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REGULATION OF PUBLIC HOUSES.

In the case of *Blouin* v. *The Corporation of the City of Quebec*, (7 Q.L.R. 18,) the question came up, whether the local legislature has authority to control and restrict the hours during which houses in which spirituous liquors are sold, may remain open. The plaintiff sued for the recovery of sums of money which he had paid to the Corporation, as penalties for keeping his house open within prohibited hours. The judgment of the Superior Court was rendered by Chief Justice Meredith, who stated that he was clearly of opinion that "the provisions of the Quebec statute requiring houses where spirituous liquors are sold to be closed on Sunday, and for certain parts of the night, are nothing more nor less than police regulations, and as such completely within the power of the provincial legislatures." Reference was made by the learned Chief Justice to a judgment delivered by Mr. Justice Stuart at Quebec, in a case of *Collepy* v. *The Corporation of Quebec* (not reported,) in which that judge "expressly said that he regarded the provisions of the law, as to the closing of taverns on Sunday, and during the night, as mere police regulations; and therefore within the power of the provincial legislatures." The decision of the Supreme Court in *City of Fredericton* v. *The Queen* (3 S.C. Rep. 505) was considered. In this case it was held that under sub. sec. 2 of sec. 91, B.N.A. Act, 1867, "regulation of trade and commerce," the Parliament of Canada alone has the power of prohibiting the traffic in intoxicating liquors in the Dominion or in any part of it. But Chief Justice Meredith held that although the Parliament of Canada, under its power to regulate trade and commerce, alone has the power to prohibit the traffic in intoxicating liquors, yet that the provincial legislatures under the powers given to them, may for the preservation of good order in the municipalities specially under their control, make reasonable police regulations, although such regulations to some extent affect the sale of spirituous liquors, provided they do not improperly interfere with trade and commerce. A decision somewhat similar in principle was given by the Court of Appeal in *Bennett* v. *The Pharmaceutical Association* (4 L.N. 125) in which Chief Justice Dorion cited the judgment of the Privy Council in *Cushing & Dupuy*, 3 L.N. 171.

LEGISLATION AT QUEBEC.

Among the bills introduced during the present session at Quebec, is one by Mr. Irvine to amend the law of evidence in civil matters. This bill provides that in all non-appealable cases in the Circuit Court, and in all cases in the Superior Court in which the trial is had before a jury, or is fixed for proof and hearing at the same time, the parties to the issue may be examined as witnesses on their own behalf and shall be subject to cross examination and amenable to all the rules which govern the examination of other witnesses, notwithstanding articles 1232 of the Civil Code and 251 of the Code of Civil Procedure to the contrary.

Mr. Irvine has also proposed a measure to secure more effectually the attendance of witnesses. The bill provides:—1. The first paragraph or section of article 249, C.C.P., is repealed, and the following is substituted in its stead:—249. At the time a witness is served with a subpœna a sufficient sum must be tendered to him for travelling expenses, at the rate usually allowed by the court of his domicile, and he may, moreover, before being sworn at the place and time appointed, require immediate payment of the amount or balance due to him for his taxation as such witness, which amount of taxation shall, in that case, be then and there taxed by the judge or prothonotary. And any witness, duly summoned, who without sufficient cause, fails to attend at the place and time appointed, in obedience to the subpœna, may, on summary application made to the court, or to the judge, on an affidavit that to the best of deponent's knowledge and belief the said witness is material and necessary, and without further notice, be arrested on a warrant issued for that purpose, and brought before the said court or judge, and, if the cause of his failure to attend be considered insufficient, he shall be

immediately condemned to a fine not exceeding forty dollars, to be recovered for the use of the Crown, and to the costs of the said application, arrest and proceedings connected therewith, for the use of the party summoning such witness, independently of any recourse the party who summoned him may have for damages caused by such default; and, in the event of the said fine and costs not being paid immediately, or within such time as the court or judge may fix, the said fine and costs are recovered at the instance of the party summoning, and for the uses aforesaid, in the same manner as any other sum awarded by judgment; and the court or judge may, moreover, imprison the said witness for contempt, if it lies; and every writ of suppœna must contain in the body thereof the following additional words: "and you are hereby notified that if you make default to appear you may be proceeded against in conformity with the provisions of article 249 of the Code of Civil Procedure, as amended."

