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NOTICE OF ACTION.

The decisions which have been rendered in this Province with reference to the notice of action to which public officers are entitled, have had to do for the most part with the persons who should receive notice. In the case of *Grant* v. *Beaudry*, in the present issue, the Court had occasion to decide some important questions relating to the form of the notice, and as the case was one of considerable prominence, and the effect of the decision was to extinguish the action, the subject received more ample investigation than it might otherwise have called for. Two fatal defects were found in the notice which had been served in the case before the Court; first, in specifying the grounds of action, the place where the injury was committed was not mentioned. Secondly, the residence of the plaintiff's attorneys was not mentioned. A reference to the decisions cited by the Court shows that the jurisprudence of England and of Ontario, as well as of this Province, has been uniform in requiring the place to be specified. The other point—information as to the residence of the plaintiff's attorney, is expressly required to be given by the article of the Code. It is true that attorneys practising before the Court are obliged to elect a domicile, or, in default, are held to have elected domicile at the prothonotary's office. But the terms of article 22 of the Code seem to have intended that public officers should not be left to this roundabout method of obtaining the information in question. The article of the Code is explicit, and the Court held that to satisfy it the notice itself should specify the place of residence of the attorney.

MODERN ADVOCACY.

In a notice of the late Mr. Isaac Butt, Q.C., the *Law Times* refers to the change which has been taking place in the style of advocacy in Great Britain. "The class of advocates to which he belonged," it says, "is that of which Scarlett and Follett are prominent examples among English barristers, having no very profound knowledge of law, but readiness in acquiring whatever is necessary for the case in hand, and facility in laying facts and arguments before Courts and juries. The glories of the profession of the law are perpetuated by men of this class, which, however, is unfortunately becoming more contracted as time goes on. The lawyer with the *omnium gatherum* of knowledge—Charles Sumner's ideal lawyer—is becoming rare, whilst the mastery of dry items and facts and argumentative reports is the characteristic of the modern barrister."

We have no doubt that one of the principal causes of the change alluded to, is the enormous pressure of cases before the Courts at the present day. In England there are some eight hundred causes in arrears before the Queen's Bench. In the United States the Supreme Court is in a still more unfortunate condition. The number of cases on the docket has increased to 1150, and the Court is now more than three years behind in its business. It is not wonderful that lawyers who rise to plead a case, with a keen realization of the fact that a thousand other cases are waiting to be heard, should confine themselves to what bears directly on their pretention, or that Courts, haunted by the vision of ever multiplying arrears, should be impatient of any display of brilliance which does not help them to get to the end of the case. Mr. Justice Miller, of the United States Supreme Court, referring to the late Benjamin R. Curtis, whom he styles "the first *lawyer* of America, of the past or the "present time," considers his brevity a sterling merit. "He rarely found it necessary," says the Judge, "in an argument in the Supreme Court "of the United States, to occupy over forty "minutes, and I recollect only two cases in "which he spoke beyond an hour."

NEW PUBLICATIONS.

The Law of Hotel Life: or the Wrongs and Rights of Host and Guest. By R. Vashon Rogers, Jr., of Osgoode Hall, barrister-at-law. Boston: Houghton, Osgood & Co.

This little volume has been written by the accomplished author as a companion to "The Wrongs and Rights of a Traveller." It is a complete manual of the law relating to hotels

and boarding-houses, and all the decisions bearing upon the subject are carefully referred to, but the whole is worked up into the form of a narrative, in which legal principles and decisions are stated in conversational language. We confess that we do not look with much favor upon this plan of sugar-coating the maxims of the law. Those who dislike the dryness of legal studies will be apt to find the vein of story rather thin, and to lawyers, the work, we venture to think, would have been more valuable without the anecdotes and gossip. However, we recognize that tastes may differ in this matter as in others, and we must say that if any one could make us fall in love with the amusing style of writing law-books, Mr. Rogers would be likely to do so. Of the real ability displayed by the author it is difficult to speak too warmly. Mr. Rogers brings to his task an ample knowledge of the subject. The various topics are treated in a masterly manner, and if those who take up the book with the idea of merely finding amusement persevere to the end, they will certainly have gained a fair insight into an important branch of the law. The work is admirably printed and bound, and is published by an American house, but Mr. Rogers, as many of our readers are no doubt aware, is a Canadian barrister, practising at Kingston.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Oct. 25, 1879.

