscription for *enquête et mérite* as well on the action as on the intervention was filed by consent of the parties. The defendant has served interrogatories *sur faits et articles* on plaintiff, and the answers thereto were duly made and filed, and the defendant has established nothing by means of these interrogatories.

It appears by the deed of sale and transfer filed, and by the copies of minutes of meetings annexed to the same, as also by the evidence of A.W. Charlebois, manager of the company plaintiff, the only witness examined in the cause, that the Union Navigation Company sold its boats in the month of May, 1876; that the transfer in question to the intervening parties was authorized at a meeting of the shareholders duly called for that purpose, and after tenders had been called for the sale of the assets of the Company. The Court is of opinion that the non-user of the charter during three consecutive years at any one time is not applicable under the provision of the Act, 31 Vict., c. 25, sec. 52. It may be true that the Company plaintiff has been for three years without any boats, but during this same period the plaintiff availed itself of its charter for the collection of its debts and for the winding up of its affairs generally. Moreover, it is very doubtful if such a forfeiture as is claimed here has not to be declared before it takes effect. See 1st Broom & Hadley's Commentaries, pp. 586-7, Code of Civil Procedure, Arts. 1016, 1017 and 998. At all events, in the present case the sale of the assets of Company plaintiff was made to the intervening parties before the expiration of the three years, and the intervening parties are as well founded in their intervention by way of *reprise d'instance* as a curator appointed to the dissolution of the said Company. As to whether an incorporated company has the right, in virtue of a resolution passed at a meeting of its shareholders called for that purpose, to sell its assets *en bloc* it seems to be unquestionable. "On the other hand, it is to be observed that a corporation acts by a majority; the will of the majority is the will of the corporation; and whatever it is competent for the corporation to do can be done by a majority of its members against the will of the minority. It follows from this, that the power of a majority of the shareholders of a company incorporated by charter or Act of Parliament, is limited only by that charter or Act, unless those who compose the majority have restricted their powers by some special agreement." 1 Lindley on Partnership and Companies, pp. 612–613. The defendant admits having subscribed the stock, and upon his paying to the intervening parties the the validity of such a payment cannot possibly be questioned. Now, as it appears of record that since the institution of the present action, the amount claimed from defendant has been transferred to the intervening parties, it is clear that the judgment must go in favor of the latter, just as in an ordinary case of intervention by way of *reprise d'instance.*

Beique & McGoun, for plaintiffs and intervenants.

Lacoste & Co. for defendants.

SUPERIOR COURT.

MONTREAL, May 14, 1881.

Before TORRANCE, J.

MARCOUX v. RANGER dit HENRI, LEROUX, opposant, and MARCOUX, contestant.

Sale in fraud of creditors—Contestation.

The nullity of a sale of lands in fraud of creditors may be invoked by contestation of the opposition by which the lands are claimed, though the opposition was based on a sale to opposant duly registered; and where such sale is attacked by a creditor not a party to the deed, it is not necessary to call all the parties to the deed into the cause.

The question here was as to the validity of a purchase of defendant's lands by the opposant. Marcoux obtained judgment against Ranger, on the 18th February, 1880, for the sum of $62.40 with interest and costs, and an execution issued, under which the lands in question were seized.

Leroux claimed the lands by an opposition, alleging a sale to him by Ranger on the 16th January, 1880, duly registered. Marcoux contested the opposition, alleging fraud and concert between Ranger and Leroux to defraud the creditors, and that Ranger was, at the date of the sale, insolvent to the knowledge of Leroux and of the public.

PER CURIAM. Leroux, answering the contestation, raises the question whether his title could be attacked in an indirect way by the seizure made. He says it could only be attacked by putting the defendant into the cause.

This question has already been discussed in the case of *Kane & Racine*, (24 L. C. J. 216,) and the jurisprudence is there laid down.

The price apparently paid by Leroux, by the deed, was $680, of which $116.17 was said to be cash paid to Ranger by Leroux, and the balance was money due by Ranger.

