The Legal News.

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"COUNTRY DAY" IN TOWN.

A day is fixed during the appeal term in Montreal for the hearing of cases from districts other than the district of Montreal. This is an arrangement manifestly necessary to prevent the waste of time which would be occasioned by keeping counsel from the outside districts ten or twelve days in the city, waiting for the chance of their cases being called. Of late, however, "country day" has come to mean the day on which country cases will *not* be heard. For two or three terms past, country day has come and gone, without any of the counsel from the St. Francis and other outside districts getting a chance of being heard. The cause of this untoward event usually is that a lengthy city case has been commenced a few minutes before the adjournment on the previous day. Now it is a very small inconvenience to suspend a city case, because the counsel are on the spot, and it is a matter of indifference to them to argue a case on the Tuesday or the Wednesday; but the Court in their wisdom have decided that the case commenced shall go on, in spite even of the courteous offer of city counsel to waive their supposed privilege and to await the next day, and thus the entire outside bar have been compelled to dance attendance on the chance of being heard on that or the next day. This is neither courteous nor reasonable, and as we often hear of the supposed antagonism between law and common sense, we think the members of our highest provincial tribunal would do well to hesitate before perpetuating an arbitrary ruling which places them at a painful disadvantage when their conduct is regarded from a common sense point of view. During the September term, the inconvenience was still farther aggravated by the fact that after "country day" (Tuesday, Sept. 25), had been occupied by a city case, the best part of Wednesday forenoon (Sept. 26) was consumed in the delivery of judgments.

SURETISHIP.

The case of *Canada Guarantee Co. & McNichols* (4 L. N. 78) has had an unsatisfactory termination. It is one of those cases which add emphasis to the banal expression as to the "glorious uncertainty of the law." The question was whether a bond given generally by an official assignee for the faithful discharge of his duties as such could be taken advantage of by the creditors of an insolvent estate who have elected to make him administrator of the estate as creditors' assignee. The weight of opinion is overwhelmingly in favor of the negative of this proposition. In Ontario the law seems to have been considered so clear that the point was never taken before the Court of Appeal and the ruling of Chief Justice Hagarty, holding that the terms of the bond could not be extended, was regarded as so conclusive that no appeal was taken from his decision. In Quebec Mr. Justice Jetté rendered judgment in the same sense, and no appeal was taken from the decision. In the case of *Canada Guarantee Co. & McNichols*, the Court below seems to have leaned in the same direction, but in deference to a contrary decision by the senior Judge of the district, the suretiship was held to be extended under the circumstances from the official assignee to the creditors' assignee. That case was taken to appeal, and both the Chief Justice and Mr. Justice Ramsay consider it erroneous and untenable. A bare majority of one hold in favor of extending the responsibility of the surety, and as the amount is too small for an appeal the matter ends here. Unfortunately, there are a number of other suits depending on the decision in this case, and they must abide the unsatisfactory and, we believe, erroneous conclusion just noted. The decision professedly turns merely upon the interpretation of a clause of the Insolvent Act which has been abolished, but the principle sinned against by this judgment lies deeper than any statutory law, and the decision will hardly, we think, command much respect hereafter as a precedent on the law of suretiship. It may be added that in a much more doubtful case (*Consolidated Bank & Merchants Bank*, 6 Legal News, p. 284), the Court of Appeal has recently refused to extend the obligation of a surety.

THE IRISH LORD CHANCELLORSHIP.

Sir Edward Sullivan has been appointed to the office of Lord Chancellor of Ireland in succession to the Right Hon. Hugh Law, who died a few days ago. The Irish Chancellorship, it has been remarked, has been held by some famous men—men of the successful type. Of those who have had the custody of the great seal of Ireland since the Revolution, at least ten have founded families. Their representatives in the peerage of to-day are Lords Methuen, Normanby, Middleton, Roden, Lifford, Redesdale, Manners, Plunket, Stratheden and Campbell, and St. Leonards. The only two in the list who sat on the English woolsack—Lords Campbell and St. Leonards—succeeded each other as heads of the law in Ireland, though Sir Edward Sugden had been once Chancellor of Ireland before he took Campbell's place in 1841. Campbell's appointment has been spoken of as a "job" intended to give him a retiring pension of £4,000 a year: but it should not be forgotten that Campbell declined the pension.