Another measure brought forward by the same gentleman is intended to make better provision for the recovery of debts. This bill provides: When any creditor has recovered judgment against his debtor, and said judgment remains unsatisfied for a period of fifteen days from the date of the said judgment, any judge of the Superior Court may on summary petition of the plaintiff order any enquiry respecting the property of the said judgment debtor, and on such order being made, the said plaintiff may proceed to examine, in the ordinary way in which evidence is taken, but on any day, whether during term, enquête days or other juridical day, the defendant himself or any other witness, respecting the property of the said defendant, and generally, thereby, to obtain any evidence which may enable him with more facility to enforce the payment of his debt. If it shall appear by such enquiry that the property of such defendant is insufficient for the payment of his debts, the judge may order that all his property shall be sold in virtue of the writ of execution to be issued in such cause, provided that the amount of the said writ is at least $200 and that his creditors be called in according to law, and their claims be produced in conformity with article 604 C. C. P.

It is to be regretted that copies of these and other important bills have not yet been distributed.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, March 31, 1881.

Before SICOTTE, J.

BANK OF AMERICA v. COPLAND et al.

Insolvent Act of 1875, *Sec.* 61—*Promissory note payable in a foreign country—Protest.*

In order to be discharged under the Insolvent Act of 1875, *from a debt represented by a note, of which the holder is unknown, the insolvent must insert the particulars of such note in his statement.*

In the absence of the affidavit required by C. C. P. 145, *the irregularity of the protest cannot be urged.*

When a note is made payable in a foreign country, the law of that country governs as to the time of protesting and days of grace.

The action was on a promissory note for $2,400, made in Montreal, and payable in the State of New York.

SICOTTE, J. Two questions are involved in the pleadings, and they are of some importance. The first concerns the maker of the note sued on, E. M. Copland, who filed a separate plea from the other defendant, the endorser. He pleads that he was put into compulsory liquidation, and that the note sued on was given to Parker & Co.; that he gave a list of his creditors, including Parker & Co. nominatively; that the latter filed their claim, in which said note was mentioned. Defendant pleads further that he has obtained a discharge in conformity with the Insolvent Act, and, therefore, that he is free from all liabilities existing against him and provable against his estate.

The evidence establishes that the note was signed by E. M. Copland, payable to his order, and being endorsed, was delivered to the other defendant, C. Copland, who endorsed it; that the note was from that time in the possession of the plaintiff, who received it in payment of a larger debt from Parker & Co. The latter did not endorse the note. When defendant filed his *bilan* he knew that the note was so made that it could pass from hand to hand without being indorsed. It follows that the holder of the note would hardly be known by the insolvent after some years, unless he was directly informed. By Section 61 of the Insolvency Act

it is enacted that "if the holder of any negotiable paper is unknown to the insolvent, the insertion of the particulars of such paper in the statement of his affairs, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper, and the holder thereof, within the operation of the Act."

It may be said that the insolvent had no interest to not insert in his *bilan* the declaration in question, as plaintiff would not have much better opportunity of receiving information of the insolvency. But the Act requiring such a declaration, to make the act of insolvency operative against the holder, the Court has no discretion, when the disposition is clear and imperative, and when the fact of the omission is equally certain. The intent and the enactments of the Insolvency Act are not to be defeated by contrivances to surprise creditors. In some cases the fact complained may appear susceptible of incertitude and of contradiction. In the doubt, who is to be preferred? the creditor or the debtor? In ordinary civil litigation the doubt is favorable to the party against whom the claim is made, on the principle that it would be greater injustice to deprive one of his property without the positive certainty that he owes the debt, than to dismiss a claimant who makes but a doubtful case.