It is proved before the Court, that the value of the lands was about $1,000 or $1,100. A lease was granted Ranger by Leroux at the same date, by which Ranger was to recover the property, on payment of the sum of $1,360, payable in ten annual payments beginning the 1st October, 1880. It amounted to this, that Ranger would get back his property in ten years, if he paid about 20 per cent. per annum on the original price of $680. The action was instituted on the 28th January, 1880, a few days after the sale, but the cause of the action arose in 1877. There were about ten creditors, and the entire indebtedness of Ranger was about $1,000, so that the property was not sold for sufficient to meet the liabilities. There was a sale of moveables which realized net, after deducting expenses, the sum of about $143, giving each chirographary creditor about 33 cents in the dollar. If we take the evidence of Ranger and Constant, he, Leroux, knew all the creditors, and must have known the insolvency. Objection has been taken to the evidence of Constant, as interested in the result of the action, he having agreed to share in the costs of the contest. He is interested, but the objection is to his credibility and not to his admissibility as a witness. The Court must judge of his credibility, and seeing him under examination, does not reject his testimony. As to the title of Marcoux to contest, it is not in issue by the pleadings. On the whole, the conclusion of the Court is that the deed should be set aside, as made in fraud of creditors with an insolvent, to the knowledge of Leroux, the purchaser.

Archambault & David, for opposant Leroux.

Duhamel, Pagnuelo & Rainville, for plaintiff Marcoux.

SUPERIOR COURT.

MONTREAL, May 14, 1881.

Before TORRANCE, J.

DUPRAS ès-qual. v. SAUVÉ, and DUPRAS, plaintiff *en gar.* v. CHAUVEAU, defendant *en gar.*

Bail—Action against sureties under C.C.P. 828—Bailiffs becoming sureties—C. C. 1938.

Bailiffs who have become sureties, in violation of the Rule of Practice, No. VI, cannot plead that rule in defence to an action against them on the bond.

The action was on a bail bond given to the Sheriff and assigned by him to the plaintiff. The defendants, when they signed the bond under C. C. P. 828, were bailiffs of the Superior Court. The defendants pleaded 1o. That the bond was null, as given in violation of the Rule of Practice No. VI.; 2o That the defendant in cause No. , Felix Hercule Legendre, was deceased, to wit, on the 30th March, 1879, and they could not fulfil the bond in consequence; 3o That the proceedings in the cause against

Legendre were irregular and null, and the sureties could avail themselves of such nullities. The plaintiff called the Sheriff *en garantie* to defend her as to the first exception pleaded by the defendants invoking the nullity arising out of the 6th Rule of Practice. The Sheriff answered that by C. C. 1938, the defendants could be sureties.

Per Curiam. I have no hesitation in saying that the answer of the Sheriff should be maintained, and the first exception and the other exceptions are also overruled in favour of the plaintiff, whose action should be maintained.

Duhamel, Pagnuelo & Rainville, for plaintiff.
Doutre & Joseph, for defendants.
Loranger, Loranger & Beaudin, for Sheriff.

THE LATE CHIEF JUSTICE DUVAL.

[Concluded from p. 160.]

Duval était admirablement fait pour ces combats d'éloquence et ces luttes de paroles. Esprit vif et à aperçus rapides, et d'une conception prompte, intelligence d'élite servie par une mémoire remarquable, de fortes études légales et un travail incessant; spirituel, railleur et caustique: doué en outre d'une remarquable facilité de langage et d'une voix sonore, ses plaidoyers incisifs, caustiques, brillants, sans manque de solidité, lui acquirent bientôt un grand renom comme avocat. Ses succès ne se bornèrent pas aux tribunaux civils. Il plaidait aussi au criminel, où, contrairement à ce que l'on aurait dû attendre d'un tempérament comme le sien, et d'un homme d'une sensibilité fort médiocre, sa parole s'élevait jusqu'à la haute éloquence. Une célèbre cause d' assassinat, qui a pendant de longues années préoccupé l'attention publique, a surtout révélé cette aptitude inconnue jusque là.