The fame of the Irish Chancellor has been, as a rule, of a rather local kind. Lord Methuen, for instance, is known in history chiefly for his achievements as a diplomatist. He it was who negotiated the treaty with Portugal which bears his name, and which did more than anything else to make England for upwards of a century a port-drinking nation. John Fitzgibbon, Earl of Clare (Chancellor from 1789 to 1802), is also known on the English side of St. George's Channel. His last male descendant was killed at Balaklava. George Ponsonby (1806-7) became leader of the Whig party in the House of Commons on Lord Grevy's ascension to the Upper House. He died in 1817. Thomas, Lord Manners (1807-27), had previously been a baron of the English Exchequer. Sir Anthony Hart (1827-30) had been Vice-Chancellor of England. Perhaps the greatest name in the list is that of the Irish Demosthenes, Lord Plunket, who was Chancellor from 1830 to 1834, and again in 1835 to 1841.

THE LATE MR. EDWARD CARTER, Q.C.

The bar of this Province has sustained a serious loss in the sudden but not altogether unexpected demise of Mr. Edward Carter, Q.C., who, like his late contemporaries, Messrs. Andrew Robertson, Q.C., and T. W. Ritchie, Q.C., has died in harness. Mr. Carter was only 61 years of age, but nearly forty of those years were passed in the most active exercise of his calling. In both civil and criminal courts he was prized as a counsel ever vigilant over the interests of his clients, seldom or never allowing a point of vantage to escape him. In his arguments and addresses to juries he was rapid, almost voluble, but at the same time his delivery was agreeable and his reasoning acute and logical. He never failed to leave a clear impression upon the minds of his hearers of the points which he wished to urge. He was rather admired by his confrères at the criminal bar for the subtlety of his attacks upon indictments, and as a counsel for the defence was a terror to limping crown prosecutors. It would, however, be a great injustice to Mr. Carter to suppose that his abilities were restricted to ingenious defences. He was well read in all branches of the law, and as counsel for insurance and other corporations had a high repute. He would have adorned the bench, and the repose from the strenuous and exhausting contentions of the bar would probably have added ten years to his life. But it was not to be. Mr. Carter appeared in the Queen's Bench (Crown side) but a few days before his death, and argued with his usual energy and perspicacity, but his strength had long been undermined by chronic indisposition, and a brief illness, which a more robust constitution would have quickly shaken off, sufficed to carry him to the realm where contention is at an end.

In private life Mr. Carter was the courteous gentleman, and of a generous and sympathetic disposition. His only deviations from the hard line of professional work were his acceptance for a short time of the office of Clerk of the Peace in Montreal, and his subsequent representation of Montreal Centre in the Local Legislature. In 1871 he was defeated in a contest with the late Mr. Holton, but soon after he was elected by acclamation to the House of Commons for Brome, when the seat became vacant by the elevation to the Bench of the late Judge Dunkin. At the general election in 1872 he was re-elected and sat until 1874, when he did not again come forward.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, September 27, 1883.

LA BANQUE D'HOCHELAGA (defendant below), Appellant, and ROBERTSON (plaintiff below), Respondent.

Banking Act—Calls on Stock.

Under 37 Vic. c. 5, s. 34, there must be an interval of thirty days between the making of the calls, as well as an interval of thirty days between the dates fixed for payments.

