The Legal News.

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Reference was made on p. 233 to the fact that the appeal to the Privy Council in the case of *McGibbon* v. *Abbott* had been dismissed. The observations of their lordships will be found in the report in the present issue. It is decided, in the first place, that the will in question, as was held by our Court of Queen's Bench, must be construed in accordance with the law of this Province, the will having been executed here by a person domiciled in the Province, and relating to an estate situated within the Province. This preliminary question being settled, the Court found that it was also rightly decided, where power was given to divide by will among the testator's children, that the division among four, to the total exclusion of the fifth child, was a valid exercise of the power. At the time the will was made, such a disposition would not have been valid under English law. But the English law, as has been observed, was held not to apply; and even in England the law has since been changed by Act of Parliament, and is now the same as our own upon this point.

A little more than a year ago, Chief Justice Coleridge, in passing sentence in the Yates case (7 Leg. News, 137), made some rather severe remarks upon society journalism. It may be suspected that there is a spice of malignity in the perseverance with which journals of the class censured have since pursued his lordship. First, in connection with his daughter's engagement and the libel suits growing out of it, the Chief Justice was not spared. And more recently, on the occasion of his marriage (Aug. 13) to Miss Lawford, it has been rumored that the ceremony was only forced by a threat of an action for breach of promise, a cruel and malicious report to which the friends of the lady have hastened to give an emphatic contradiction.

The venerable anecdote of the testator who wished his worst enemy no more cruel fate than to find favour with his widow, has become a reality in a case now before the courts. An eccentric French physician of St. Maude had lived for years the life of a hermit. At his death the heirs-at-law put in an appearance expecting to inherit, but were confronted by the following will:—"January 8, 1882. This is my will and testament. At the present moment I consider myself bodily healthy, but cannot swear that I am so in mind. Such ridiculous presumption I bequeath to others. My fortune amounts to 70,000 francs. How many hypocritical tears might I have purchased for such a sum! I intended at first to devote these 70,000 francs to a beneficent object; but I asked myself, what would be the use of this? The only benefactors of mankind are war and cholera. Besides this, I am under great obligations to my dear wife, Célestine Mélanie, of whose whereabouts I have not the slightest idea. She once did me a great kindness. She left me one beautiful morning and I have never heard of her since then. With the most heartfelt thankfulness I appoint her my heir-at-law, but subject to the following condition—that she marry again immediately, so that at least there may be *one* man who will deeply deplore my death!" The heirs at law dispute the will on the ground that the testator was of unsound mind.

The English Criminal Law Amendment Act, 1885, section 4, provides that the personation of a husband shall amount to rape. Mr. Justice Stephen and Mr. Bishop have been of opinion that the act in question was not rape. The later decisions were opposed to this view. See *Reg.* v. *Dee*, p. 29 of this volume.

The latest number of the official statistical reports on the city of Paris states that during the month of January the number of divorces pronounced by the Maires of the city was 20; in February the number rose to 47, and in March to 167. In all these cases except three there had been a previous judicial separation *a mensa et thoro*. In 157 cases the wife was the petitioner; in 74 it was the husband. As to position, in 105 cases the parties were manufacturers or engaged in trade; 20 were officials; 36 belonged to a liberal profession; 32 were working people; the rest are undescribed.

*SUPERIOR COURT.—MONTREAL.**

Malicious prosecution — Probable cause.—Held:—Where a person was discovered cutting and removing trees from the land of the defendant, and the excuse given, viz., that he had received permission to remove dead trees from the land of the adjoining proprietor, and that his men had unwittingly crossed the boundary line, was untrue, as he had not received such permission, that there was probable cause for his arrest for trespass.—*Wiseman* v. *McCulloch*, Loranger, J., Feb. 29, 1884 (confirmed in Review).

Caution solidaire—Droit de la caution contre le débiteur principal—Terme—Louage—Discussion.—Jugé:—1o. Que la caution solidaire du consentement du principal obligé peut, avant comme après l'échéance de la dette, sans avoir payé le créancier, soit que celui-ci ait donné terme ou non au débiteur principal, poursuivre ce dernier s'il devient insolvable, en déconfiture, ou, dans un cas de louage, s'il enlève des lieux loués les meubles affectés au loyer.

