The Legal News.

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CAPITAL PUNISHMENT IN FOREIGN COUNTRIES.

Of all suggestions for the reformation of our legal system none, perhaps, is more certain to recur, when an opportunity presents itself, than that respecting the abolition of capital punishment. It is satisfactory, therefore, to find that the Government, appreciating the importance of the question, have taken measures to elucidate the matter by ascertaining the law of homicide as administered by other nations, and that, with this view, our foreign office, in July last, addressed a circular to Her Majesty's Representatives at foreign courts, directing them to procure the required information and statistics. The results of these inquiries are now placed before Parliament in the form of a white book of some sixty pages, which amply repay perusal.

Commencing in alphabetical order, Austria is the first country dealt with in the report. While under the Penal Code of 1852, which is still in force, capital punishment may be inflicted for murder, and similar crimes, and during the ten years preceding 1880 more than 800 death sentences were pronounced, the statistics show that no more than sixteen of the latter were actually carried out. In Hungary, also, the crime of murder is punishable with death, but by the new penal code of that country, which came into effect September last, it is expressly provided that in mitigating circumstances the penalty may be reduced to penal servitude. In Bavaria and in Belgium the punishment is retained, but in practice can hardly be said to exist. In the former of these countries, we are told, the sentence of death is rarely carried out, "as the king usually by royal clemency changes that punishment into one of penal servitude for life," and, in fact, during ten years, although 128 persons have been condemned to death, only seven executions have taken place. In Belgium the royal prerogative is still more freely exercised, for since the accession of the present king to the throne not a single criminal has been executed, "it being impossible to obtain His Majesty's signature to a death warrant."

A similar report is sent from Denmark. No sentence of death in that country is considered definitive until it has been confirmed by the Supreme Court at Copenhagen, considered by the Council of Ministers, and finally submitted to the king; and, although it is stated that, "as a rule, a conviction of murder with premeditation, or of wilful murder without any extenuating circumstances, would be followed by a sentence of death," capital punishment has not been inflicted more than once or twice since 1863.

Under the French penal code, again, which has, in this respect, remained unmodified since 1810, the penalty of death is enforceable in the case of murder, when premeditated or accompanied by some other crime, but in the year 1878—and other years, it is said, would yield similar results—only four out of 125 convicted criminals were sentenced to capital punishment.

German statistics are no less significant. While, on the one hand, between 1869 and 1878, as many as 484 persons were in Prussia alone condemned to death, on the other hand, Lord Odo Russell reports that he has "every reason to believe that during the above mentioned period the only criminal executed was Hodel, the man who fired at the Emperor in 1878." "The fact," he adds, "is that his Imperial Majesty has so strong an objection to signing death warrants that, notwithstanding his stern sense of duty, it would be almost impossible to obtain his signature for the purpose, and this circumstance has become so well known, that in passing sentence of death a judge would now feel that he was doing no more than recording it, and that it would be commuted to one of penal servitude for life, or perhaps to one of even less severity."

The law of Russia presents an exception to the penal system already referred to, for in that country the punishment of death has in theory ceased to exist. It was abolished virtually, we are told, in 1741 by the Empress Elizabeth, who refused to confirm the sentences; but the Empress Catherine, in 1767, introduced its abolition into the penal code for all cases except those of high treason. In one part, however, of the Russian Empire—the Grand

Duchy of Finland—it is retained, and in cases adjudged by court-martial the penalty of death is frequently inflicted. The fact that courts of this latter kind are employed in the trial of "homicides of a political nature, and even those which are remarkable for the gravity of their results," probably affords ample ground for the concluding clause of the report from St. Petersburg, where it is observed that, "Abolished as capital punishment is *de jure*, it has never ceased to exist *de facto*, which stultifies the result of the abolition."

Of other European governments, Spain and Sweden only remain to be mentioned. The information relating to Portugal, Switzerland and other countries has not yet been received. Of Spain it is reported that capital punishment "has never been abolished by the Legislature, although it has temporarily been suspended by mob government;" and in Sweden, it is stated, out of thirteen criminals upon whom, between 1869 and 1878, the sentence of death was passed, only three were executed.