The action was to set aside, as irregular and illegal, a resolution of the bank directors, passed on the 27th October, 1880, which forfeited for non-payment of calls the shares of certain shareholders. The respondent held 50 shares, on ten of which 90 per cent. had been paid up, and on the remaining 40 shares 50 per cent. had been paid, and these shares had been declared forfeited by the resolution above mentioned. It was alleged in support of the action that the calls and notices were irregular and insufficient. The Court below held that the respondent had not been regularly put *en demeure*, and that the confiscation was unreasonable and illegal. The action was therefore maintained, and the bank was ordered to reinstate the respondent in his fifty shares.

Béique, for the appellant, contended that the notices of calls had been regularly given. The respondent had not made any payments on account of the stock himself; the amount paid on it was paid before he acquired it, and the reason why the calls were not responded to was the low price of the stock in the market. The price afterwards advanced, and then the respondent became anxious to claim the stock.

Maclaren, for the respondent, submitted that besides other irregularities, the directors of the bank had undertaken by one resolution to make seven calls. This point had been decided by the Court of Appeal in the case of *Gilman & Court*, in which it was held that under section 58 of the Banking Act of 1871, the assignee of the Mechanics' Bank could only make calls not exceeding twenty per cent. each, at intervals not less than 30 days. Section 34 which governs the calls in this case, was practically the same. The respondent, while protesting against the irregularity of the calls, had offered the bank the money claimed by it with interest in order that there might be no excuse for refusing to consider him a shareholder.

RAMSAY, J. This is an action by the respondent, demanding that the confiscation of certain stock belonging to him in the Hochelaga Bank be declared null, and that the bank be ordered to reinscribe the name of plaintiff amongst its shareholders.

The declaration sets up that the respondent held fifty shares of $100 each in the stock of the bank, on ten shares of which 90 per cent. had been paid up, and that on the other forty shares fifty per cent. had been paid up. That the confiscation was for the non-payment of pretended calls, seven in number; that these calls had been irregularly made, and that he had no notice of confiscation, but, on the contrary, that he had special notice that he would be sued to compel him to pay.

What really happened was this: On the 25th of July, 1874, a resolution was passed making seven calls, namely, the 4th, 5th, 6th, 7th, 8th, 9th and 10th calls, payable respectively 1st September, 1874, 2nd January, 1875, 1st May, 1875, 1st September, 1875, 2nd January, 1876, 1st May, 1876, and 1st September, 1876. That these calls were published in English and French, and a notice sent to each shareholder. Several shareholders, and among them the respondent, did not pay all these calls, and on the 21st January, 1880, the directors met and passed this resolution:—"Il est résolu de donner avis dans la *Gazette Officielle* aux actionnaires qui n'ont pas encore payé les 3ème, 4ème, 5ème. 6ème, 7ème, 8ème, 9ème et 10ème versements de 10 par cent. chacun sur les actions par eux souscrites, tant dans la première que dans la deuxième émission du fonds capital de cette banque, qu'ils sont requis de payer les dits versements dans les bureaux de cette banque, à Montréal, comme suit:—

Le 3ème versement de 10 par cent. le 6 Mars prochain,
Le 4ème versement de 10 par cent. le 6 Avril prochain.
Le 5ème versement de 10 par cent. le 7 Mai prochain.
Le 6ème versement de 10 par cent. le 7 Juin prochain.
Le 7ème versement de 10 par cent. le 7 Juillet prochain.
Le 8ème versement de 10 par cent. le 7 Aout prochain.
Le 9ème versement de 10 par cent. le 7 Septembre prochain.
Le 10ème versement de 10 par cent. le 7 Octobre prochain.

Et qu'en outre un avis soit envoyé à chacun

des dits actionnaires, leur faisant part de la résolution de ce bureau, en accord avec une résolution des actionnaires passée le 15 de ce mois, de prendre des procédés légaux pour le recouvrement des dits versements dans le cas où ils ne seraient pas payés, le jour et au lieu mentionnés plus haut."