On this question of discharge it is the insolvent who is plaintiff, claiming to be liberated from a just debt because he is unable to pay. The creditor's claim is admitted; but by the law, he may be forced to relinquish all his rights, if his debtor has fully executed the prescriptions of the special law enacted for a certain class of debtors. In such circumstances the creditor is preferred to the debtor, as to the strict compliance with all the safeguards prescribed for fair play. Everything required to give him knowledge of the proceedings in insolvency must have been done. In this case no declaration, as to unknown holders of notes in the *bilan*, or notice by mail to the creditor, was made or given. By want of notice the creditor was not put in a condition to prove his claim. As a principle, the right of the creditor to prove his debt, and of the debtor to be discharged, is coextensive and commensurate. Statutes giving summary remedy, out of the ordinary course of the civil law, must be followed strictly. Upon this point the following facts must be noted. As proved by C. Copland, witness of defendant, the exhibit No. 4 of the latter, containing statement of notes due to Tucker & Co., does not emanate from Parker, but is only a copy of the books of E. M. Copland. This witness proves further that Parker & Co. filed no claim against the estate; he states also that the note in question and other notes given went into other people's hands, but that Parker kept the old notes given for the same debt reduced by agreement to the amount stated in these new notes. which went into other people's hands. The same witness testifies that his son E. M. Copland, must have seen the protest and notice sent on the part of plaintiff, for non-payment of the note. There is proof then, that the insolvent knew that the note was in other people's hands, and in the possession of plaintiff. It is also proved that no notice of the presentation of the petition for a discharge was given to plaintiff as required by the Insolvency Act. From these facts and the law, it must be decided that the debtor not having declared in his *bilan* that holders of certain notes of his were unknown to him, and not having given notice, as prescribed, to plaintiff, of the petition for discharge, cannot invoke such discharge against such creditor.

The second point is the liability of the endorser. At the hearing, the objection urged was that no protest and notice had been made and given, as required, and *partant*, that the endorser was not liable for the payment. In reading the plea, I found no allusion even to this want or irregularity of protest and notice. The plea alleges simply that the defendant, C. Copland, owed nothing to plaintiff, and that he was not bound in law or in fact to pay the sum claimed; that plaintiff was the *prête-nom* of Parker & Co.; that plaintiff had acquired no right against him. No objection was taken as to the omission of affidavit concerning the irregularity or want of protest or notice in the general answer to the plea. But it may be well to examine the point so argued. The Art. 145 C. P. enacts positively that in such cases an affidavit must be made, that the protest, or the notice or notification required has not been regularly made, and how it is irregular. It has been often decided that this objection and want or

irregularity of protest or notice, must be specially pleaded and be supported by an affidavit. However, there is full proof that the protest was made and notice duly given, as appears by the evidence taken on the *commission rogatoire*, and by the protest filed before the Commissioner, and by the testimony of the indorser himself. But it was urged that the note was protested on the 3rd March, and that the last day of grace was the 4th, that by our law the note must be and ought to have been presented and protested on that last day. It was also urged that our law concerning this point ought to prevail, as the note was made in Canada. The rule, *locus regit actum*, properly carried out in all its bearings, will give a solution covering all interests with the same guarantees, but otherwise than pretended by defendant. As the note was made in Canada, everything concerning the mode or modality of the note itself must be governed by the law of Canada—*locus regit actum*. But if the payment is to be made in a foreign country, everything concerning the payment and the mode of securing it, must be made according to the law of the country where the note is payable. *Locus regit actum*. In the commentaries by Victor Fons upon legal maxims, we read the following lines:—"Les formalités probantes sont celles qui ont pour objet de constater le contrat, d'en faire la preuve écrite. C'est à cela que s'applique la maxime, *Locus regit actum*. Cela découle du principe adopté aujourd'hui par l'usage général, que la forme des actes est réglée par la loi du lieu dans lequel ils sont faits." Story, Conflict of Laws, No. 316, writes: "Nor is it any departure from the rule, that the law of the place of payment is to govern, to hold that the time when the payment of the bill is to accrue, is to be according to the law of the place where the bill is payable, so that the days of grace, if any, are to be allowed according to the law or custom where the bill is to be accepted or paid; for such is the appropriate construction of the contract, according to the rules of law, and the presumed intention of the parties." "Acceptances are deemed contracts of acceptance in the place where they are made and where they are to be performed." No. 361: "The rule as to the period of indulgence, called days of grace, is that the usage of the place in which the bill is drawn and where the payment of bill or note is to be made, governs as to the number of days of grace to be allowed thereon."