Le talent de M. Duval n'était cependant pas sans reproche. On a quelquefois dit de lui qu'il était plus brillant que solide, et qu'il manquait de logique. Je crois que l'on s'est trompé et qu'il possédait au contraire un esprit fort droit et fort logique. Mais ce qui lui manquait à mon sens, c'était l'ordre dans la conception de ses idées et la méthode dans leur exposition. Ce défaut que les artifices de l'élocution peuvent quelquefois pallier chez l'avocat qui plaide une cause, ne peuvent également se dissimuler chez le magistrat qui la juge.

Ce n'est cependant pas simplement au banc de la défense que M. Duval occupa devant les cours criminelles. Il représenta aussi le ministère public, et pendant plusieurs années, conduisit les causes de la Couronne. Quoiqu'on dise de ses succès dans la défense des accusés, je n'en persiste pas moins à croire que son talent était plutôt fait pour l'accusation que pour la défense, et qu'il a dû avoir plus de succès réels dans le premier rôle que dans le dernier.

Il était, à cette époque mouvementée de notre histoire, trop en vue comme avocat pour échapper aux honneurs parlementaires, et depuis 1830 à 1834 il représenta la haute ville de Québec dans la chambre d'assemblée. Je ne sais au juste dans quels rangs il s'est placé en chambre; je ne connais pas non plus grand chose de ses opinions politiques d'alors, mais je serais bien surpris s'il s'était servilement attaché à aucun parti. Il devait être trop frondeur pour soutenir franchement le gouvernement, et il était, d'un autre côté, d'allures trop indépendantes pour suivre l'opposition du jour, qui constituait la majorité. Il devait être du tiers parti fondé par M. Nelson; et après réflexion je crois le lui avoir entendu dire. A tout événement, dans la politique, qui ne devait pas convenir à ses habitudes et pour laquelle son tempérament n'était guère fait, il n'a joué qu'un rôle effacé.

Si cependant il a combattu le gouvernement, son opposition a dû être fort modérée, puisqu'en 1838, il fut nommé juge suppléant, en remplacement de l'un des trois juges, Vallières, Panet et Bédard, suspendus pour octroi du bref d'*habeas corpus* en faveur des accusés politiques. Cette charge ne dura cependant pas longtemps, et lors de la réinstallation des juges suspendus, il retourna à sa pratique d'avocat.

* * *

J'ai parlé de l'esprit proverbial de M. Duval et de ses vives reparties, que d'ailleurs tout le monde connait. Parvenu au barreau il n'avait pas perdu son caractère railleur, que les gens peu patients n'enduraient pas toujours avec équanimité. Il s'exposait quelquefois même à de cruelles représailles dont sa stature peu avantageuse faisait ordinairement les frais. Il laissait cependant peu souvent les rieurs du côté de sa victime. A un avocat d'une grande taille

qu'il avait obsédé et qui lui disait dédaigneusement: Vas-t'en donc, pygmée! tu ne me vas pas à l'épaule, je suis plus grand que toi de toute la tête." Il répondit vivement: "Mais tu sais bien que chez toi la tête ne compte pas?—Pourquoi, demande l'autre, qui ne comprend pas très-bien.—Parce que, lui riposte Duval, tu es un être fait contre nature. Ne sais-tu pas qu'elle a horreur du vide?

Un juge au criminel, devant lequel il avait sans succès défendu un accusé de peccadille, lui disait: "Je ne sais vraiment quelle sentence prononcer contre votre client." "La chose est cependant fort simple, lui répond l'avocat, faites comme si c'était pour vous."

Il demandait un jour au juge en chef Stuart, qu'il n'aimait pas, quand le tribunal serait prêt à rendre un jugement attendu depuis longtemps. Demain, répond le président du tribunal. Pas demain, dit M. Duval, après demain, s'il vous plaît, mais soyez sûr de le rendre.