Now it is contended—1st, that this is not a resolution making a call, but a resolution to give notice that a call should be made; 2nd, that if it is a call it is a new call, and that it abolishes the old one; 3rd, that a call cannot be made in block in this way, but that thirty days should elapse "before the making of each call," and 4th, that thirty clear days did not elapse between the times of payment of each instalment. The argument is based on the following words of the Act relating to Banks and Banking (37 Vic. c. 5), section 34: "Provided that such calls shall be made at intervals of not less than thirty days, and upon notice to be given at least thirty days prior to the day on which such call shall be payable; and no such call shall exceed ten per cent. of each share subscribed." These words then clearly require two things; 1st, that calls are to be made at intervals of not less than thirty days, and 2nd, upon notice given at least thirty days prior to the day on which such call shall be payable. In the case of *Gilman & Court* it was formally decided that there must be the interval of thirty days in making the calls as well as thirty days at least between the payments. If we take the resolution of the 25th July, 1874, there were no intervals in making the calls; and if we consider the resolution of the 21st January, 1880, to be the basis of the call it is open to the three objections, in its form it is not a resolution to call up, but to give notice, still they advertise it as "a new call," there are no intervals in making the new call, and the days of payment do not allow at least 30 days to elapse between. The right to forfeit is to be strictly construed, and we cannot go beyond the statute. The authorities on this point are numerous and uniform.

As to the question of want of notice, it is not necessary that I should express any opinion in this case. I may say, however, that where there is a failure to do, it seems to me to be a fair thing to exact notice before forfeiture, but the very meagre section of our statute does not require it. In the English Companies Act of 1862, the procedure prior to forfeiting is elaborated with much care (25 and 26 Vic., c. 89, sec. 1, table A, 17). But in *Lapierre* v. *L'Union St. Joseph*, we decided that although there was no mention of prior notice in the statute on which forfeiture was based, still by the principles of our law in cases involving the failure to do, where there is a vested right to be taken away, good faith requires a prior notice. This case was reversed in the Supreme Court on the ground that the want of notice was not pleaded. (4 Supreme Court Rep. 164). So that our judgment on that point stands unimpaired. But the difficulty here is that there were numerous notices and promises to pay, followed by a calculated abstention from carrying out these promises, but there was no notice specially saying which of the remedies given the company by law would be adopted.

On the ground, then, that in making the calls the terms of the statute were not strictly followed, I am of opinion that the forfeiture was not incurred. To this judgment Mr. Justice Monk dissents on the ground of waiver by respondent, inasmuch as it appears he was present at the meeting at which the calls were made and that he paid a part of the calls. But I don't think this can be considered such a waiver of these irregularities as would justify so extreme a measure as the confiscation of respondent's stock. It might, perhaps, be a good answer to an action if he had brought it to get back the money he had paid. But respondent had a right to refuse to go on paying calls whenever he discovered they were not binding on others. I am, therefore, to confirm, and this is the decision of the majority of the Court.

Judgment confirmed, Monk, J., *diss.*

Beique & McGoun for appellant.

Maclaren, Leet & Smith for respondent.

SUPERIOR COURT.

MONTREAL, September 13, 1883.

Before LORANGER, J.

MCGILLIVRAY v. PARKER.

Sale—Defects in goods sold—Custom of trade.

A usage of trade, to be considered binding, must be general, and the facts adduced to prove its existence must be consistent and repeated and pub-

licly apparent during a reasonable length of time.

The action of the plaintiff was for the price of goods sold and delivered to the defendant.

The defence was that there was a deficiency in quantity, and that defects were discovered in the goods, of which the plaintiff had notice, and a deduction of $69 was claimed.