GRANT v. BEAUDRY.

Public Officer—C. C. P. 22—Notice of suit must state where the act of defendant complained of was committed, and the residence of plaintiff's attorneys.

MACKAY, J. In February last the plaintiff sued the defendant, Mayor of Montreal and a Justice of the Peace, for damages for false arrest, for having illegally caused the arrest of plaintiff on 12th July, 1878. The declaration has a very long introduction, stating the history, objects and constitution of the Loyal Orange Association. It is formed (so says the declaration) of persons desirous of supporting the principles of the Christian religion; they meet together periodically, in honor of William, Prince of Orange, whose memory they hold in reverence, &c. The declaration goes on to charge the defendant with having, in abuse of his authority, gotten one Murphy to make an affidavit on that 12th of July, charging plaintiff and others with having unlawfully assembled for the purpose of walking in procession through public streets of the city, thereby provoking a breach of the peace, the affidavit praying for plaintiff's arrest; it is said that plaintiff thereupon was arrested, and had to give bail; and afterwards defendant caused an indictment to be preferred against plaintiff and others for unlawfully assembling on that 12th of July; that a true bill was found, the defendant having obtained it by abuse of the process of law; that on the 14th of October the plaintiff was tried, and found not guilty. The declaration then proceeds to charge defendant with having also gotten plaintiff, with others, indicted in October, 1878, for an unlawful combination and confederacy, the members of it taking an oath not authorized by law; that by abuse of law the defendant got "true bill" found upon this indictment; that afterwards plaintiff was tried upon it, but acquitted; damages are alleged, and $10,000 are sued for.

On the 23rd of October, 1878, notice of action was served upon defendant in the words and form following:

"DISTRICT OF MONTREAL,
"Superior Court.

"David Grant, plaintiff, *vs.* Hon. J. L. Beaudry, defendant.

"*To the Hon. J. L. Beaudry, Mayor of Montreal:*

"SIR,—We give you notice that David Grant, of the City of Montreal, salesman and trader, will claim from you personally, the sum of ten thousand dollars damages, by him suffered from the abuse made of your authority in causing his arrest illegally and for no cause, on the twelfth day of July last (1878), and that unless you make proper amend and reparation of such damages within a month, judicial proceedings will be adopted against you.

"Yours,

"DOUTRE, BRANCHAUD & MCCORD,
"Advocates f. plff.

"Montreal, 19th October, 1878."

The defendant pleads four special pleas, and the general issue.

By the first he says that he is sued as a public officer, and therefore was entitled to a month's notice of action before suit; that this notice ought to have stated the causes of action, and

the name and residence of plaintiff's attorney, or agent; that plaintiff did *not* give such notice, and that the pretended notice of 23rd October, 1878, was informal and irregular, and did not even mention the place where the act of defendant (*quasi délit*) complained of, was committed. By his answer to this first plea, the plaintiff says that the notice of action given to defendant was sufficient in every respect.

By other pleas, the defendant alleges that plaintiff was an Orangeman on the 12th of July, 1878; that the Orange Association is dangerous to public order; that in Montreal the Society was and is an illegal one; that before 12th July, 1878, it had announced a determination to have a procession through the streets; that this caused great anxiety among the citizens, disorders usually being the result of such processions; that the magistrates advised the defendant to issue a proclamation against all processions that day, and inviting the citizens to help to preserve the peace; that the City Council also so advised the defendant; that he did as advised; yet the Orangemen met with intention to walk with insignia that day, and the plaintiff was, while organizing or marshalling the parade or procession, arrested by proper authority, and defendant is not responsible; that the plaintiff was arrested by the High Constable, upon a warrant of the Police Magistrate upon the information of one Murphy, which warrant the defendant approved, and plaintiff was, as it were, consenting to his own arrest, that, by or through it, he might raise before the Courts the question of the legality, or illegality, of the Orange Association; that as to the proceedings before the Criminal Courts, whether the plaintiff was acquitted or not cannot affect the defendant; for he did not promote them, and had nothing to do with them, &c.

In disposing of the case we have first to do with the first plea, and the answer to it. That the defendant was entitled to notice of action before suit is plain. We see at the end of the *enquête* that he acted, on the 12th of July, in the execution of his office. He was in the exercise of his functions. The plaintiff admits that he had to give notice of action; he alleges notice, and by his answer to plea insists that the notice given was sufficient.