The last day of grace for the maturity of the note in question was falling on a Sunday; the note was presented and protested on the Saturday. These performances done in the foreign country concerning the protest and notice are presumed to have been done according to the law of the land, unless impugned by affidavit, as required by Art. 145. Further, there is proof that everything was done according to the law of the State of New York, except as to the protest having been made on the Saturday. No question was put to the witnesses on this particular fact. As proof of the foreign law upon this point, plaintiff has cited Story on Promissory Notes (6 Ed., No. 220). "By the laws and custom of the United States, when the last day of grace falls on a Sunday, the note or bill must be presented for payment and protested for non-payment on the preceding day." Other authorities could have been cited to the same effect, and I will only cite one from the Commentaries of Chancellor Kent, 3, page 102: "If the third day of grace falls on Sunday, the demand must be made on the day preceding. The usage is settled in commercial matters, that if payment falls on a Sunday, payment is to be made on Saturday." If the affidavit required by Art. 145 had been made, more positive evidence would perhaps have been necessitated than that offered, to explain the special law of the foreign country. The plaintiffs have proved their case, and the defendants have not justified their pleas. Judgment for plaintiffs.

Dunlop & Lyman for plaintiffs.
Roy & Boutillier for defendants.

SUPERIOR COURT.

MONTREAL, November 30, 1880.

Before JOHNSON, J.

CITY OF MONTREAL v. TRACEY.

Assessment—Mode of questioning legality—"Necessary" and "Advisable."

Work was authorized to be done by the Corporation upon a report being made by the Road Committee that it was "necessary." Held, that a report that it was "advisable" was sufficient.

PER CURIAM. The defendant is sued in the

present case for $130, the amount of his contribution or share in the construction of a drain in McCord street, under the authority of a resolution of the Council of the 26th September, 1867. The defendant assumes to answer this demand by setting up the irregularity, as he calls it, of the resolution, which he says is null and void, without, however, giving any reason why; and then he adds, by another plea, that there was a good drain before, and the Corporation had no right to make another one, or to levy an assessment for that purpose; that the lowest tender was not accepted; and that the assessment roll is null and void. There is a replication, and a general answer in fact and in law; and the first point, therefore, would be whether this plea is good in law, which I should say it is not: for if a party can incidentally, in any case where he is asked to pay his share of an assessment, raise the question of the legality of the by-law, or the resolution, or the assessment; or even go so far as has been done in this plea, and raise the question of the utility of the work and the mode of giving the contracts, after the assessment has become executory, from not being questioned in a regular manner, it is quite obvious that civic government becomes simply impossible. I shall not now go into this, however, because nothing was said about it in argument; and because on the only points of fact as to which any irregularity is pretended the defendant's case utterly fails.

There was, however, a pretension that the powers given plainly by the 12th paragraph of the 58th section of chapter 128 of the 14 and 15 Vic., to pass the by-law which authorizes the resolution in question, were exercised irregularly, because the statute and the by-law under which this assessment was made, gave power to make it whenever the Road Committee should judge it to be "*necessary*;" whereas, in the present case, the Road Committee had only reported to the Council that it was "*advisable*." But the Council seems to have thought, reasonably enough, that if their committee thought it advisable, it was probably necessary. See Dillon 1, 178. Judgment for the amount demanded, less $4 by retraxit.

R. Roy, Q.C., for plaintiffs.

Doutre & Co. for defendant.