PER CURIAM. [After stating the facts and pleadings]. Le défendeur a-t-il prouvé que les marchandises qui lui ont été livrées à partir du deux au vingt février n'avaient ni la qualité ni la quantité voulue, et a-t-il établi le quantum de sa réclamation? Cette preuve a-t-elle le dégré de certitude nécessaire pour l'admettre à faire valoir à l'encontre du prix d'un dernier achat, les imperfections ou les défauts de marchandises qui lui avaient été vendues longtemps auparavant, et dont il avait eu la possession sans se plaindre, pendant plusieurs semaines. Comme je l'ai dit plus haut, si ce n'était l'écrit du 27 février, le défendeur serait non recevable à réclamer les diminutions et les dommages dont il se plaint, sans une preuve bien certaine. Or, admettant que cet écrit n'aurait pas été consenti, la preuve du défendeur serait-elle suffisante pour maintenir sa réclamation? Je ne le crois pas. En effet en quoi consiste-t-elle? Le défendeur a fait mesurer par deux de ses employés un certain nombre de pièces de marchandises, dans lesquelles ils prétendent avoir constaté des diminutions dans le mesurage et des imperfections dans le tissu, consistant soit en des trous, des nœuds ou la discoloration de l'étoffe; mais aucun d'eux ne peut dire la quantité de pièces ainsi mesurées, ni les identifier sur les envois produits. Ces témoins sont certains que les marchandises qu'ils ont examinées sont bien celles que l'on trouve détaillées dans les envois 1, 2, 3, 4, 5, 6, 7, 8 du défendeur, mais quand on leur demande de les identifier sur les envois mêmes, ils se déclarent incapables de le faire. Le défendeur était dans l'habitude de faire des achats chez le demandeur de marchandises semblables depuis longtemps et en avait reçu dans les mois de janvier précédent, et jusqu'à la date du 10 février. Le nommé Martin déclare qu'il a mesuré des marchandises livrées avant cette dernière date. Le défaut d'identification des marchandises mesurées le 27 et le 28, joint à ce fait, rend incertaine la preuve de ces deux témoins sur ce point important. Il est vrai que leur mesurage a été vérifié par d'autres témoins du défendeur, mais ceux-ci sont des étrangers, qui ne savent pas par eux-mêmes d'où proviennent les marchandises en question. Cet examen a eu lieu *ex parte* pour la plus grande partie, le demandeur n'ayant été présent que pendant un très-faible espace de temps à l'examen, et il n'existe aucune identification des marchandises examinées en sa présence. Le demandeur se trouve ainsi à la merci du défendeur, et il est en droit d'exiger une preuve certaine. Mais il y a plus, non-seulement il n'existe aucune preuve de l'identité des marchandises en question, mais le défendeur n'a point établi le quantum de sa réclamation. On trouvera dans son exhibit onze l'état de compte sur lequel il appuie cette réclamation. Outre trois items pour diminution dans la quantité, le reste consiste en dommages résultant des imperfections de l'étoffe. Or voici comment les commis du défendeur ont procédé pour établir le quantum de ces dommages. Chaque fois qu'ils trouvaient dans une pièce d'étoffe des taches, des trous ou autres imperfections, ils déduisaient de la pièce un quart de verge et en chargeaient le prix au demandeur, et c'est de cette manière, sauf les trois items ci-dessus mentionnées, qu'ils ont réussi à établir un chiffre de $69.00. Ce compte a été fait *ex parte* comme je viens de le dire, et il était très-naturel que le demandeur s'enquit par quelle autorité le défendeur avait pris cette base d'opération. On répond que tel est l'usage du commerce en semblable matière, et c'est sur cet usage que le défendeur fait reposer sa cause.

Or la preuve sur ce point est bien contradictoire. Pour qu'un usage soit considéré comme existant et obligatoire, il faut qu'il soit général, et que les faits invoqués pour en établir l'existence soient multiples et uniformes, qu'ils se soient longtemps produits d'une manière non clandestine et pendant un certain laps de temps.

Dans l'espèce comment cet usage a-t-il été établi? Par des commis et le frère du défendeur, et sauf un marchand de Toronto, aucun manufacturier ou marchand de ce genre de commerce, n'ont été entendus de la part du défendeur. Graham, Stebens, Rowell, Murphy, sont tous des commis, le nommé Wilby seul est un manufacturier, de la province d'Ontario, et son témoignage unique sur les usages du

commerce de cette province serait insuffisant.