The defendant says that he has *not* received the required notice; that the causes of action were not stated in the notice served; that it did not even state *where* the act of defendant complained of was done; he objects, also, that the names and residence of plaintiff's attorneys, or agents, giving the notice, are not stated in or upon it.

The notice is sufficient, says plaintiff's attorney, "the defendant could not misunderstand it." "It must be read in a reasonable, common sense way," &c.

Art. 22, Code of Procedure, enacts: "No public officer can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any verdict or judgment be rendered against him, unless notice of such suit has been given him at least one month before the issuing of the writ. Such notice must be in writing; it must specify the grounds of the action, and must state the name and residence of the plaintiff's attorney."

Are the causes or grounds of action stated in the notice? The arrest of the plaintiff on the 12th of July is the trespass charged, or offence of the defendant. *Where* it took place or was committed is not stated. In England, whence we have drawn our law, this would be held fatal to plaintiff's case. *Martin* v. *Upcher*, 3 Q. B (Ad. & Ellis). So it would be in Ireland. See Fisher's Digest, p. 3, cases of 1877. So in Ontario. *Kemble* v. *McGarry*, 6 Q. B. Rep. Old Series, and *Madden* v. *Shewer*, 2 Q. B. Rep., p. 115. (Here the Judge read from these cases.) Our Code of Procedure, Art. 36, orders "Every suit in damages against a public officer, by reason of any act done by him in the exercise of his functions, must be brought before the Court of the place where such act was committed." How can it be seen whether an action is instituted in the proper county if, in the notice of action, no place be stated? The necessity for statement of place in the notice of action is apparent for more reasons than one. Certain is it that our Quebec Courts hold as do those in England, Ireland and Ontario. See *Bettersworth* v. *Hough*, 16 L.C. Rep. Judgment of Stuart, J. (confirmed in the Q.B. afterwards.)

The cause of action, in a notice of action, is not stated within the intent of Art. 22, Code of Procedure, unless place be stated.

In no country possessing the institution of Justices of the Peace, as do the British possessions generally, has it ever been judged,

except at the trial of the case of *Kemble* v. *McGarry*, when the trial Judge erred, and his ruling afterwards was corrected by the Queen's Bench, that place needed not be stated in the notice of action.

This is a large proposition, but no less true than large; and there cannot be one law for the *Martins*, the *Kembles*, the *Maddens* and the *Bettersworths*, and another one for the *Grants*. I shall not stultify myself by making a first departure from what has been ruled in the cases that I have referred to.

They control, and upon this part of the case I have to support the first plea of defendant.

But another objection in the same plea against the plaintiff's notice may not improperly be considered. It is this: that the notice does not set forth the name and residence of plaintiff's attorneys or agents giving it. Art. 22 C. P. orders as I have said before. Plaintiff's notice does not express the place of residence of his attorneys. Both in England and Ontario the plaintiff's notice would be held defective. See *Taylor* v. *Fenwick*, 7 D. & E.; and 6 Q. B. Rep. Ontario, p. 499; *Bates* v. *Walsh*. The practice in Quebec Province is well established, to give the name and address of the attorneys giving notice of action. I could cite many cases; and see Doutre's Proc. Civile, Vol 2.

Our Code meant to enact, as do the English Statutes, a strictness. It must be observed literally, and allows of no equivalent. (P. 417, Paley, on Convictions, 4th Ed.) *Osborne* v. *Gough*, 3 Bosanquet & Puller, is the case that some might call the best case for the plaintiff, but in that case the attorney signed *of* Birmingham. That case might have helped, had the plaintiff's attorneys signed "*of* Montreal," as they have *not* done. On this part of the case I am bound to say that the defendant's first plea has to be supported; so that upon *either one* of defendant's two objections, treated of, plaintiff's action must fail. This makes it unnecessary to go into the case any farther.

Before concluding, I make apology to the profession for having taken up so much time in pronouncing judgment in a case which might have been disposed of in a very short time; butI have wished to make things plain to unprofessional hearers. I might say more, but will abstain.

Doutre, Branchaud & McCord for plaintiff.

Roy, Q.C., and *Carter, Q.C.*, for defendant.