2o. Que dans le cas ci-dessus, si la caution solidaire ne prend aucune action contre le débiteur principal, elle ne peut, après avoir été poursuivi conjointement et solidairement par le créancier, opposer à ce dernier l'exception de discussion.—*Laurent* v. *Paquin et al.*, Papineau, J., 14 mai 1880.

Capias — Affidavit — Province de Québec et Province du Canada.—Jugé:—Qu'un défendeur arrêté en vertu d'un *capias* émané sur un affidavit qui allègue que le défendeur "est sur le point de quitter immédiatement la province de Québec, etc.," sera mis en liberté sur requête préliminaire comme ayant été arrêté irrégulièrement et illégalement, l'affidavit étant insuffisant en autant qu'il aurait dû mentionner la "province de Canada" au lieu de la "province de Québec."—*Maury* v. *Durand*, Johnson, J., 10 janvier 1882.

Compensation—Créance ni claire ni liquide—Dommages—Acte authentique.—Jugé:—Qu'une créance résultant de dommages ni clairs ni liquides ne peut être offerte, par exception péremptoire, en compensation à une action d'un vendeur réclamant la balance d'un prix de vente d'un immeuble par acte authentique, alors même que ces dommages resultent de la violation par le vendeur des conditions du dit acte de vente.—*Gagnon* v. *Gaudry et vir*, Mathieu, J., 13 mai 1885.

Cité de Montréal—Hommes de police—Arrestation illégale—Responsabilité.—Jugé:—1o. Que la cité de Montréal est responsable des actes de ses employés faits dans l'exécution de leur charge, ces derniers étant alors censés agir comme agents autorisés de la dite cité; qu'en conséquence, elle est responsable des fausses arrestations faites par ses hommes de police.

2o. Que lorsque la cité de Montréal envoie ses hommes de police garder la paix publique à quelqu'endroit, et qu'elle place ces hommes sous les ordres d'une personne quelconque qui n'est pas à son emploi, cette délégation de pouvoirs n'empêche pas sa responsabilité.

3o. Que les hommes de police qui font une fausse arrestation sont aussi personnellement responsables, et ne peuvent être excusés par le fait qu'ils ont reçu d'une personne, autorisée ou non, l'ordre de faire l'arrestation.—*Laviolette* v. *Thomaset al.*, Jetté, J., 8 juillet 1881.

Action qui tam—Société—Enregistrement subséquent à l'action.—Jugé:—Qu'une personne qui fait un commerce en société et qui néglige de faire la déclaration requise par l'article 981 C. C., ne peut se soustraire à l'action pénale en établissant que dès avant l'institution de l'action elle avait enregistré la dite déclaration.—*Jeannotte dit Bellehumeur* v. *Burns*, Mathieu, J., 25 juin 1885.

Notaire—Responsabilité—Dommages.—Jugé:—1o. Qu'un notaire, dans la rédaction de ses actes, est responsable des vices de forme soit extrinsèques ou intrinsèques, et pourra être condamné à payer des dommages s'il y insère des clauses illégales qui sont la cause de l'annulation de l'acte par les tribunaux.

2o. Qu'il est de jurisprudence que ces dommages sont accordés plutôt comme peine que comme indemnité et que la tribunal peut les mitiger suivant les circonstances.—*Dupuis* v. *Ricutord*, Jetté, J., 5 juin 1885.

* To appear in full in Montreal Law Reports, 1 S.C.

Demande incidente—Libellée—Exception à la forme.— Jugé : — Qu'une demande incidente est suffisamment libellée, lorsque faite par le demandeur immédiatement après sa réponse spéciale au plaidoyer, elle ne mentionne pas les raisons sur lesquelles elle est basée, mais réfère généralement à la dite réponse spéciale. —*Laflamme* v. *Mail Printing Co.*, Mathieu, J., 22 juin 1885.