Nommé juge de la cour Supérieure à Québec, il y siégea jusqu'au 27 janvier 1855, époque où il fut promu à la cour d'appel où il occupa le poste de juge puisné jusqu'à la mort du juge-en-chef LaFontaine, qu'il remplaça le 5 mars 1864. Le 30 mai 1874, après avoir occupé ce poste élevé pendant dix ans, il prenait sa retraite et rentrait dans la vie privée d'où la mort vient de le retirer pour une vie meilleure.

En changeant de position l'homme ne change point de disposition, et l'avocat devenu juge ne se dépouille pas de son tempérament comme il se dépouille de sa toge d'avocat pour se couvrir de la robe de magistrat. Son caractère comme son talent, restent au fond les mêmes, et les modifications obligées qu'ils reçoivent de ses fonctions nouvelles sont plus apparentes que réelles. Sur le siège du magistrat le juge en chef Duval est resté ce qu'il était au barreau, impétueux, caustique et quelque peu bizarre. D'un autre côté, il y apporta les grandes ressources de son talent enrichies par le vaste trésor de ses connaissances.

Personne n'avait le sens juridique plus développé que le juge en chef Duval, et la remarquable perspicacité de son esprit, ses vastes connaissances du droit, jointes à une longue expérience, lui faisaient, en un moment, et avant que l'avocat en eut fait un exposé complet, saisir le point d'une cause. Le point d'une cause c'est bien souvent toute la cause, et ne le saisit pas qui veut. Il y a même des hommes remarquables qui n'y parviennent pas et restent déplorablement défectueux sous ce rapport.

Marie, un des membres du gouvernement provisoire de 1848, qui était aussi un avocat distingué, avait coutume de dire: "Une cause c'est une muraille nue; le point de la cause, c'est un clou qu'on y plante; l'avocat ou le juge, c'est un aveugle que l'on arme d'un marteau, et quand il a frappé le clou il a trouvé le point litigieux.

Armé de ce marteau, le juge Duval n'eût pas frappé deux fois la muraille sans atteindre le clou.

Certaines qualités du juge peuvent cependant se changer en défauts; ce qui arrivait chez le juge Duval. La rapidité de sa conception surprenait quelquefois son jugement, pourtant bien sain et bien droit comme je l'ai dit, et le portait à former hâtivement son opinion. Il jugeait trop *a priori*. La méthode analytique du juge-en-chef LaFontaine, la méthode synthétique familière au juge Aylwin et de fait toute méthode, paraissait lui être inconnue.

Cette rapidité de jugement qui eût entraîné dans de graves erreurs un homme moins capable que lui, ne parait cependant jamais avoir été fatale à ses décisions, et l'on ne connait guère de cas où il se soit gravement trompé. Il faut le reconnaître, ses conclusions, quelques hâtives qu'elles fussent, étaient généralement correctes.

"*Duval always jumps to the conclusion, but invariably falls on the right spot,*" disait de lui, en ma présence, un juge qui avait siégé avec lui pendant plusieurs années et que j'aimerais à nommer, si son extrême réserve ne s'imposait à la mienne.

Je ne veux cependant pas dire qu'il jugeait les causes sans examen et sans avoir muri ses jugements. Ce serait de ma part une assertion aussi fausse qu'inconvenante, et tout-à-fait en dehors de mes intentions. Ce que je veux faire entendre, c'est que le défaut d'ordre de ses idées comme de ses connaissances fort vastes, mais mal digérées, lui rendait plus difficile qu'à un esprit plus méthodique que le sien, la rectification d'une opinion préconçue. Son jugement était trop rapide et ses facultés raisonnantes inférieures à ses facultés perceptives.

Son défaut de méthode qui se trahissait dans sa conversation toute à bâtons rompus et sans suite, était surtout perceptible dans l'exposition incomplète et tronquée des causes qu'il jugeait. On aurait dit qu'il ne lui importait guère d'être entré dans une cause, par la porte ou par la fenêtre, pourvu qu'il en connût l'ensemble, sans s'être préoccupé des détails, et qu'il la jugeât bien.