MONTREAL, Sept. 26, 1879.

BANK OF MONTREAL v. GEDDES et al.

Banking Act of 1871—*Authority of Bank to make loans on collateral security of C.P.R. Stock.*

This was an action brought by the Bank of Montreal, against ex-directors of the Montreal City Passenger Railway Company, to recover the amount of a loss sustained by the Bank on several loans made to Bond Brothers in 1876, on the collateral security of shares of the City Passenger Railway Company. The plaintiff alleged that the defendants, while directors of the City Passenger Railway Company, had made false reports and paid dividends in excess of the earnings, with a view to deceive the public and create an erroneous impression as to the value of the Company's property, and to raise the price of the stock; that the plaintiff had thereby been misled, and had made a loan to Bond Brothers to an amount much exceeding the intrinsic value of the stock, and had suffered loss in consequence.

The defendants demurred to the action, alleging, first, that the Bank could not, under the Banking Act of 1871, lawfully make a loan on the stock of the City Passenger Railway Company; and, secondly, that supposing such a loan could lawfully be made, the allegations of the declaration did not disclose sufficient grounds of action.

RAINVILLE, J., as to the right of the Bank to make the loans, considered that it would be preferable to adopt the opinion of Papineau, J., who had ruled in the case of *Geddes & Banque Jacques Cartier*, that Banks might make such loans, and to hold that the Bank had power to make the loans on City Passenger stock. Were he to maintain the demurrer on this ground, there would be an appeal, and the case might go to the Privy Council before any further proceeding could be taken in this Court. On the second point, there was no doubt that the allegations of the declaration were sufficient to permit the plaintiff to prove the publication of the reports, and that they were published with the intention of deceiving the public.

Demurrer dismissed.

Ritchie, Q.C., for plaintiff.

Lunn & Cramp, Carter, Q.C., Barnard, Q.C., Lacoste, Q.C., for defendants.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, Oct. 14, 1879.

REGINA v. GEORGE MAYNARD.

Obtaining "money" under false pretences.

The defendant, Maynard, was indicted for obtaining "money" under false pretences. The evidence for the prosecution showed that he had obtained a cheque on the Exchange Bank from one Sonne.

MONK, J., who presided, held that there was no case on the indictment as laid, and directed the jury to acquit the defendant.

F. X. Archambault, Q.C., for the Crown.

W. H. Kerr, Q.C., and *R. D. McGibbon*, for the defendant.

MONTREAL, Oct. 13, 1879.

REGINA v. SIR FRANCIS HINCKS et al.

Banking Act of 1871—Making false statement—Indictment—Demurrer.

The defendants, directors of the Consolidated Bank of Canada, were indicted, under 34 Vict. cap. 5, sec. 62, for making a wilfully false and deceptive statement in a return respecting the affairs of the Bank. The indictment was similar to that in *Reg.* v. *Cotté*, 22 L.C.J. 141.

The following is a copy:—

"The jurors, &c. present, that before and at the time of the committing of the offence hereinafter mentioned, John Baxter Renny was the General Manager, and Sir Francis Hincks, Robert James Reekie, John Grant, John Rankin, Hugh McKay, and William Watson Ogilvie were Directors of a certain Bank called "The Consolidated Bank of Canada," and that they the said John Baxter Renny, Sir Francis Hinks, &c., being respectively such General Manager and Directors as aforesaid, on the 6th of February, 1879, did unlawfully and wilfully make a certain wilfully false and deceptive statement in a certain return partly written and partly printed respecting the affairs of the said Bank, which said statement was wilfully false and deceptive in certain material particulars, that is to say in this, to wit, that it was therein falsely stated that certain liabilities of the said Bank, to wit, "other deposits payable on demand" amounted on the 31st day of January, 1879, to $2,180,373.61, and in this, to wit, that it was therein falsely stated that certain other liabilities of the Bank, to wit, "other deposits payable after notice or on a fixed day," amounted on the day and year last aforesaid to $2,031,098.02; and in this, to wit, that it was therein falsely stated that no amount was due on the day and year last aforesaid by the said Consolidated Bank of Canada to other Banks in Canada; and in this, to wit, that it was therein falsely stated that certain assets, to wit, the "specie" of the said Bank, amounted on the day and year last aforesaid to $311,460.85; and in this, to wit, that it was therein falsely stated that certain other assets of the said Bank, to wit, "Dominion Notes," amounted on the day and year last aforesaid to $267,733.50; and in this, to wit, that it was therein falsely stated that certain other assets of the said Bank, to wit, "Notes of and cheques on other Banks," amounted on the day and year last aforesaid to $263,838.99; and in this, to wit, that it was therein falsely stated that certain other assets of the said Bank, to wit, "Notes and Bills discounted and current," amounted on the day and year last aforesaid to $7,250,149.45; and in this, to wit, that it was therein falsely stated that there were no other assets of the said Bank not included under the several heads contained in the said return, they the said John Baxter Renny, Sir Francis Hincks, &c., then well knowing the said statement to be false in the several particulars aforesaid."