Vente à réméré—Délai convenu—Avis—Mise en demeure—Impenses.—Jugé :— Que dans le cas d'une vente à réméré, lorsque le délai pour l'exercice du droit de réméré ne doit commencer à courir qu'à partir de l'achèvement par l'acheteur de certaines améliorations sur la propriété vendue, ce dernier est tenu de donner avis au vendeur lorsque les travaux communs sont terminés, et le délai ne compte que de cet avis.—*Fournier* v. *Leger*, Jetté, J., 20 juin 1885.

Vente—Mandat — Responsabilité du mandataire—Billets.—Jugé :—1o. Qu'un mandataire qui achète pour son mandant sans déclarer sa qualité est responsable personnellement.

2o. Que lorsque le mandant fait affaire sous le nom du mandataire, le fait que ce dernier, après avoir acheté, aurait signé des billets du nom de la société, et les aurait donnés au vendeur en paiement, n'est pas une déclaration suffisante de sa qualité pour dégager sa responsabilité personnelle.—*Pratte* v. *Maurice et al.*, Mathieu, J., 25 juin 1885.

Saisie-arrêt—Société commerciale — Déclaration de tiers-saisi—Fonds social.—Jugé :—Qu'un tiers-saisi, membre d'une société commerciale, et qui déclare pour elle que le défendeur a une part dans la dite société, peut être forcé de déclarer quel était lors de la signification de la saisie-arrêt le fonds capital de la dite société commerciale dont le défendeur fait partie.—*Laframboise* v. *Rolland*, Jetté, J., 7 janvier 1885.

Société commerciale—Saisie-arrêt—Part d'un des associés—Argent payé après la saisie-arrêt. —Jugé :—Que l'on peut saisir par saisie-arrêt la part ou l'intérêt d'un associé dans une société commerciale, et que les associés seront condamnés personnellement à payer au demandeur-saisissant, toute somme d'argent qu'ils auront payées à leur co-associé, dont la part ou l'intérêt aura été ainsi saisi, depuis la signification du bref de saisie-arrêt.—*Laframboise* v. *Rolland*, Mathieu, J., 25 avril 1885.

PRIVY COUNCIL.

LONDON, July 18, 1885.

Coram LORD WATSON, LORD MONKSWELL, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR RICHARD COUCH.

MCGIBBON es qual. (plff. below), Appellant,

and ABBOTT et al. es qual. (defts. below), Respondents.

Will—Power to divide among children—Exercise of power—Exclusion of one of the children.

HELD :—1. *That a will executed in the Province of Quebec by a person domiciled therein, with reference to a portion of an estate situate in the Province, must be interpreted according to the laws of the Province, and not according to English law, though the will be in the English language and be couched in English legal phraseology.*

2. *Where an estate was devised to A. in trust, with power to A. to divide the capital among his children at his death in such proportion as he should appoint by his will, that a division by will among four of the children to the entire exclusion of the fifth, was a valid exercise of the power by A.*

The appeal was from a decision of the Court of Queen's Bench, Montreal, (reported in 7 Leg. News, 179), reversing a judgment of the Superior Court, Montreal (reported in 5 Leg. News, 431).

PER CURIAM. This is an appeal from a decision of the Court of Queen's Bench for Lower Canada, in the Province of Quebec, which reversed a decision of the Superior Court in that province in favour of the plaintiff, who is now the appellant. He sued in the character of tutor *aux biens* of Humphrey Gordon Eversley Macrae, a minor, whom it will be convenient for the purpose of this judgment to treat as the plaintiff.

It appears that the late William Macrae, who was domiciled in Lower Canada, executed his last will at Montreal on the 3rd March 1868, in the English language.

The twelfth clause of the will was in the following words:—

"I give and bequeath unto my executors herein-after named for the use, benefit, and behalf of the children issue of the present or any future marriage of my son John Octavius Macrae, one-third of the residue and remainder of my estate and succession, to have and to hold the same upon trust; firstly, to invest the proceeds thereof in such securities as to them shall seem sufficient, and from time to time to remove and re-invest the same, and during the life of my said son, John Octavius Macrae, to pay the rents and revenues derived therefrom, to my said son, for his maintenance and support, and for the maintenance and support of his family; and secondly, upon the death of the said John Octavius Macrae, then the capital thereof, to his children in such proportion as my said son shall decide by his last will and testament, but in default of such decision, then share and share alike as their absolute property for ever; And I hereby will and ordain that my said son, John Octavius Macrae, shall have the right to receive the said revenues and profits for his maintenance as aforesaid, without their being subject to seizure for any debts created, or due, or payable by him, but shall be deemed and are hereby declared to have been given as an alimentary provision for his support, and that of his family, and *insaisissables*."