But the inquiries instituted by the Foreign Office have not been confined to Europe. A copious supply of reports is sent by Sir Edward Thornton from the United States, affording facts and evidence of a most conflicting nature. While in some seventeen States the punishment of death is retained and enforced with various degrees of rigor, it has been abolished in Maine, Rhode Island, Wisconsin and Michigan. In Kansas, also, it has, since 1872, been rendered practically inoperative by an enactment that no one convicted of a capital crime can be executed, except when so ordered by the Governor of the State, after the expiration of one year from the date of sentence. Popular opinion upon the subject in America also seems to be unsettled. It is stated, for instance, that in the State of North Carolina there is a growing sentiment against capital punishment, and that "if made a political issue it would be carried." Strong evidence in favor of its abolition is also supplied by the Secretary of State for Rhode Island, where, as already mentioned, the punishment no longer exists. "I think it is safe to say," he observes, "that the sense of our community is strongly against it. I do not recall any effort for many years to have it restored, and I think any proposition to that effect would receive very little sympathy; nor do I think it can be claimed that homicide has increased in consequence of the abolition of the death penalty. I do not recall an instance where the penalty has presumably had any effect on the commission of the crime." On the other hand, however, an ex-Governor of the State of Ohio declares his conviction that more than three-quarters of the people are in favor of capital punishment, and states that during the term of his official experience he remembers "but one single instance when an opposition to capital punishment was given as a reason why the convict should be pardoned."

Such evidence as we have briefly cited must, on the whole, be admitted by the most zealous advocates of capital punishment to point irresistibly to one conclusion. It cannot be denied that among civilized nations the penalty of death is at the present time seldom inflicted, even in the case of the most heinous offences. In one European country, and in certain American States, the punishment has been formally abolished; in other countries the prerogative of pardon has been so liberally employed that capital sentences are only on rare occasions carried into execution. The merits of capital punishment as a deterrent, it is not our present purpose to discuss; but we may, in conclusion, refer to an opinion upon this point, expressed in the report for the State of Maine, which seems deserving of careful consideration. "The better opinion seems to be that criminals are not deterred from the commission of murder by the fear of the punishment of death which would follow their detection. If they believed that they would be detected and convicted of the crime, in almost every case they would refrain from its commission." Certainty of detection is more essential to an efficient penal code than severity of punishment.—*London Law Times.*

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

CAMPBELL v. JAMES et al.

Contract—Misrepresentation.

Held, where the defendants purchased the right from plaintiff to manufacture and sell a patented

churn, and more than two months subsequently wrote that the churn was a success, that they could not afterwards, in defence to an action on the contract, set up misrepresentation as to the merits of the patented article.

PER CURIAM. This is an action on an agreement which was entered into between the parties in April, 1880. Under the agreement in question the plaintiff gave the defendants the right to manufacture and sell a new kind of churn, called the *Monitor*, in the Province of Quebec, this churn being one for which plaintiff holds a patent. The plaintiff was to protect defendants, and the defendants were to keep on hand a lot of the churns of different sizes, so that the market should be furnished with them. The defendants were to push sales in the Province, &c., and were to pay plaintiff a royalty of $1 a churn, and on 150 at least before February, 1881. They paid $50 in advance, and were to pay quarterly on the first of May, August, November and February (first payment due 1st August, 1880), with attested accounts of sales each quarter. The $100, balance of 1st February, 1881, is unpaid, and the plaintiff alleges that the defendants have failed to pay all else, and to render accounts each quarter as they were bound to do; that they have not kept the market supplied, and have not pushed sales, but have been negligent, and have thus damaged plaintiff to the extent of $50. The conclusions are for the sum of $150, and that the defendants be condemned to render a full account of all their sales and doings, or, in default of an account, that they be condemned to pay a further sum of $500 as damages.

The plea is to the effect that plaintiff falsely pretended that his churn was a new and useful invention, and that its principle was new, whereas it is not new, and the churn does not perform its work in any way to fulfil what the plaintiff represented about it, and is not a new and useful invention; that the plaintiff was to defend the defendants selling said churn, but instead of doing so has allowed others to make and sell churns of like principle, although the defendants duly notified the plaintiff of what was going on; that the "Baldwin figure 8 churn" has been openly sold in competition with plaintiff's so-called invention and works upon like principle as plaintiff's patented churn, but the plaintiff has never taken steps to prosecute those selling the Baldwin churn; that the Baldwin is a superior churn, and prevents the sale of plaintiff's, in consequence; that plaintiff gave the defendants the exclusive right to sell but had been selling, contrary to his agreement, churns manufactured by himself in the city of Montreal; that defendants did all they could, by advertising and sending agents about, and manufacturing churns, to push sales, and kept at it for months, but have only sold 13 churns, and the patent is worthless; that it is untrue that defendants have refused to furnish accounts to plaintiff, as they have regularly rendered accounts. The conclusions of the plea pray that the agreement of April, 1880, be rescinded and the plaintiff's action dismissed.