There was another indictment in the same terms, referring to return of 9 January, 1879.

Kerr, Q.C., for the defendants, moved to quash the indictment, and also filed a demurrer setting up the same grounds as the motion to quash. The demurrer was as follows:—

"And the said Sir Francis Hincks, Robert J. Reekie, and William W. Ogilvie, in their own proper persons, come into Court here, and having heard the said indictment read, say that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law, and that they, the said Sir Francis Hincks, Robert James Reekie, John Rankin, and William W. Ogilvie, are not bound by the law of the land to answer the same for the following reasons: 1. Because there is no allegation therein of the said offence therein set out having been committed in the District of Montreal. 2. Because

it does not appear in the said indictment that the said Consolidated Bank of Canada is a bank subject to the operation of the Act of Parliament of the Dominion of Canada the 34 Victoria, Chapter 5; nor is it shown in the said indictment that the said Act, or any Act of the Dominion of Canada, applies to the Consolidated Bank of Canada. 3. Because each of the false statements alleged in the said returns is a misdemeanor of itself, and such misdemeanor should be the subject of one count, whereas there are over six misdemeanors alleged in the said count in the said indictment. 4. Because it is not therein alleged that the return which is said to contain the false statements was a return to the Government of the Dominion of Canada. 5. Because it is not therein alleged that the said return was ever published or made known to the public. 6. Because it is not therein alleged that the said Sir Francis Hincks, Robert James Reekie, John Rankin, William W. Ogilvie were directors of a bank to which the Banking Acts of the Dominion of Canada apply; and this the said Sir Francis Hincks, Robert James Reekie, John Rankin, William W. Ogilvie are ready to verify. Wherefore for want of sufficient indictment in this behalf the said Sir Francis Hincks, Robert James Reekie, John Rankin, William W. Ogilvie pray judgment, and that by the Court here they may be dismissed and discharged from the said premises in the said indictment specified."

MONK, J. The questions which have been presented for the consideration of the Court arise on two motions to quash and two demurrers to indictments, Nos. 49 and 50, against the accused. The objections urged by the defence in these several proceedings are identical, and the decision of the Court in regard to one disposes of the other three. I may remark also that the two indictments are the same in form, setting forth the same description of offences committed, the one on the 9th January, 1879, and the other on the 6th February, 1879. The defendants are there charged with having unlawfully and wilfully made at these dates, respectively, certain wilfully false and deceptive returns respecting the affairs of the Consolidated Bank of Canada, they then being, one the General Manager and the others directors of the aforesaid Bank, and these wilful and false statements are alleged to exist in certain material particulars which are therein set forth in detail. As before remarked, the motions to quash and the demurrers involve similar grounds of objection, and it is urged against the indictments that they should be declared and adjudged insufficient in law.

"1st. Because there is no allegation therein of the said offence therein set out having been committed in the district of Montreal." This ground was abandoned by the defendants' counsel at the argument, and as a matter of law and legal procedure, it could not prove successful on a motion to quash or on demurrer. The point is too clear under the statute to admit of doubt or discussion.