D'un autre côté le demandeur a fait entendre le nommé Borne, gérant du département des draps de la Co-operative Association, Huston et Smith, marchands de hardes, et tous s'accordent à dire qu'ils ne connaissent pas semblable usage. Huston, il est vrai, déclare que le manufacturier fait une marque sur les pièces de marchandises endommagées et qu'une déduction d'un quart de verge est faite sur le ticket, mais il ajoute que cela ne s'applique pas aux marchandises de qualité secondaire. Les autres s'entendent pour déclarer que pour des marchandises à bas prix, on ne fait aucune déduction pour les défauts de la nature de ceux dont le défendeur se plaint.

Les marchandises en question sont des marchandises pour hardes d'une valeur au-dessous de la moyenne. En présence de cette preuve contradictoire, comment reconnaître que l'usage invoqué par le défendeur a été suffisamment établi ?

Le défendeur ayant failli dans cette preuve, il reste sans preuve sur le quantum des dommages qu'il réclame. Quant aux trois items réclamés pour diminution dans la quantité, le défendeur n'a point prouvé que les pièces de marchandises ainsi réduites, faisaient partie des envois qui, aux termes de l'écrit du 27 février dernier, étaient sujettes à examen.

On a prétendu que les offres étaient insuffisantes. Il y a à cette objection une réponse sans réplique. Le demandeur a admis qu'on lui a offert de l'argent et a déclaré qu'il n'aurait rien accepté au-dessous du montant de son action. Il est donc sans intérêt à se plaindre de l'insuffisance des offres.

Je suis sur le tout d'opinion que le défendeur n'a point prouvé les allégués de sa défense et le demandeur a droit à son jugement pour le montant réclamé par son action.

Stephens & Lighthall for plaintiff.
Greenshields & Co. for defendant.

COUR DE CIRCUIT.

MONTREAL, 21 septembre 1883.

Coram MATHIEU, J.

LORD v. HUNTER et al.

Cheque—Présentation—Endosseur.

Le 29 juillet 1882 J. S. Hunter fit à Montréal son chèque en ces termes:

"*Montréal, 29 juillet* 1882.

"*Au gérant de la Banque Union du Bas Canada :*

"*Payez à T. J. Church, Ecuier, ou ordre, soixante-et-quinze piastres* ($75.00).

"(*Signé,*) *J. S. HUNTER.*"

Le même jour ce chèque fut remis à T. J. Church qui l'endossa et le remit le même jour à Antoine G. Lord. Il a été prouvé par un témoin que le chèque avait été présenté à la Banque Union environ douze jours après sa date, et que le paiement en avait été refusé faute de fonds. Il a été de nouveau présenté le 22 août 1882, *et ce jour-là il fut protesté et avis de ce protêt fut donné à T. J. Church l'endosseur. Hunter a laissé la province et Lord a, le 6 septembre* 1882, *poursuivi Church pour le recouvrement du montant de ce chèque et du coût du protêt.*

Jugé: Que le chèque n'ayant pas été présenté le lendemain du jour il était fait payable, le demandeur devait prouver qu'il n'y avait pas de fonds le lendemain où il a reçu ce chèque, et que le défaut de présentation légale n'a pas porté préjudice au défendeur, et que Lord n'ayant pas fait cette preuve son action doit être déboutée.

Que l'endosseur d'un chèque comme l'endosseur d'une lettre de change doit avoir avis de sa présentation légale le lendemain du transport du chèque, et que s'il ne le reçoit pas il est absolument déchargé.

Action déboutée.

A. Desjardins for plaintiff.
E. A. D. Morgan for defendants.

ECCLESIASTICAL DISCIPLINE.