The plaintiff answered specially that the defendants had never made any complaints to him about the Baldwin churn, and that the rest of defendants' allegations were untrue.

The defence is not made out, but quite the contrary. The defendants' letters to plaintiff of June and July testify against them. On the 16th June, 1880, the defendants wrote asking license to sell the churn in Ontario, and on the 2nd July, 1880, the defendants wrote to plaintiff that the churn was a success. James' deposition proves this letter. I see no false representations by plaintiff, nor default by him towards the defendants. The latter have made a bad bargain, and lost money undoubtedly, yet their defence fails. The plaintiff did not guarantee any amount of sales to defendants, and the latter have not rendered to plaintiff quarterly accounts as he was entitled to have them, nor have they paid the plaintiff what they guaranteed him. Judgment will therefore go in favor of plaintiff for the $100, balance, and for an account.

John L. Morris for plaintiff.

Maclaren & Leet for defendants.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

ROY v. THE GRAND TRUNK RAILWAY CO. OF CANADA.

Railway—Accident at Crossing—Negligence.

The plaintiff, while attempting to pass a railway crossing, was struck by a train and injured;

held, that he was bound to use caution in crossing the track at an hour when trains were usually passing, and the Company not being guilty of negligence or omission of the customary warnings, the plaintiff was not entitled to damages for injuries sustained.

PER CURIAM. The plaintiff, a physician, complains that on the 23rd of November, 1880, at half-past five p.m., on St. Philippe street, at St. Henri, while crossing the railroad track there, he was struck by a *convoi* of the defendant's railroad. It is a very dangerous place, says plaintiff. The collision made him "*sauter une vingtaine de pieds dans l'air;*" he was going towards Point St. Charles, along St. Philippe street, and was struck by the train coming from Montreal, and moving westwardly. He had to keep his bed for a month, and a *maladie incurable* has been induced, which will abridge his existence several years, *de plusieurs années.* He suffered agonies (*les souffrances les plus aigues*) for a month. At that place no sign was up to indicate the railroad track is there, and no lights there lighted it up. On the left side of St. Philippe street buildings reach to seven or eight feet from the railroad, and prevent seeing a train approaching from Montreal. Consequently, says the plaintiff's declaration, it was gross negligence of the defendant not to have barriers and lights there. The plaintiff adds that no bell nor whistle announced the approach of that train on that night; and here again was gross negligence. Evidently, says plaintiff's declaration, it was the fault of the defendant that the accident happened. Plaintiff had to call in doctors, which had cost him at least $200. Further, the plaintiff's *voiture* was broken, and damages were caused to the amount of $18 in repairs. Finally, at least $300 was lost to plaintiff of earnings from attending to his usual practice. Considering all these damages, and the fact that from this accident the plaintiff's existence will be abridged, *infailliblement, de plusieurs années,* $10,000 are the least damages that ought to be awarded plaintiff, says his declaration.

The plea is the general issue; denying plaintiff's allegations; denying that he has suffered as alleged, &c.; and a special plea, alleging that the accident was not caused by any fault of defendant, but that if plaintiff was hurt it was by his own fault and imprudence; that plaintiff caused his own damages or contributed to them by his own negligence and imprudence.

The principal witness for plaintiff is his brother, Jos. Henri Roy, aged 19 years, a merchant's or shop clerk. He was driving plaintiff in a cariole. They had reached the track, when plaintiff cried out, "Voilà les chars." The driver jerked the horse, who made a leap and got across the track, but the hind part of the sleigh was struck. Plaintiff *est tombé à terre,* says Henri. He swears that they could not see the train approaching owing to a building; *ni sifflet, ni cloche,* was to be heard. The train was going more than six miles an hour, says Henri. He adds: It was a train of four cars drawn by an engine. He is certain, *positif,* that there were four or five, and that it was a freight train.