RECENT DECISIONS AT QUEBEC.

Account—Demurrer.—The plaintiff brought suit against defendant, alleging a purchase by them jointly of certain promissory notes and securities which the defendant collected for their common profit, the plaintiff's share, acknowledged by the defendant, being a definite and ascertained sum of $713.75. The plaintiff added the common assumpsit counts, and prayed for an account in the usual form, with vouchers, and that in default the defendant should be condemned to pay the said sum of $713.75. *Held*, on demurrer, that the demand for an account was not warranted by the allegations of the declaration, and was not the proper remedy for the cause of complaint therein stated.—*Michaud* v. *Vezina*, (Q.B.,) 6 Q.L.R. 353.

School Taxes.—The Circuit Court has exclusive jurisdiction in all suits for school taxes, whatever may be the amount of such suits, and whether the actions be hypothecary or personal only.—*Les Commissaires d'Ecole de Sillery* v. *Gingras et al.*, (Court of Review,) 6 Q.L.R. 355.

Master and Servant.—An employer cannot, of his own mere will, cancel or terminate a contract for personal service for a fixed period. And where, in connection with the contract of personal service, the employee had a lease of premises from his employer, it was held that the termination of the former contract by the employer without cause and without due notice, could not serve as the basis of an action to rescind the lease.—*Reid et al.* v. *Smith*, (C.R.,) 6 Q.L.R. 367.

School Commissioners.—La fabrique qui contribue annuellement $50 au soutien d'une école sous la direction des commissaires d'écoles, acquiert par là le droit au curé et au marguillier en charge d'être commissaires, et l'allégation de l'acte, par lequel la fabrique s'est obligée à contribuer une plus forte somme pour une école, et de sa qualité de marguillier en charge, est une réponse légale à la requête qui accuse ce dernier d'exercer illégalement la charge de commissaire.—*Charest* v. *Veilleux*, (S.C.,) 6 Q.L.R. 375.

Congé-Défaut.—1. Un congé-défaut ne peut être obtenu par le défendeur qu'en rapportant sa copie du bref et de l'action le jour du retour.—*Cherrier* v. *Torcapel*, (C.C.,) 6 Q.L.R. 377. [*Vide Siegert* v. *Hartlant*, 3 L.N. 347.]

2. Le défendeur, en faisant motion pour congé-défaut, doit en produisant la copie de l'assignation payer l'entrée de l'action.—*Coady* v. *Fraser*, (S.C.,) 6 Q.L.R. 384.

Immoveable—Execution—C.C.P. 1102.—In a suit for $45, dismissed with costs taxed in favor of defendant at a sum exceeding $40, a writ of *fieri facias de terris* may issue from the non-appealable side of the Circuit Court against the plaintiff's lands to satisfy the defendant's costs. —*Moore* v. *Keane et al.*, (C.R.) 6 Q.L.R. 378.

Saisie-Gagerie.—Dans une saisie-gagerie par droit de suite pour loyer non échu, la saisie doit être, le nouveau locateur étant mis en cause, déclarée tenante jusqu'à la fin du premier bail, si la défenderesse ne paie pas plus tôt le montant du loyer, ou si le bail n'est pas resilié ou résolu auparavant, et la défenderesse doit être condamnée à payer les dépens.—*Sansfaçon* v. *Boucher et al.*, (C.C.) 6 Q.L.R. 384.

Mayor of Local Council.—Le maire d'un conseil local n'a le droit de voter durant les sessions qu'il préside en cette qualité que lorsqu'il y a égalité des votes.—*Lemieux* v. *Cantin*, (C.C.) 7 Q.L.R. 16.

Local Legislature.—The provision of the Provincial Statute, 38 Vict., ch. 74, s. 4. ordering houses in which spirituous liquors are sold, to be closed on Sundays, and on every day from 11 of the clock at night until 5 of the clock in the morning, is a police regulation, within the power of the Provincial Legislature.—*Blouin* v. *Corporation of the City of Quebec*, (S.C.) 7 Q.L.R. 18.