It will be convenient in this judgment to call the father "William" and the son "John." John was twice married, first in 1859, and secondly on the 20th November 1879. He died on the 12th May 1881, leaving four children the issue of his first marriage, viz., Lucy Caroline Macrae, now of age and one of the respondents in this case, John Ogilvy Macrae, Ada Beatrice Macrae, Catherine Alice Lennox Macrae, and Humphrey Gordon Eversley Macrae, the plaintiff, the issue of the second marriage, who was born on the 25th January, 1881, and is the appellant.

John, by his will dated the 5th April, 1880, directed and appointed that his son John Ogilvy Macrae and his three daughters, Lucy Caroline Macrae, Ada Beatrice Macrae, and Catherine Alice Lennox Macrae, should be entitled equally, share and share alike, to the trust fund over which he had a power of appointment under his father's will; and by a subsequent provision of his will he bequeathed to his second wife the usufruct of all his property beyond the trust fund and the amount comprised in the settlement made on his first marriage, and to all of his children, including any who might be born after his second marriage, the capital of such other property, share and share alike.

It is evident that the intention of William was to tie up the capital of the share of his son John for the benefit of John's children as a class after his death. William, when he made his will, could not foresee what children John might have at the time of his death, or what might be their respective wants or requirements. He did not, therefore, attempt to specify in what proportion the capital should be divided, but he left that to the decision of his son, who would naturally be better acquainted with the circumstances of his own children. For example, John, during his lifetime, might make advances to some of his children, as it appears from another part of the will the testator himself had done with regard to his own sons George and John, and to his daughter Catherine, and not to others. Some of the children might be otherwise amply provided for, and might need no portion of the property left by their grandfather. It is contended, however, and was contended in the Courts below, that John was bound to give some share, however small, to each of his children, and that, according to the intentions of William as expressed by his will, in default of his doing so, all the children were entitled under it to take in equal shares.

The case was heard in the first instance in the Superior Court, when Mr. Justice Torrance decided in accordance with that view of the case.

On appeal to the Court of Queen's Bench, that Court, consisting of Chief Justice Dorion and four other Judges, reversed the decision of the Superior Court, and unanimously held that John had not only the right to apportion the capital between all his children, as well those of his then existing marriage as

those of any future marriage, but also the right to dispose of the property in favour of one or more of his children to the exclusion of the others, as he had done by will. From that judgment the plaintiff has appealed to Her Majesty in Council, for the following amongst other reasons:—

1. By the law of Lower Canada the Court is bound to give effect to the intention of the testator as evidenced by the whole will. *Martin* v. *Lee*, 14 Moore, P.C.C., 142.

2. That in the case of a will in the English language and couched in English legal phraseology, it was proper for the Courts of Lower Canada, in accordance with the case of *Martin* v. *Lee*, to have regard to the meaning and effect of that phraseology in the English language and law at the date of the will, in order to arrive at the intention of the testator.

3. That at the date of the execution of the will and down to and at the date of the death of the testator, the language of the said will would by the law of England, as it then stood, have given no right to John Octavius Macrae to exclude any of his children, but only to direct the proportions in which they would share.

4. That it appears from the will to have been the intention of the testator to benefit all his said grandchildren, and to give their father a power only to apportion but not to exclude.

5. That there is nothing in the law of Lower Canada opposed to this construction or to this intention.

The reasons of Mr. Justice Ramsay for his judgment in the Court of Appeal are set out in the supplemental record, and it appears from a letter from the Clerk of Appeals at Montreal to the Registrar of the Privy Council that Mr. Justice Ramsay rendered the unanimous judgment of the Court of Appeal, and that the other Judges have no notes, and have not sent any reasons for their concurrence in the judgment.