It is proved by the defendants that that November only three trains left Montreal passing St. Philippe street and going west of it, between 5 and 6 o'clock; one leaving Montreal at 5, one at one minute past 5, and the third at 20 minutes past 5. The two first were passenger trains, and the third one an engine with one freight car. Nobody on any of those trains felt any shock or was aware of having collided with anything that night. In approaching St. Philippe street crossing, all the engine bells were ringing. This is proved abundantly, not merely by the firemen and others in the employ of defendants, but by four indifferent persons. Upon this point Henri is flatly contradicted, as is plaintiff's declaration. Henri is proved untrue, also, in stating that the train was going more than six miles an hour, also in stating that it was a freight train of four or five cars, positively; for two and a half miles an hour was the greatest speed of the train there, and it was composed of only one freight car drawn by a pilot engine. If plaintiff's *voiture* was struck, it must have been by this pilot engine train, for none other passed there at the time stated in plaintiff's declaration, and it must have been very slightly for nobody on the train to perceive any collision. That plaintiff was thrown 25 feet into the air by the collision is untrue; there is not a shadow of proof of that; on the contrary, there is reason to doubt that plaintiff was thrown out of his vehicle. Henri says he was thrown out *en bas.* Leonard says he was

leaning on the vehicle, outside of it, when he first saw him, while Leon, *charretier*, and Walter McDonald say that plaintiff was in the sleigh all the time. Henri jumped out, and after picking up a parcel that had fallen out of the sleigh, the two turned round and drove away home, the plaintiff not much hurt apparently, and having his senses perfectly, and swinging out his arms to show that they were all right. The plaintiff's allegation that no sign was up to indicate the railway crossing at St. Philippe street is not true; nor is it true that plaintiff had to keep his bed for a month; nor is it true that a *maladie incurable* has supervened that will shorten plaintiff's existence infallibly. I do not believe that plaintiff suffered much. He made extraordinary efforts to prove the contrary, and to prove his *maladie incurable*, but he failed. His doctors had hard work to say what harm he had received, beyond a slight contusion between the lower ribs and the haunch. They were pressed to swear to impossibilities. The appearance physical of plaintiff before me was excellent. The allegation that he was put to expense of $200 for medical attendance has not been proved. That plaintiff had to keep his bed for a month is not true. Dr. Scott's evidence is to the contrary. It is unfortunate for plaintiff that Dr. Scott called when he did, to find that the plaintiff, instead of being in bed, was away from his house at St. Henri. He had gone out. This was six or seven days after the accident.

I have said that the damage done to plaintiff was small; but be this as it may, another question is, namely: was or is defendant blameable for it—is *faute* proved against defendants? Upon this I find for defendants. Plaintiff is blameable for the accident by inobservance of precaution at approaching the railway crossing. He, resident at the place, was bound to know that the railway track was there, and he might have known that between five and half-past five three trains would pass there; for such had been the case all that month of November. Certainly no fault can be seen against the defendants; so they must go free.

Roy & Boutillier for plaintiff.

Geo. Macrae, Q.C., for defendants.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

LA BANQUE JACQUES CARTIER v. MEUNIER, and PREVOST et al., creditors collocated, and LA BANQUE D'HOCHELAGA, contesting.

Hypothec—Insolvency.

A hypothec will not be set aside on the ground that the debtor was insolvent at the time it was granted, unless it appear that such insolvency was notorious, or that there was fraudulent collusion between the parties.

PER CURIAM. Prevost & Co. were collocated for the sum of $811.31, under a mortgage, of date 28th April, 1880. The Bank contested the collocation on the ground that, at the date of the mortgage, Meunier, who gave it, was notoriously insolvent. C. C. 2023. One Marion was debtor of Meunier, and also liable on certain paper, which he (Marion) had received as accommodation from Meunier. He absconded in March 1880, and it became known that Meunier, besides his own liabilities, was seriously affected by the insolvency of Marion. Mr. DeMartigny, Cashier of the Bank Jacques Cartier, says he had a conversation with Meunier, after the departure of Marion, and that he had the appearance of a man completely lost in his affairs with Marion; and gave him the impression that he was not then solvent. "Etait-ce connu dans le monde des affaires? (qu'il a été poursuivi par un grand nombre de personnes). Etait-ce connu généralement? R. C'était à peu près admis qu'il était insolvable." This must have been in the early part of May.