The following account given by the Ecclesiastical Commissioners in their report of the methods of enforcing ecclesiastical discipline in several Churches not in communion with the Church of England, will be read with interest :—

The constitution and authority of the established ecclesiastical courts in Scotland, were recognized and confirmed by the Act appended to the treaty of union (1707), in which it is provided that " * * * * the Presbyterian Church government and discipline—that is to say, the government of the church by kirk sessions, presbyteries, provincial synods, and general assemblies * * * shall remain and continue unalterable."

The Court of First Instance is the presbytery, a permanent body, composed of the ministers of the different parishes within defined bounds and of elders elected by each kirk session. The

kirk session, which is the primary element of the ecclesiastical system, is established in each parish, and consists of the parish minister as chairman and a certain number of laymen specially ordained to the eldership.

An appeal lies from the presbytery to the provincial synod of the district within the bounds of which the presbytery is situated. This synod consists of representatives of the different presbyteries included in the district, each kirk session sending its parish minister and one or more elders. The ultimate appeal lies to the general assembly, which is composed of representatives elected annually by every Presbytery in the Church, by the four Universities, and by the Royal Burghs. It consists of about 440 members, in the proportion of about 260 ministers to 180 elders. A Lord Commissioner, as representing the Crown, takes part in the meetings of the General Assembly; but the constitutional limits of his power are not exactly determined. When the Lord Commissioner dissolved the General Assembly in 1692 without naming another day for its meeting, he was met by a solemn protest from the Moderator, who affirmed "that the office-bearers in the house of God have a spiritual intrinsic power from Jesus Christ, the only head of the Church, to meet in assemblies about the affairs thereof, the necessity of the same being first represented to the magistrate." The assembly then fixed a day for their meeting. They did not meet on that day; but having been summoned by the King's writ, they met in 1694, and continued to sit regularly during the rest of the reign of William III.

The Church courts in Scotland have no executive power of their own for enforcing the civil consequences of their judgments; but the judgments can been forced by application to the civil court, which would, as a matter of course, give effect to them. And it is believed that in no case would the civil court entertain an appeal from a judgment of an ecclesiastical court on a question of doctrine, or enter on an examination of the soundness of such a judgment before enforcing its civil consequences; or, when a case is clearly within the province of the Church courts, interfere upon an allegation that the forms of ecclesiastical procedure had not been observed.

At the same time it is allowed that cases might arise of such flagrant departure from the "form and purity of worship" established by the Act of 1707 as might be held to constitute a violation of the provisions of that Act, and consequently to justify on the failure to obtain redress from the General Assembly, an appeal to the civil court.

In Russia complaints against ecclesiastics are brought in the first place to the bishop. His preliminary decision is examined by his Consistorial Court, which constitutes a Court of First Instance, and their decision, together with the opinion of the minority of the court, if the court is not unanimous, is submitted to the bishop for confirmation. The consistorial courts consist of three to five ecclesiastics appointed by the Holy Synod with a staff of lay officials.

The consistorial courts appear to have complete and independent jurisdiction over the cases which fall within their cognizance. Their punishments "partake more of a moral character." Contumacy against their decisions is visited by temporary suspension or consignment to a monastery until repentance.

If a priest has been sentenced to deprivation he can appeal either to the Consistorial Court which decided the case or directly to the Holy Synod. A sentence of degradation from the ministry requires to be confirmed by the Synod. The Holy Synod has supreme authority, under the Czar, over all ecclesiastical affairs. It was constituted in 1721 by Peter the Great to exercise the authority and enjoy the privileges before vested in the patriarch. The language of the Emperor's edict is as follows:—"We appoint a Spiritual College, *i. e.*, a Spiritual Syndical Administration, which is authorized to rectify according to the regulation here following, all spiritual affairs throughout the Russian Church. And we require all our faithful subjects of every rank and condition, spiritual and temporal, to account this administration powerful and authoritative. * * * * * We constitute members of this Spiritual College, as is here specified, one president, two vice-presidents, four counsellors, four assessors. The number of members has been since varied. It was fixed at six in 1763, and at seven in 1818, with "power to add to their number."