As to the first reason for the appeal to Her Majesty in Council, there can be no doubt that, according to the law of Lower Canada as well as according to the law of England, "the paramount duty of the Courts" (to use the words of Lord Justice Turner in the case of *Martin* v. *Lee*, 14 Moore's Privy Council Cases, 153) "is to ascertain and give effect to "the intention of a testator to be collected "from the whole will, and not from any par- "ticular word or expression which may be "contained in it." But it is not their duty, by adhering to the strict letter of a will, so to construe general words as in the absence of clear and unambiguous language to impute to a testator an unreasonable intention.

The doctrine of the English Courts of Equity as to illusory or unsubstantial appointments under a power is not, and never was, any part of the old French law or of the law of Lower Canada, nor is it included in any of the Articles of Chapter 4 of the Civil Code of Canada, relating to substitutions.

The question whether John could exclude any one of his children from a share must, in their Lordships' opinion, be decided according to the law of Lower Canada, and not according to the English law. They do not understand the case of *Martin* v. *Lee* as deciding that a will executed in Lower Canada by a person domiciled in Lower Canada, if written in English, must be interpreted with regard either to moveable or immoveable property in Lower Canada according to the rules of English law, and have the same effect given to the phraseology as if that phraseology had been contained in a will executed in England by a person domiciled in England, or relating to land or other property in England. All that they understand that case to decide is that the word "children," used as it was in the will then to be interpreted, was not intended to have the more extensive meaning which may sometimes be given to the word "*enfants*" in the old French law. Lord Justice Turner, at p. 154, said: "The true question therefore in "this case is not whether the word '*enfants*' "may include grandchildren and even more "remote descendants, but whether upon the "true construction of this will it was in- "tended to include them." See also the remarks at at pp. 154 and 155.

It could never have been intended by their Lordships to lay down a rule of construction which might render it necessary to apply the rule in Shelley's case to a conveyance or devise written in the English language of lands

in Lower Canada to a man for life, with a substitution in favor of his heirs upon his death.

The question to be considered is whether, according to the law of Lower Canada, the gift in the will of William, by the words, "and, secondly, upon the death of the said "John Octavius Macrae, the capital thereof "to his children in such proportion as my "son shall decide by his last will and testa-"ment," contained an exclusive or non-exclusive power. It may be said that, according to the words taken in their strict grammatical sense, each child was entitled to a share; but it is to be borne in mind that, as the old English rule of equity as to illusory appointments was not in force in Lower Canada, John, even if the power is to be construed as non-exclusive, might have given a share of one cent each to four of the children, and the whole of the remainder to the other. In other words, that $100,000, the amount at which the property is valued by the plaintiff, *minus* four cents, might have been given to one of the children, and one cent, or a share in the proportion of one to ten millions, might have been given to each of the others.

It is to be observed that at the date of his will John had only the four children, amongst whom he thereby decided that the property charged should be divided. His decision at the time was quite in accordance with the will of his father, whatever construction is to be put upon it. He was not bound at that time to make by general words provision for a child who might be afterwards born. He was not bound to make his decision *uno flatu* (see *Cunningham* v. *Anstruther*, 2 Law Reports, Scotch and Divorce Appeals, p. 223). He might have revoked the will and made a new will, or he might have amended it by a codicil; and all doubt as to the validity of the will which was made before the birth of the plaintiff would have been removed if John had executed a codicil amending his will by giving one cent to the plaintiff, and the remainder to the four children named in the will.

William, if he had pleased, might have provided by express words that each child of John should have a share, and that no share should be less than a certain amount, but he was not prepared to fix the amount of the shares. To hold that when he left to his son to fix the proportion he intended to render it compulsory upon him to give each child a share, though it should only be in the proportion of one to ten millions, would be to impute to him a most unreasonable intention. To do so would violate the rule of interpretation, *Qui hæret in litera hæret in cortice.*"