On ne peut cependant pas nier, que ce manque de discussion des questions en litige et cette absence de dissertation, tout en laissant intact le fond de ses jugements, n'en ait paralysé l'utilité au point de vue de la science du droit et de la jurisprudence. Un jugement doit être, dans nos usages juridiques du moins, un enseignement légal et un précédent raisonné faisant loi sur les points qu'il décide. C'est ce qui rend si précieuse pour la science pratique du droit, l'étude de la jurisprudence. Les jugements du juge Duval pèchent sur ce point, mais s'ils ne tiennent pas une large place dans les rapports judiciaires, leur auteur n'en restera pas moins dans la mémoire du barreau et dans le souvenir des populations un grand avocat et un juge distingué.

***

Le juge Duval était d'une intégrité à toute épreuve. Son désintéressement seul eut été la caution de son impartialité. D'un autre côté, il n'aimait personne assez pour le faire soupçonner de préférence.

Si cependant il aimait peu il ne haissait pas du tout. C'est au moins un avantage que les indifférents ont sur les cœurs froids pour l'amour et chauds pour la haine.

Sur le banc il se souvenait qu'il était né frondeur, et s'il l'oubliait, c'était pour s'en venger par d'incessantes interruptions. Je me souviens, il y a de cela bien longtemps, qu'en un jour d'absence du juge en chef LaFontaine, M. Duval présidait la cour. J'allais plaider. Le président après avoir entendu l'appelant me dit M.... vous avez la parole. Je reste coi. Est-ce que vous n'avez rien à dire au soutien du jugement ? me demande-t-il. Oui, lui répondis-je, mais à une condition, c'est que vous me promettez de ne pas m'interrompre. D'accord, dit-il, en riant, mais il ne me tint pas parole !

Un écrivain français, je crois que c'est Royer Collard, a dit, que la vie privée doit rester murée. Cette défense du domicile n'aurait pu servir au juge Duval qui semblait ne rien avoir à dissimuler dans sa vie intime. Il n'avait certainement pas de bijous à cacher.

Sa porte était ouverte à tout le monde, et il semblait content de voir tous ceux qui allaient le visiter, sans montrer beaucoup de préférence à personne. Sa conversation était enjouée sans cependant se rendre jusqu'au rire et était fort facile pour ses interlocuteurs, qu'il n'obligeait pas à grands frais d'imagination, attendu qu'il la soutenait le plus souvent seul et qu'il ne leur demandait guère que des réponses qu'il n'attendait pas toujours, pour en faire une nouvelle. J'ai dit qu'elle était à bâtons rompus et sans enchainement.

Il était sarcastique et malin, mais il n'était pas méchant, et s'il ne faisait l'éloge de personne, il ne dénigrait personne non plus.

Naturellement, je parle de lui comme je l'ai connu et comme l'ont connu ceux qui m'en ont parlé. Mais je ne l'ai jamais connu intimement. D'autres ont-ils surpris chez lui des sentiments plus vifs ? C'est ce que je ne saurais dire. A tout évènement, ils paraissent avoir bien gardé le secret de ses faiblesses.

Qu'on ne croie cependant pas qu'il ne fut pas charitable. Il ne criait pas sur les toits ses actes de bienfaisance, mais ils n'en étaient pas moins réels. Ainsi, il contribua activement de ses efforts et de sa bourse à faire venir de France et à établir à Québec les Frères de la doctrine chrétienne, dont il fut toujours le protecteur, et il a, dit-on, fait instruire dans leur école une foule d'enfants pauvres sans jamais divulguer ses largesses. L'homme capable de ces bienfaits secrets doit en prodiguer bien d'autres.

