The Legal News.

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JUDICIAL REFORMS.

The following letter has been addressed by Mr. Justice Cross to the Attorney-General, on the subject of the proposed judicial reforms:—

To the Honorable the Attorney-General
for the Province of Quebec.

SIR,—Your predecessor in office having requested the opinion of the judges on the reforms suggested in the Report made to the Legislative Assembly by the Codification Commission on the subject of judicial reform, I beg leave to make the following observations:

Perhaps no attempt to present the subject to the profession and the public interested has hitherto been made so comprehensive in its completeness as the one on which I venture to make the few remarks now submitted.

It seems to embrace all, to have omitted nothing, and to have its parts appropriately fitting into each other.

I do not intend to attack nor even to criticise a system, nor to attempt to substitute one, but merely to make some general observations evoked by my own experience, in the hope that they may be found to support the views of some possessing the knowledge and ability to deal with this subject, and who may have given it a careful study.

A principal object to be kept in view seems to me to be to preserve what we have that is good, to be cautious in making changes, and to let these be based as much as possible on evident necessity, with as little as may be in the direction of what is merely experimental.

In revising the legislation for the last forty years on the subject under consideration, although we can discover many ameliorations, numerous incongruities wiped out and process of a special character facilitated, yet should we ask ourselves whether the expedients for delay and frustration of the operation of the law are less numerous and less effective than at the commencement of that epoch, whether the average delays of lawsuits are diminished, I fear we should have to answer in the negative. Are the ameliorating forces therefore little effective, or have they taken a wrong direction? I am convinced that no general satisfactory answer can be given to this question, and if we wish to elucidate we must discriminate, but my object is only to take a general view.

It seems to me that in one direction there has been too much legislation, and that is in attempting to regulate the proceedings in Court, and especially fixing the delays within which rights must be claimed.

While I hold that the defining of rights is the proper province of the legislature, the regulation of the machinery by which these are put in operation is best left to the action of the Courts. The legislature operates with a measure of iron yielding little to emergency. Courts with a stricter rule for cases in general can temper it by concessions to meet the justice of particular cases. To comprise as much as possible all cases, the legislative delays are usually made more liberal than those of the Courts, but necessarily less plastic. Loss of time in ordinary cases is more likely to result from the operation of the former than from that of the latter. While the former three day rule might seem sufficient to a Court which could always concede further delay for special cause, it could not perhaps be judiciously adopted by the legislature to form a general rule, and rules of practice can readily and conveniently be altered as the test of experience impresses itself directly upon the Judges who have the remedy in their own hands to apply according to the emergency. Many instances will readily occur in which the superior advantages will be apparent of the control of the Judges in matters reasonably falling within the province of Rules of Practice. I would suggest avoiding legislation as much as possible in matters merely regulating the exercise of rights and matters of practice, including all special formalities merely touching the mode or manner of proceeding, at least until it became apparent that the judges in this respect failed in their duty, or were unsuccessful in controlling litigants in the exercise of diligence. It seems to me that much time is lost with the formalities of inscriptions and notices to proceed, good in themselves but not always essential, and much whereof might frequently be avoided by a simple entry on the Roll by the judge in the presence of the parties,

and when they were by any reasonable means sufficiently warned, formal objections to the proceedings should at all times be admitted with great caution.

This but gives an instance of the superior advantage of Judges' rules over those fixed by the Legislature.

Perhaps the most important consideration for facilitating the administration of justice, is compelling the parties to place promptly before the Court the points really in dispute between them, and the avoidance of issues, designed only to embarrass an adversary; a familiar example of which may be given in the plea of *défense en fait* or general issue, but the same may be said of every special denial of a fact which the party making it knows to be true.

The articulation of facts has been tried as a remedy to this evil; it has not succeeded. Were it even better guarded than it has been and practised with a greater desire for its efficacy on the part of the profession than has been manifested, the measure of its success must still prove very incomplete, and I think not worth the experiment of attempting its amelioration.

A pleader in bad faith or with a view to delay will endeavour to spread the issues as much as possible, and to embarrass his adversary with as many difficulties as it is possible for him to raise. The only preventative suggested has been to visit him with the penalty of costs, but this has been unsuccessfully attempted during the last twenty years and upwards, while this system has been in force, nor can it ever under improved rules attain to any great measure of success. The pleader who is interested in creating embarrassments in framing the issues will be equally so in the construction of the articulation of facts; they may be framed in a complex form partly applicable and partly inapplicable. The labour of the Judge, already sufficiently taxed in the unravelling of legitimate issues, becomes ten times more so in framing out of such labyrinth of confusion the main issues actually raised. When that is done the separation of the portions of proof applicable to the issues on which one of the parties has failed, has proved a task of such difficulty that it has seldom been attempted, and when done, not over successful in the result. It is not a labour which ought to be imposed on the Judge, nor one that he can fulfil to the satisfaction of the parties. It is they and not he that should have the labour and responsibility of framing the issues that are to be tried. It is by compulsion much better done by them than by him. This could be easily accomplished by the adoption of a system of pleading so far scientific as to oblige all distinct defences to be arranged under separate heads, not to allow duplicity of pleading but to have each separate demand or substantive ground of defence kept distinct from others which might be available, and which could also be pleaded under distinct separate heads. Separate costs could be easily taxed on each of these separate issues against the party who had succumbed, whether Plaintiff or Defendant. Each would consequently have great interest in raising only such issues as he thought could be sustained, and there could be no great difficulty for a Judge when as a general rule taxing each issue against the party who had wrongfully raised it, giving such temperament to the rule as not to impose costs against a party losing an issue when he seemed on the whole to have had probable cause for raising the issue. By this means the responsibility of allegations could readily be made to fall upon the party affirming, and that with a distinctness of measure which involved no serious difficulty. The issues would be naturally narrowed to those only which the parties thought worth while seriously to raise; their interest would prompt them to make these as few as possible; the case would then come to be tried not on what the Judge supposed to be real issues as he gathered them from a mass of allegations which contained false and true issues intermingled, broadened to the extent that the parties might think desirable to embarrass each his adversary. The parties themselves would have the responsibility of framing their respective pretensions, and no arbitrary notion of the Judge could take this power out of their hands, as for instance, is the case in framing the questions to be submitted to a Jury, a system borrowed from the practice in Scotland under a Statute made for the introduction there of jury trial in civil cases; a system which even there, under a much better practice than we have, has been far from resulting in a success, and which here may be said to have been a miserable failure.