In England, Lord Alvanley, in the case of *Kemp* v. *Kemp* (5 Ves. Jun., 861), in holding a power to be non-exclusive upon finding a current of authorities against the words being construed as giving an exclusive power, observed: "My inclination is strong "to support the execution of the power if I "could consistently with the rules I find "established;" and on referring to the case of *Burrell* v. *Burrell*, in which a testator gave all his real and personal estate to his wife, to the end that she "might *give his children* "*such fortunes as she should think proper*," remarked: "Lord Camden, as I conceive, was "of opinion that these words were so ample "that if she thought fit to give nothing to "one she might so execute the power. I "am willing to subscribe to that opinion of "Lord Camden upon such a doubtful ques-"tion, being perfectly satisfied that in set-"ting aside these appointments, by criticis-"ing the words 'to and amongst,' &c., and "the rule as to illusory shares, the Court "goes against the intention. I must there-"fore think that, under the words of that "will, Lord Camden thought that the wife "might have given the whole to one child, "and had a right to exclude any who, in her "opinion, did not want it." In the case then before him, Lord Alvanley held that the power was non-exclusive, but at the conclusion of his judgment, having given his reasons at length, he added: "For these reasons, "but with less satisfaction than I have had "in any other judgment that I have given, "being satisfied that the person creating the "power meant a much larger power than I "can hold the person executing it had, I "must declare the appointment void."

In Sugden on Powers it is said, "In many "cases an exclusive appointment may be

" authorized by the apparent intention of the " donor, although no words of exclusion are " expressly used. Thus, he says, in *Bovil* v. " *Rich*, 1 Chan. Cases, 309, the testator gave " all the rest of his estate to A B in trust, " 'to give my children and grandchildren " 'according to their demerits.' A B gave " the estate to one, excluding the rest. Lord " Nottingham refused to set aside the appoint- " ment, as the children were to come in by " the act of the devisee, and he was to give " or distribute according to their demerits, " therefore he was to judge." So in the present case John was charged with the fiduciary substitution and was to decide.

It was contended in the argument at the bar that John could not properly decide with reference to the plaintiff without considering his case, and that as his will was executed before the plaintiff was born he must have decided without considering. This is not so. He had the power to revoke or alter his will, and if he had thought that the plaintiff ought to have a substantially proportionate share, or even a nominal share, he could have decided in his favour by a codicil. In Domat's Civil Law, Part 2, Book 5, para. 3877, it is said, and with very good reason, "If he who " was charged with a fiduciary bequest or " substitution at the time of his death in " favour of some one of his children whom " he should think fit to choose, has given in " his lifetime, to one of his children, the " things which were subject to the fiduciary " trust, this donation would be in the place " of an election if the same were not revoked. " For although the liberty of this choice " ought to last until the time of the death of " the person charged with the fiduciary sub- " stitution, and it was for the interests of all " the children that the said donation should " not destroy the said liberty, yet it would " be sufficient that the donee had been made " choice of, and that the said choice had not " been revoked; seeing the choice would be " confirmed by the will of him who, having " it in his power to make another choice, had " not done so. So it would be the same thing " as if the choice had been made at the time " of his death."

The courts in Lower Canada are not bound by the current of decisions in England, as the judges in England before 1874, and Lord Alvanley in the case of *Kemp* v. *Kemp*, considered themselves to be bound in deciding whether a power was exclusive or non-exclusive. Even in England those decisions had caused so much inconvenience that it was found necessary to resort to legislation upon the subject, and the law was amended by Act 37 & 38 Vict., c. 37.

A similar Act was not necessary in Lower Canada. The Courts there were not trammelled by the current of authorities to which Lord Alvanley and other judges in England were forced to yield.

Judge Ramsay, in his written reasons, says, and says with some force, speaking of the law of England before 1874, "It is only by " the help of repeated legislation that the " law there has come down to that reason " from which I apprehend our law starts. It " was therefore quite unnecessary for us to " make any Act similar to the English Act " 37 & 38 Vict., c. 37."

Mr. Justice Ramsay also, in his reasons, states that, "Under the Roman law and under " the old *régime* of France there was a great " question as to the effect of the substitution of " the children or of a class, as for instance the " relations, and that at last it seems to have " been determined that when the children of " the *grevé* were called *nominatim* they held " of the original testator, and that the father " could not affect the disposition; but that " when the children were called collectively, " there was a difference of opinion as to " whether the father could select among the " children so as to give to some and exclude " others." He adds, "Although the affirma- " tive of the proposition cannot be supported " on a strictly legal argument, it seems to " have prevailed." He then cites some authorities in support of his argument.