"2nd. Because it does not appear in the said indictment that the said Act, or any Act of the Dominion of Canada applies to the Consolidated Bank of Canada." This objection was argued at great length, and urged with considerable ingenuity by the counsel for the defence. But in regard to these pretensions, it might perhaps be sufficient for me to refer to the case of Cotté, in which one of the points raised on motion to quash reads as follows:—"Because it is not shown, as set forth in the said indictment, that the Bank therein referred to as La Banque Jacques Cartier, of which it is alleged, the said Honoré Cotté was cashier, was a duly incorporated banking institution, doing business within the Dominion of Canada, and subject to the provisions of law relating to banks and banking." A learned Judge of this Court refused to reserve the question thus submitted for his decision, and held that this omission in the indictment was not fatal. In that opinion I entirely concur, and in any case, even if that view of the law was not so clear to my mind, I would hesitate in the face of such a ruling before dissenting from that decision on the present occasion. But as this point was not submitted to the Court of Appeals upon the reserved case, and as the Consolidated Bank of Canada is not to be found in the schedule to the Banking Act 34 Vic., Cap. 5, it is, perhaps, due to the argument of counsel that I should, in a few words, assign my reasons why the above decision in the Cotté case applies to the one under consideration, and must be upheld and adhered to in this instance, although there is a slight difference between the two banks in regard to the dates of their incorporation—the

one being in existence at the time of the Banking Act, and the other incorporated by a statute subsequent to that Act. If I clearly understand the objection, it amounts to this: The Consolidated Bank of Canada not being in existence when the Banking Act was passed, and, therefore, not being referred to in the schedule to that statute, its subsequent incorporation and the application of Dominion banking law to that institution should have been alleged in the indictment. At first sight, and upon a restricted view of the law, there is, no doubt, something plausible about this argument, but I confess myself, after careful consideration, unable to see how it can be successfully urged against the sufficiency of this indictment. Bearing in mind, therefore, the precise point raised by the defendants' counsel, viz: if the Consolidated Bank of Canada was in existence when the 34 Vic., cap. 5, was enacted, that Act does not apply to it, because not mentioned in the schedule, and as it was incorporated five years afterwards by the Act 39 Vic., cap. 44, this subsequent charter should have been alleged in the indictment, in order to show that it came under the operation of the Act 34 Vic., cap. 5. In order to mark the relation of these two statutes, the one to the other, it is necessary to refer to them a little more in detail. By the first clause of the Banking Act it is enacted in substance as follows:—The charters or acts of incorporation of the general banks enumerated in the schedule to that Act are continued, subject to the provisions of that Act until 1st July, 1881, and the provisions of that statute shall apply to each of them respectively, and their then present charters were repealed, except only as to the matters for which the said charters are as therein above continued until the day last aforesaid. In the Section 2 of that Act will be found the following words:

"The provisions of this Act shall apply to any bank to be hereafter incorporated (which expression in this Act includes any bank incorporated by any Act passed in the present session, or in any future session of the Parliament of Canada, whether this Act is specially mentioned in its act of incorporation or not, as well as to all banks whose charters are hereby continued, but not to any other, unless extended to it under the special provisions hereinafter made."

Section 13 of the same Act provides that—

"Monthly returns shall be made by the bank to the Government in the following form, and shall be made up within the first ten days of each month, and shall exhibit the condition of the bank on the last juridical day of the month preceding; and such monthly returns shall be signed by the president or vice-president, or the director (or, if the bank be *en commandite*, the principal partner) then acting as president, and by the manager, cashier, or other principal officer of the bank, at its chief seat of business."

Section 62 of the same Act, 34 Vic., cap. 8, enacts that—

"The making of any wilfully false or deceptive statement in any account, statement, return, report, or other document respecting the affairs of the Bank shall, unless it amounts to a higher offence, be a misdemeanor, and any and every president, vice-president, director, principal partner, *en commandite*, auditor, manager, cashier, or other officer of the bank preparing, signing, approving or concurring in such statement, return, report or document, or issuing the same with intent to deceive or mislead any party, shall be held to have wilfully made such false statement, and shall further be responsible for all damages sustained by such party in consequence thereof."