C'était un chrétien convaincu, et quoique sans ostentation, un catholique sincère. Il a enduré avec courage la longue maladie qui l'a lentement conduit au tombeau, et dont les secours de la religion ont adouci les douleurs.

Le juge-en-chef Duval a passé seul et dans l'isolement la première partie de sa vie, et il avait plus de 40 ans, quand il a épousé la femme aimable dont chacun connait les belles qualités, et qui, depuis bien des années, fait l'ornement de la société québecquoise.

THE BAR SECRETARYSHIP.

To the Editor of the Legal News:

SIR,—I regret that Mr. C. H. Stephens was not appointed Secretary of the Montreal Bar, as he has stronger claims to the position, even that the flying promises of his *confrères*, made years ago. He is a talented, clever young man, and has rendered great services to the profession by his large and extensive *Digest of Cases*, which, although hastily made and bearing the appearance of it, is nevertheless a very valuable work. His recent publication on *Joint Stock Companies* shows him to be, not only an indefatigable writer and worker, but also a learned and promising lawyer.

But Mr. Stephens is not and never will be the Secretary of the Bar, for all that. He wants an absolute requisite for that office, it is the knowledge of the French language. It is preposterous to appoint a Secretary who cannot speak the language of three-fourths of those with whom he has to deal, and the reason why the Secretary of the Montreal Bar is seldom an English advocate, is that there are very few English lawyers who can speak French, how strange and anomalous soever it may be in this Province; while most of the French lawyers, although unable to speak English when coming out of the college, will be able to do so at the end of their clerkship, or at least a few years after their admission to practise. Let young lawyers take a warning from this. Unless they can speak fluently both languages, they will always labour under a disadvantage.

A second reason for appointing a French secretary this year, was that the President was chosen among the English advocates. Let it be remembered that in this section there are over two hundred French and less than one hundred English advocates. Last year, the President and Secretary were French, but the Syndic an English.

I regret Mr. Stephens' attacks on the present Secretary; they are unjust, unfair, uncalled for, and of questionable taste. Mr. Stephens' cause would have been stronger without them.

Yours, truly,

AN ADVOCATE.

PUBLICATION OF SALES.

To the Editor of the Legal News:

DEAR SIR,—There are a few questions I would like to submit to you for your decision. I have asked several practising lawyers for their opinion in the matter; but, each, after giving his opinion, felt dubious as to the correctness of it.

Art. 572 of the Code of Civil Procedure reads as follows:

"* * * the sale of moveables must be "published by posting and reading a notice, in "a loud and distinct manner, at *the door of the* "*church* of the place where the seizure has been "made, *immediately after morning service on the* "*Sunday next after the seizure.*" Now, the question is this: Suppose the seizure be made, the day for the publication of the sale at hand, and the bailiff ready to do his duty, but no service takes place, *what recourse is left to the bailiff?*

In some of the large parishes in this District (Ottawa), a seizure is made at one extremity, while the publication is read at another, at the door of the parish Church, a distance of eight or ten miles from the place, where the people or property is neither known nor cared for.

Has a judge a right to extend a term after having adjourned it to a subsequent day; or, in other words, has he the power to prolong the term by extending it from that subsequent day?

By answering these questions, either by inserting the answers in the "Legal News" or by letter, you will exceedingly oblige,

* * *

[While we appreciate the compliment of an invitation to decide questions as to which "several practising lawyers" feel dubious, we are afraid we can hardly extend the province of the "Legal News," so as to anticipate the work of the Courts. We shall feel satisfied if we can, in a more and more perfect manner, keep our readers informed as to the actual decisions. We publish our correspondent's questions, however, and we shall have no objection to insert a reply by any correspondent who may feel disposed to express an opinion thereon.—ED.]

RECENT CRIMINAL DECISIONS.

Escape pending appeal—Jurisdiction.—Where a person escapes from the custody of the law pending appeal, the appellate court loses jurisdiction, which does not attach by the capture of the prisoner.—*Lunsford* v. *The State*, Court of Appeals, Texas.