In cross-examination, he is asked: "Au commencement de mai, pouvez-vous dire qu'il "était notoirement connu, dans la cité de "Montréal, que M. Meunier était insolvable? R. Moi, je crois que j'étais sous cette impression là qu'il était insolvable, après le départ de Marion; dès lors qu'il m'eût déclaré qu'il ne savait pas le montant des billets qu'il avait signés, j'ai cru qu'il était insolvable.

Q. Mais, était-ce une chose généralement connue parmi les hommes d'affaires de la cité de Montréal? Etait-ce des bruits qui couraient la ville?

R. Je crois qu'un certain nombre le croyait; j'ai eu occasion d'en parler avec quelqu'un, et on a dit: ça va entraîner la faillite de Meunier.

Q. Etait-ce avec les Directeurs de la Banque que vous avez parlé de cela?

R. Quelquefois avec les Directeurs de la Banque, et quelquefois en dehors. On croyait Meunier riche jusqu'à ce moment-là, mais après cela, on a dit : ça va entraîner la faillite de Meunier.

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Q. Est-ce que j'ai compris de vous, tout-à-l'heure, que monsieur Meunier passait pour riche avant le départ de M. Marion?

R. Jusqu'à ce moment-là, moi, je l'ai cru pour un homme à l'aise.

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Q. Si vous aviez la certitude que ça n'excéderait pas $3,000, (le montant de billets signés par Meunier pour Marion) est-ce que c'était de nature à le ruiner, à le rendre insolvable?

R. Monsieur Meunier ignorait alors le montant des billets qu'il avait donnés pour Marion, et nous avons cru que c'était entre $3,000 à $4,000.

Q. D'après les informations que vous avez maintenant, ça n'excède pas $3,000, et croyez-vous que c'était de nature à le faire passer pour insolvable, même à cette époque-là?

R. D'après sa propre déclaration, j'ai été convaincu que ça l'amenerait en faillite, qu'il ne pourrait pas payer.

Q. Mais il n'y a que vous qui avez eu cette opinion-là?

R. C'était une conversation avec lui ; mais comme je vous le remarque, l'opinion du public était qu'il était entraîné par la fuite de Marion, je parle de ceux avec qui j'ai eu des conversations.

M. Brais, Cashier of the Hochelaga Bank, says that when Marion left, it was notorious that Meunier was maker or endorser on his paper, and some of it being overdue, he saw Meunier to have an explanation. "Je lui ai demandé s'il était appelé à payer les billets de Marion, comment ça l'affecterait. Il m'a dit : s'ils continuent à vouloir aller comme cela, et vouloir me faire payer de suite, je ne suis pas capable de payer tout cela. Il m'a dit : Peut-être que plus tard je pourrais payer ; mais, dans le moment, si j'étais appelé à payer cela, je ne suis pas capable de le faire."

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Q. Avez-vous eu occasion d'entendre parler, par différentes personnes dans le monde commercial, de la position de M. Meunier après le départ de M. Marion?

R. C'est comme je le disais tout-à-l'heure, les gens, dans le moment du départ de M. Marion, n'étaient pas tout-à-fait positifs sur l'état des affaires de M. Meunier, et comment il pourrait rencontrer les billets de M. Marion ; les gens discutaient cela entre eux.

Q. Il y avait, au moins, beaucoup de doute sur la solvabilité de M. Meunier?

R. Il y avait de grandes craintes. Je sais que dans le bureau chez nous, d'après les informations que nous avions prises, nous avions de grandes craintes sur la position de M. Meunier.

Q. Ensuite, avez-vous eu connaissance des poursuites qui ont été prises contre M. Meunier, par plusieurs de ses créanciers?

R. Oui, monsieur.

Q. C'était généralement connu?

R. Oui, c'était généralement connu.

CROSS-EXAMINED.

Q. Disait-on dans le monde commercial que M. Meunier était insolvable à cette époque-là?

R. Je ne puis pas répondre à cette question-là.

Q. Est-ce qu'on disait cela, oui ou non?

R. On disait qu'on ne savait pas comment M. Meunier pourrait sortir de là.

Q. Disait-on qu'il était insolvable dans le monde commercial?

R. Ca, c'est difficile à dire ; moi, je ne l'ai pas entendu dire.

Vous ne saviez pas non plus qu'il était insolvable? Vous aviez des doutes?

R. J'avais des doutes ; c'est tout ce que j'avais ; personnellement je ne connaissais pas le montant que M. Meunier devait à Montréal.