By the 13th clause the law imposes on the banks the duty of making monthly returns to the Government; and the 62nd clause speaks of any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank, and it further declares that any president, vice-president, director, auditor, manager, cashier, or other officer of the bank preparing, signing, approving or concurring in such statement, return, report or document, shall be held to have wilfully made such false statement. It must be admitted that this clause embraces a great number and variety of cases regarded as wilful and false in business transactions. It undoubtedly is extremely stringent and comprehensive, and is calculated in the highest degree to stimulate the activity and vigilance of every one connected with the management of these important institutions. It goes far beyond the monthly returns which Banks are obliged by the Act to make to the Government;

but such is the law and we have to take it as we find it and administer it as best we can. Its bearing on the case will appear in the sequel of these remarks. Now, let us ascertain whether this Act 34 Vic., cap. 5, with this and other provisions, applies to the Consolidated Bank of Canada. Section 9 of the Act of Incorporation of this "Consolidated Bank," 39 Vic., cap. 44, enacts that

"The Act of Parliament of Canada, passed in the thirty-fourth year of Her Majesty's reign, chapter five, intituled 'An Act relating to Banks and Banking, and all the provisions thereof and the amendments thereof shall apply to the 'Consolidated Bank of Canada,' in the same manner as if the same were expressly incorporated in this Act, except in so far as such provisions relate specially to banks in existence before the passing thereof, or to banks *en commandite*, or are inconsistent with this Act;" and it is then declared to be a public Act. Here we have an express clause of a public Act declaring that the Banking Act, 34 Vic., chap. 5, shall apply to the Consolidated Bank. The Court is bound to know this provision of the law, I am obliged to recognize and act upon it without allegation in legal proceedings and without proof other than that furnished by the law itself. What necessity for alleging the fact in the indictment? What object would be attained in a prosecution like the present, by inserting such an allegation therein? I have heard none—I know of none; in the opinion of the Court such an averment would be simply useless, and, therefore, this ground of demurrer must be overruled. We come now to the third reason for demurring to this indictment, and it is as follows: "Thirdly—Because each of the false statements alleged in the said return is, if false, as alleged, a misdemeanor of itself, and each such misdemeanor should be the subject of one count, whereas there are over six misdemeanors alleged in the sole count contained in the said indictment." This ground, I believe, was abandoned at the argument; but in any case this point was disposed of by the Court of Appeal in the Cotté case; the Court holding that the indictment, which was in form precisely the same as the one under consideration, did not charge the defendant with several offences or with one offence in different counts, but contains only one count, charging the defendant with only one offence—that is, of having unlawfully and wilfully made a certain wilfully false and deceptive statement in a return respecting the affairs of the Bank, which statement, it is averred, was false in several particulars, the whole forming but one offence, as the several particulars in which the statement was false and deceptive were included in the same return, and formed but one and the same transaction. This pretension, therefore, cannot be sustained. The 4th and 5th reasons are as follows, viz.:—"Fourthly—Because it is not therein alleged that the return, which is said to contain false statements, was a return to the Government of the Dominion of Canada." "Fifthly,—Because it is not therein alleged that the said return was ever published or made known to the public. The law does not distinguish between returns imposed as obligatory by the Act and other returns, and where the law does not the Court will not—cannot distinguish. Besides, these points were disposed of by the Court of Appeals in the Cotté case, and in that judgment I concurred. The wording of that indictment, as before remarked, was the very same as in these, and it was held that these allegations were not necessary. The offence consists in the making any wilfully false or deceptive statement in any account, return, report or other document respecting the affairs of the bank. The indictment is in the very terms of the statute, and no more is required in this instance. Besides, the return must be wilfully false and deceptive. The nature of that return will speak for itself when produced and legally proved. Till then, and owing to the comprehensive language of the statute, the Court is of opinion that these averments were not necessary, and consequently that the omission of them is not fatal. The 6th reason, that it is not alleged in the indictment that the defendants were directors and officers of a bank to which the Banking Acts of the Dominion of Canada apply, has already been considered and disposed of. The necessity of negative averments in the indictment was also mentioned in the argument. The counsel were aware of the holding of the Court of Appeals as to such allegations in the case so often referred to above. The authorities cited by Mr. Kerr, from Archbold and Paley, in my opinion, do not apply to the case under consideration, and the inconvenience and even inexpediency, in view of an effective administration of justice in cases like the present of attempting to point out, before the adduction of evidence, in what particulars such statements are false and deceptive must be obvious to every one familiar with the incidents of this kind of prosecution. The statutes I have quoted and referred to are public Acts. They are precise, formal and peremptory in their provisions, and I am of opinion that the jurisprudence of this Court fully justifies the application of them which the Court feels called upon to make in these cases. The motions and demurrers are consequently dismissed.

Ritchie, Q.C., for the private prosecutor.

Kerr, Q.C., Wurtele, Q.C., Wotherspoon, and *Macmaster* for the defence.