THE LATE CHIEF JUSTICE DUVAL.

Mr. Duval, for ten years Chief Justice of the Court of Queen's Bench in this Province, died on Friday, the 6th inst. The following notice written by "Un ancien Avocat," which appears in *La Minerve*, furnishes an interesting sketch of the life of the deceased and of the times in which he played an active part.

Le juge Duval était le dernier anneau de la chaîne qui unissait le barreau de Montréal à celui de Québec, un des derniers représentants des traditions juridiques d'une autre époque, et, avec le juge Badgley et le digne doyen de la faculté de droit de l'Université Laval, M. Cherrier, un des derniers avocats admis au barreau pendant le premier quart de ce siècle. Sous ces différents aspects, sa mort a revêtu le caractère d'une perte nationale.

Jean François Joseph Duval est né à Québec le 18 juillet 1801, et était ainsi à sa mort âgé de près de quatre-vingt ans. Son père, François Duval, appartenant au régiment royal des volontaires canadiens, avait épousé, au fort de Chambly, où il était en garnison, Ann Germaine, la fille d'un militaire anglais, dont il eut deux enfants, le sujet de cette notice et Ann Duval, qui épousa plus tard le juge Polette et qui est morte aux Trois-Rivières il y a plus de vingt-cinq ans.

Eloigné par une infirmité précoce des jeux de son âge, le jeune Duval eut une enfance sérieuse et retirée.

Aussitôt qu'il eut appris à lire, les livres devinrent ses seuls compagnons et son unique amusement. Ce fut sans doute dans cette existence souffrante qu'il puisa, de bonne heure, cet amour passionné de l'étude qui ne l'abandonna jamais et qui le suivit jusqu'à la tombe.

Presque constamment cloué dans sa chambre, par ses infirmités croissantes, depuis sa retraite de la magistrature, il y consacra les sept dernières années de sa vie, aux sciences, aux lettres et à la philosophie. Il a passé une partie de l'hiver dernier à l'étude de la chimie, et la dernière fois que l'auteur de cette notice lui rendit visite, peu de temps avant sa mort, il le trouva occupé à la lecture, dans le texte grec, d'un ouvrage de Platon. Peu de personnes peuvent affirmer qu'en entrant chez lui, elles l'aient trouvé autrement qu'un livre à la main. Le besoin des occupations intellectuelles exerçait chez lui l'empire d'une nécessité, et sous ce rapport, il était diligent, comme d'autres sont paresseux, avec délice.

* * *

Sa première éducation fut une éducation anglaise. Son père était ce que l'on appelait un Canadien anglifié, et sa mère étant une anglaise, on devait naturellement parler anglais dans la famille. Cette circonstance explique pourquoi, au lieu d'être envoyé dans un collège français, comme la plupart des Canadiens de son temps, pour y faire un cours classique, il fut mis à l'Académie du Dr. Wilkie, professeur d'une

grande distinction, qui fut le fondateur du *High School*, et que fréquentaient ses contemporains d'origine anglaise.

Comme il est bien rare qu'un homme soit versé à égal degré dans deux langues, et que la première apprise rejette toujours à l'arrière place la seconde, M. Duval qui, au dire des connaisseurs, possédait avec une grande perfection la langue anglaise, n'était pas également versé dans la langue française. Non que sa connaissance du français fût défectueuse,—il en avait au contraire une connaissance complète,—mais il parlait mieux et de préférence l'anglais, qu'aux yeux d'un étranger, eût passé pour sa langue maternelle.

Quand il était au barreau, il plaidait en anglais, et sur le banc, il prenait avec empressement occasion de la circonstance qu'une cause avait été plaidée des deux côtés, ou d'un seul côté, en anglais, pour prononcer son jugement en cette langue.