Q. Il n'était pas dit publiquement que M. Meunier ne serait pas capable de payer ses dettes, de rencontrer ses affaires?

R. Quant à ses affaires personnelles, tout le monde était certain de cela, mais quant aux affaires de Marion, on n'était pas certain.

Q. Mais on ne disait pas dans le public que M. Meunier ne serait pas capable de rencontrer les obligations qu'il avait souscrites?

R. On disait qu'on ne savait pas comment il s'en tirerait avec les affaires de Marion.

Q. On faisait des suppositions dans le public?

R. Comme de raison.

Q. N'est-ce pas au commencement de mai que vous êtes allé chez M. Meunier?

R. C'est à la fin du mois d'avril ou au commencement de mai.

Touching the suits taken out against Meunier, the first I find is by the Molsons Bank, on the 27th April. The action by Prevost & Cie. is on the 29th April, and Prevost says he sued because the Bank had. Meunier carried on business till June. Do all these facts show notorious insolvency on the 28th April, and on the 1st May, dates of the two obligations? M. De Martigny says in his examination in chief that it was about admitted that Meunier was insolvent when he was sued. In cross-examination, in answer to the question whether Meunier was notoriously insolvent in the beginning of May, he says he was under the impression that he was insolvent. He adds, he thought a number thought so. The opinion of those with whom he had conversations was that Meunier was involved (entrainé) by Marion.

Mr. Blais, cashier of the Banque d'Hochelaga, could not say when Meunier was sued, that the commercial world said he was insolvent. He had not heard it. He had doubts himself. The facts show that Meunier was insolvent about the first of May, but I do not see proof of notorious insolvency—insolvency known to the public as a fact, or insolvency known to Mr. Prevost or Mr. Dionne. C.C. 1035.

Referring now to the jurisprudence of our Courts, I have before me a case of *Shaw*, mortgage creditor in the insolvency of *Warren*, 12 L.C.J. 309, where the mortgage was upheld by the Court of Review. Mr. Justice Mackay said: "It would be intolerable if mere insolvency should vitiate all transactions which have occurred in good faith with the insolvent. In order that it should vitiate such transactions, the insolvency must be known to the party or notorious." This case was reversed by the Queen's Bench, but on the facts. There is also the case of *Dorwin* v. *Thomson*, and *La Banque Jacques Cartier*, opposant, where the Superior Court (Torrance, J.) held that the *hypothèque* was valid where as a matter of fact C.C. 2023 could not apply. 3 Rev. Crit. 85. This judgment was reversed in Appeal, on the ground that the facts established notorious insolvency. 19 L. C. J. 100.

On the whole case, my conclusion is that the contestation by the Bank be dismissed, and the *hypothèque* allowed to stand.

Contestation dismissed.

Beique & McGoun for the Bank.
Duhamel & Co. for creditor collocated.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

WALKER v. THE CITY OF MONTREAL.

Corporation—Illegal arrest.

An arrest under the Vagrant Act (32-33 *Vict.* [*Can.*] *c.* 28), *for indecent exposure, cannot be made without warrant after an interval of time following the offence, and where such unauthorized arrest was made the City was held liable in damages for the act of its policeman.*

This was an action of damages against the City of Montreal and Alexis Prefontaine, one of its policemen, for an illegal arrest and criminal prosecution. The city pleaded that it was in no wise responsible for the acts of the policeman, and if plaintiff had been illegally imprisoned, Prefontaine did not act by the orders of the City. Prefontaine pleaded that complaints of indecent exposure of his person by Walker had been made, and he was arrested and indicted and a true bill found by a jury against Walker, and in the circumstances of this case, there was probable cause for the arrest and prosecution.