Their Lordships are not prepared to say that that exposition of the law is not correct. If, then, a man to whom an estate is given for life, charged with a substitution in favour of his children after his death, can substitute one or more of his children to the exclusion of others, the addition of the words in the present case, "in such proportion as he shall " decide," does not affect the nature or substance of the substitution. It only gives

power to the father to do that which he could have done under the general words of the substitution in favour of his children.

It would be lamentable if their Lordships, in a case arising in Lower Canada and to be determined by the law of that country, should feel themselves bound by a course of English decisions which have been swept away by the Legislature as fraught with inconvenience and mischief, and thus be driven to such a construction of the will of William as would form a precedent in future cases of a similar nature, and thereby introduce into Lower Canada all those difficulties and inconveniences which it required the force of an Act of Parliament in England to remove. In their Lordships' opinion the decision of the Court of Queen's Bench is correct. They will therefore humbly advise Her Majesty to affirm the judgment of that Court.

The appellant must pay the costs of this appeal.

Judgment affirmed.

Bompas, Q.C., and *McLeod Fullarton* for appellant.

Macnaughten, Q.C., and *Jeune* for respondents.

PREPARING FOR TRIAL.

Chief Justice Curtis, of Boston, gave hints as a basis for the following trial rules that are not so generally known as they should be, and yet they very forcibly apply to criminal defences:

1. Pay little attention to the good side of the case at first, that side will take care of itself, but be sure you look well to the bad side—not forgetting to explore the strongest form of the proof, and knowing that an opportunity to prove even what is false may be used by your adversary, unless you have certain means to refute it.

2. Never try to disprove what has not been proven, and supply thereby the missing link in the enemy's chain of evidence.

3. Never forget that an innocent person, with enemies, may be in a more dangerous condition than a guilty one with friends and influence.

4. The pulse of the people beat nearest together through the columns of the press, and will shade the whole story with a jury.

5. Persistent energy in the face of genius and eloquence will bear its fruit in due season if properly directed, but endless travel in the wrong direction will never reach the place of destination; therefore, of all things, be safe in your theory and start out equipped for a trial of hardship. Chas. S. May says:

"The best trial rule I can think of is for the advocate first to possess himself thoroughly of the facts of his case, and to believe in its justice; and then to keep in mind in every step of its progress that the jury is composed of men representing the average common sense and moral sense of the people, actuated by an honest desire to do impartial justice between the parties; and so, in the light of this fact, to be able to see how every proposition or objection, piece of testimony, remark at the bar or observation from the bench would be likely to affect such a body; in other words, for the trial lawyer to imagine himself in the jury box, with their purposes and intelligence, and think how these things would be apt to influence him."—*J. W. Donovan.*

DIALOGUE BETWEEN LAWYER AND CLIENT.

Who taught me first to litigate,
My neighbour and my brother hate,
And my own rights to overrate?
My lawyer.

Who cleaned my bank account all out,
And brought my solvency in doubt,
Then turned me to the right-about?
My lawyer.

ANSWER.

Who lied to me about his case,
And said we'd have an easy race,
And did it all with solemn face?
My client.

Who took my services for naught,
And did not pay me when he ought,
And boasted what a trick he'd wrought?
My client.

—*Albany L. J.*

INSURING A MOTHER-IN-LAW.—The Supreme Court of Pennsylvania, in holding that a son-in-law has no insurable interest in the life of his mother-in-law, has aimed another blow at this much-abused class. The Court sneeringly says that he is not a creditor of hers, nor in any manner legally liable for her support or maintenance, and that he could not inherit from her nor she from him; in fact that there is no consanguinity between them. The mere fact that he married her daughter gave him no pecuniary interest in the preservation of her life; and while the Court does not in words say so, the inference is very plain that it means it to be understood that in the opinion of the Court the son-in-law is so interested in getting rid of his mother-in-law that to insure her life is a gambling contract of the worst kind.—*Washington Law Reporter.*