Ecrivait-il avec la même facilité qu'il les parlait, l'une et l'autre langue? La chose est difficile à dire ; car, en dehors du domaine judiciaire, nous n'avons de lui, que je sache, aucun écrit remarquable, et sur le banc il disait plutôt qu'il ne lisait ses opinions qu'il n'écrivait jamais, du moins, *in extenso*. Ce qui sert, en dehors d'autres motifs, à expliquer la maigreur des rapports judiciaires à l'endroit de ses opinions.

A l'école de M. Wilkie, où il eût pour condisciples les juges William King, John Samuel McCord et Aylwin, le jeune Duval se montra ce qu'il devait être plus tard au barreau, en société, et un peu sur le banc : railleur, frondeur et taquin. Comme tous les enfants malingres, qui profitent de leur faiblesse pour faire toutes sortes de niches à leurs camarades plus forts et plus ingambes, le jeune Duval, au dire de ses condisciples, se plaisait à accabler de railleries, de tours et d'avanies ses camarades plus ou moins âgés que lui. Dans les circonstances ordinaires, mal lui en serait advenu, mais il avait trouvé dans son ami, William King McCord, qui s'était pris d'affection pour lui, un défenseur robuste dont la stature puissante faisait rentrer la colère des élèves bernés et sauvait de la vengeance de leurs coups, leur malin persécuteur. "*From many lickings I have saved you at school*," lui disait un jour son ancien ami en ma présence. Et l'autre a répondu par un jeu de figure venant en droite ligne de l'école du Dr. Wilkie !

Sous le rapport intellectuel, John Duval, c'est ainsi qu'on l'appelait dans sa famille, révéla également les aptitudes qui devaient en faire l'homme distingué que nous avons connu, et lui ouvrir la brillante carrière qu'il a parcourue. Une intelligence précoce, un talent d'une grande supériorité et une vaste mémoire en firent bientôt un des meilleurs élèves de l'Académie, d'où il sortit, après y avoir fait un cours classique, aussi brillant que solide, pour entrer en cléricature.

A l'école de M. Wilkie, John Duval avait cependant un rival qui, en bien et en mal, ne lui en cédait guère, et qui, sous aucun des rapports que je viens de signaler, n'était homme à se laisser rendre des points par personne. Cet élève qui a, aussi lui, fourni une carrière distinguée au barreau, en politique et dans la magistrature, était le juge Thomas Cushing Aylwin, ou plutôt, comme on l'appelait alors tout court, Tom Aylwin. Si celui-là n'a pas ravi à l'autre la palme du succès et de la taquinerie, il l'a bien partagée avec lui. A tout événement, la chronique québecquoise disait, quand il y a vingt-cinq ans, on parlait encore des choses de cette époque déjà éloignée, que Duval et Aylwin étaient restés dans les souvenirs de cette école —qui etait encore bien chère à la population anglaise—les deux élèves les plus remarquables de leur temps.

* * *

M. Duval commença d'abord sa cléricature sous M. Van Felson, avocat distingué du temps, —qui fut nommé juge à Montréal, en Décembre 1849, en vertu de la loi de judicature de 1848, faite par M. Lafontaine, et qui y est mort quelques années plus tard—et la termina sous le juge en chef Vallières de Saint-Réal, avec lequel il entra en société en 1823, lors de son admission au barreau. Un incident assez curieux que j'ai entendu le juge Vallières lui-même raconter, le plus plaisamment du monde, fut la cause de leur séparation.

La dissolution précoce d'une société entre un vieil et un jeune avocat, est d'ordinaire préjudiciable au dernier, mais il n'en fut pas ainsi pour M. Duval, dont le talent déjà populaire, l'amour du travail et l'assiduité lui assurèrent bientôt une grande clientèle.

Sa carrière professionnelle s'ouvrit donc en 1823, pour ne se fermer, sauf un court intervalle de suspension lors de sa nomination comme juge assistant à la Cour du Banc de la Reine, qu'en 1849, époque où il fut appelé à la Cour Supérieure à Québec, en même temps que M. Van Felson fut, comme nous venons de le dire, nommé à Montréal. Le juge en chef Meredith fut en même temps nommé juge à Québec, à sa propre demande, et non à Montréal, à raison des incompétences que pouvait susciter la grande clientèle dont il avait joui à Montréal. Tous deux devaient se rejoindre plus tard sur le banc de la Cour d'Appel, après avoir siégé ensemble à Québec.