PER CURIAM. The facts show that Walker was arrested by Prefontaine by order of the assistant sergeant of the Chaboillez police station on the 16th April 1880, and confined in the station until the afternoon of the following day (Sunday), and then was liberated on bail. The following morning he was brought before the Recorder's Court on the charge of exposing his person to wit, his privy parts, publicly and indecently in St. Bonaventure street, and after hearing witnesses, the case was sent to the general sessions of the peace. There an indictment was laid before the grand jury, a true bill found and plaintiff was in the month of June acquitted by the petty jury. There was evidence by school girls who had complained to their parents that they had seen the plaintiff more than once in a lane or passage, and also in a yard with the gate open off St. Bonaventure street, exposing his person, with his trowsers unbuttoned, and holding his privy parts in his hands. The plain English of it was that he obeyed a call of nature in a passage or yard off a street of the City. Probably he did it in a more careless way than might have been, and it is much to be regretted that the Corporation has not provided in convenient

places urinals which would prevent unseemly spectacles. The arrest was made without a warrant on a Saturday afternoon and the plaintiff was in custody nearly 24 hours before he was bailed out. Do the circumstances entitle him to damages, and is the claim good against the city and also against the policeman? The Vagrant Act, 32-33 Victoria (1869) (Canada) Cap. 28, has been cited. It provides for the punishment of persons openly or indecently exposing their persons. So also, the City Charter 14 & 15 Vic. Cap. 128, Sect. 87, makes it lawful for a constable of the police force to arrest on view any person offending against any of the by-laws, Rules, and Regulations of the City, the violation of which is punishable with imprisonment, and it may and shall be lawful also for any such officer or constable to arrest any such offender against any such by-law, Rule or Regulation, immediately or very soon after the commission of the offence, upon good and satisfactory information given as to the nature of the offence and the parties by whom committed.

We see here that the Vagrant Act provides for the punishment of persons openly or indecently exposing their persons, but it has no application to the present case; it does not provide for arrest without warrant after an interval of time following the offence. The City charter allows of the arrest by a constable of a person violating the City by-laws, rules and regulations immediately or very soon after the commission of the offence, but there is here no City by-law which has been violated, so far as I have seen. The policeman was to blame for what he did without a warrant, and he should answer for it in damages, and the City should also answer for him, for he acted on the order of his sergeant. Both will therefore be condemned. I would also add that plaintiff is to blame for responding to a call of nature in a way to offend a sense of propriety, though the offence is of every day occurrence, and the City is to blame further in this that it has not provided in convenient localities, urinals or places of retirement to be found in most of civilized countries in large cities. The damages are assessed at $50 which will cover the loss of 10 days' pay, of which plaintiff complains among other things.

The costs will be those of an action over $100.

Greenshields & Busteed for plaintiff.
Roy, Q.C., and *Ethier* for the City.

RECENT U. S. DECISIONS.

Negligence—Injury to person stopping upon street from fall of defective wall.—A person lawfully passing along a street, who stops on the door sill of a house fronting on the street, for the purpose of adjusting his shoe, and while thus occupied, his head being within the lines of the street, without any negligence on his part, is injured by a brick falling on his head, in consequence of the dilapidated condition of the wall of the house, has a right of action against the owner of the house for the injury inflicted. Deford v. State, 30 Md. 205; Irwin v. Sprigg, 6 Gill, 200; Copeland v. Hardengham, 3 Campb. 348; Maenner v. Carroll, 46 Md. 212; Butterfield v. Forrester, 11 East, 60; Bridge v. G. J. R. Co., 3 M. & W. 244. Angell on Highw. 347. Travellers on a street have not only the right to pass, but to stop and rest on necessary and reasonable occasions, so that they do not obstruct the street, or doorways, or wantonly injure them. Douglas, 745; 3 Steph. N. P. 2768; 2 Bl. Com., note 26, by Christ.; Adams v. Rivers, 11 Barb. 390. A ruined or dilapidated wall is as much a nuisance, if it imperils the safety of passengers or travellers on a public highway, as a ditch or a pit-fall dug by its side.—*Murray* v. *McShane*, Maryland Court of Appeals, 52 Maryland Rep.

GENERAL NOTES.

Were the verdict to stand which was given the other day at the Guildhall in the case of *Bartlett* v. *Eyre*, the legal obligations of the fashionable world of London would be very largely increased. A roll of carpet, such as is in universal use for such purposes, had been laid down from the door of the defendant's house to the door of his carriage. The plaintiff, in passing along the street, caught his foot in the carpet and fell, sustaining severe injuries. There was no suggestion, apparently, on the part of the plaintiff that there was any negligence on the part of the defendant or his servants in the way in which the carpet was laid down. The place where the accident occurred was lighted in the ordinary way, and the only complaint was that no one was stationed by the carpet to warn passers-by of its presence. We venture to think that the case was lost because no witnesses were called for the defence to prove that the carpet was laid in the ordinary way and without negligence. —*London Law Times.*