The judgment, when finally pronounced, is carried into execution by the Consistorial Court.

The peculiarity of the Russian system lies in

the exceptional position of the Czar, who is personally supreme over all civil and ecclesiastical procedure. The members of the Holy Synod are chosen and appointed by him, and his relation to it does not appear to be defined by any legal instrument. The Czar exercises, in some cases directly, powers which properly belong to an ecclesiastical tribunal, but generally he acts through the synod. "In the synod he is represented by a high official (Chief Procurator), who has a negative on all its resolutions till laid before the Emperor," and this officer, though he has theoretically no voice in the deliberations of the synod and no vote, practically exercises a powerful influence upon its decisions. The synod cannot in fact give effect to any of its decisions without the Emperor's consent, given through his representative.

The extent and character of the Imperial interference with the wishes of the synod at any time might, no doubt, be determined in some degree by public opinion within the Russian Empire, and in grave cases by the expressed or expected judgment of the four eastern patriarchs: but in the empire itself there is no constitutional check on such an exercise of the Czar's personal authority as that by which Peter the Great abolished the patriarchal power in Russia. The indefinite relation of the ecclesiastical to the Imperial power, determined only by general expressions of respect for early precedents, corresponds with the peculiar circumstances of the nation. The Czar is necessarily unwilling to limit his own authority, and the synod may shrink from the danger of being formally forced to accept a position inconsistent with spiritual freedom.

In the older provinces of the Kingdom of Prussia the eight provincial Consistories, each consisting partly of legal members from 6 to 14 in number, with a legal president, form Courts of First Instance. If the charge be one of false doctrine, the members of the Provincial Synodal Committee, a body of ecclesiastics and laymen, freely elected from the Synods of each province for three years, are joined to the Consistory with equal rights of voting.

An appeal from the judgment of the Consistory lies to the Evangelical Supreme Council, a mixed body of ecclesiastics and laymen, by which the final decision is given.

There is no appeal from the Ecclesiastical Court to a Civil Court; but in certain cases it is permitted, under the name of appeal, to address a remonstrance on account of misuse of ecclesiastical authority to a Civil Court, the Royal Tribunal for Ecclesiastical Affairs. This court has either to reject the appeal or else to cancel the disputed sentence of the ecclesiastical authorities. It has no right to give a decision of the case itself, or to issue a separate disciplinary sentence.

In France the discipline of those clergy of the Roman Catholic church who have a permanent position depends almost entirely upon their voluntary and loyal obedience to their spiritual rulers. The Church possesses no coercive jurisdiction, and there is no external power to execute a sentence given by an Ecclesiastical Court against a priest. One article only of the penal code may be applied, which punishes the individual who wears a costume which he has no right to wear. This article has often been enforced on priests who have been forbidden by the ecclesiastical tribunal to wear the habit of priest.

The priest in charge of the churches of the chief places in the "canton" (églises cantonnales) have alone a fixed tenure, and are alone legally styled curés. All the other clergy hold their charges absolutely at the will of the bishops, who have, however, to inform the Government of the changes which they make in their dioceses by the appointment or the removal of clergy.

The cases in which the civil courts can interfere in ecclesiastical matters in France, under the present laws, are more numerous than is commonly supposed. In addition to cases which fall under the *appel comme d'abus*, the articles 199 sqq. of the Penal Code are capable of severe application against the clergy, but they appear to be commonly disregarded in some particulars with impunity, though it is said that convictions occur almost every year for breaches of the code. The synods and consistories of other religious bodies in France are composed of clerical and lay members in general chosen by themselves; but in the case of the General Consistory of the Lutheran Church, the president and two ecclesiastical members are named by the Government. These synods appear to have complete control over the internal discipline and administration of the bodies which they represent, but all their decisions, of whatever kind, are submitted to the approbation of the Government; nor can they meet without the permission of the civil authorities. The duration of the sessions of the general synods is limited to six days.