Le barreau de Québec était à cette époque le premier barreau de la province ; il était sans contredit supérieur à celui de Montréal. Un grand nombre d'avocats dont le nom est resté célèbre dans le pays, non-seulement dans la carrière du barreau, mais dans la politique, y avaient atteint l'apogée de leur réputation. Les noms de Plamondon, Vallières, les deux Stuart (James et Andrew), Moquin et Bédard, y brillaient de tout leur éclat. Mais cette pleïade d'avocats distingués qui, depuis vingt ans, tenaient le sceptre de l'éloquence du palais, devait bientôt se disperser, les uns par leur élévation à la magistrature, les autres par la mort, et le reste pour d'autres causes. La gloire du barreau de Québec ne devait pas cependant s'éclipser pour cela ; leurs successeurs étaient trouvés, Aylwin, Duval, Black, Caron, Bacquet étaient là pour recueillir leur héritage et perpétuer les traditions de leurs prédécesseurs.

* * *

L'avocat de ce temps-là n'était pas l'avocat d'aujourd'hui. L'homme de loi était *avant tout* un homme d'esprit. Un procès n'était pas une affaire, mais toute affaire devenait un procès, c'est-à-dire une plaidoierie que la ville venait écouter; et l'audience était un théâtre, où la campagne avait aussi siège au parterre. Tels procès sont restés historiques à Québec, qui, instruits aujourd'hui à Montréal, auraient à peine leur place dans les journaux, parmi les faits divers.

C'est dans ces joutes oratoires, que Vallières et Plamondon avaient fait leurs armes et gagné leur titre d'avocats éloquents, et celui d'hommes les plus spirituels de Québec ; titre que valait alors; dans l'ancienne capitale, ce que vaut aujourd'hui le titre de ministre.

Combien de positions difficiles un mot d'esprit n'avait-il pas remportées, et que de succès obtenus par une prompte repartie ! Vallières, assis à la table des Conseils du Roi, causant avec un confrère, est trop occupé à vilipender les juges, pour s'apercevoir de l'entrée de la cour qui l'écoute et oublie d'ouvrir l'audience. Il relève la tête et l'un des juges lui dit : " M. Vallières, nous avons tout entendu." Un moment déconcerté, Vallières recouvre cependant son sangfroid, et dit à voix haute : " Une chose me console, c'est que vous ne vous en vanterez pas." Et le tribunal de se joindre à l'auditoire pour acclamer le bon mot et oublier l'offense !

M. Plamondon, dit le juge Sewell, la cour admet votre principe, mais n'en est pas moins unanime à vous faire perdre votre cause. " Si la chose était égale, répond Plamondon, ne pourriez-vous pas me faire perdre le principe et gagner la cause." Et le soir toute la ville répétait le bon mot, tout comme on raconterait aujourd'hui le gain d'un avocat sur un stock acheté sur marge !

Et que d'autres bons mots et que d'autres promptes réparties !

(*A continuer.*)

RECENT CRIMINAL DECISIONS.

Assault—Husband and wife.— Where a husband is charged with aggravated assault upon his wife, and the facts tend to show wanton conduct on his part, it is admissible for him to show that, a short time previous thereto, he surprised his wife in undue intimacy with another man.—*Gretta* v. *The State*, Court of Appeals, Texas.

GENERAL NOTES.

Richard Alleyn, Esq., Q. C., has been appointed a puisné Judge of the Superior Court, in the room of Mr. Justice Baby, transferred to the Court of Queen's Bench.

The *Canadian Law Times* for May contains an essay which was written by Mr. W. A. Polette, for the B.C.L. degree, McGill Law Faculty. The subject is, " Can the Jury convict of common assault upon an indictment for murder or manslaughter ?"