The articulation of facts, as practised here, should certainly be abolished. It has created

embarrassment and led to injustice. The instances in which it has proved of value, I think, are exceedingly rare; I have known of none. It might have been of value if framed by the Judge after a preliminary hearing of the parties specifying the articles on which verbal proof was permitted, but this imposes an unnecessary labor on the Judge, and sometimes deprives the parties arbitrarily of well founded pretensions, or necessitates a preliminary appeal, and would be difficult of adoption under our practice.

Anything that tends to entrap or overreach an adversary is contrary to the spirit of the age and equally contrary to justice. This is the nature of such interrogatories put by astute counsel to their adversaries, with, it may be, other objects, but often with a view of running the adversary into a contradiction with his pleadings, or procuring answers which are contradictory of each other.

These interrogatories in the form also of affirming facts are not so put, nor are they answered under the sanction of an oath. They are simply the acts of the attorney *ad litem*, and yet they have all the effect of binding the parties in the same manner as solemn admissions would do. All the advantages of such proceedings, and in a more legitimate way, can be gained by the submission in the ordinary way of interrogatories *sur faits et articles*, the answers to which are verified by the sanction of an oath. Why, then, complicate and multiply proceedings which tend to embarrass but are of no value as facilities for the decision of a cause? If neither declaration nor formal pleadings were required, such articulation might replace them, but as a double set or repetition of the same thing they are useless and, perhaps, even mischievous.

With regard to the reconstitution of courts for the trial of civil cases, by making them be composed of three judges, it seems to me that this would be a retrograde movement not warranted either by experience or the most approved theory; it would add to the expense and delay of proceeding and bring no compensating advantages. I am not aware that there has been any serious complaint against the one Judge system; it seems to me to have worked well. It is likely to secure more scrupulous attention to each individual case than the system of three Judges, where the responsibility is divided and each may be disposed to rely, more or less, on the attention given by his colleagues. With the one Judge, whatever theory is adopted is uninterruptedly followed out to its legitimate conclusion, and the numerous minor details of facts and of procedure settled without the necessity of the same work being gone over by two other Judges, thus leaving to a revision, when necessary, the correction of the theory, if wrong, by a greater number of Judges after a more solemn discussion. They, of course, have power over the whole facts of the case, but are likely to give great weight to the finding of the facts by the primary Judge, and their treble labor in this respect is confined to the few cases that pass into Review of the many that are tried.

This leads to the consideration of the Court of Review, which I think a most valuable institution, designed to correct the errors and render uniform the jurisprudence of the Superior Court, which should be one court administering one law, rendering its application as uniform as possible.

With the one Judge system the Court needed cohesion; the Review was designed to overcome isolation, to make as it were one family of the Court meeting in Council in Review to regularise and render uniform its jurisprudence, being a representative body so varying in its constituent parts by the change of Judges as to communicate its tone and impart its ideas to the whole Court.

In this view it was wrong to attempt to make it a Court of Appeals, usually composed of particular Judges and excluding the Judge who had pronounced the sentence brought under Review. This was not the object for which it was designed. The excluding of the primary Judge was an unwise innovation. I would on the contrary hold that in all cases where the original Judge did not sit in Review, it would be desirable for the Review Court to obtain from him the reasons for his opinion by personal consultation or otherwise, as circumstances admitted. An Appellant is naturally anxious to augment his chances of success: he fears and tries to guard against the prejudice of an opinion already formed, but the first judge equally with the appellate tribunal and with a better opportunity for forming a correct opin-

ion, must be presumed to have the same motive for the furtherance of justice; and no good reason would seem to exclude his participation in a decision the object of which was to sustain truth and right. He is frequently able to throw more light on the case than the advocates employed, and his colleagues are always ready enough to take a different view from him, if impressed with the belief that his theory or its application has been erroneous; nor is it unusual for a Judge to change his first impression, and his final deliberate opinion ought to be at least as good and to count for as much as that of another Judge. A consultation of Judges is certainly desirable to settle points tending to render uniform the course of decisions in the same Court.

With the adoption of a rule that would tend to restrict the choice of a President in Review, that Court ought as much as possible, or as convenience admitted, to be composed of all the Judges who administer justice within the division where the Court of Review has jurisdiction, so as to allow the ideas of all the Judges to react on each other, and thus to evolve a uniformity binding on the whole.

It is urged that the city Judges have superior advantages of experience and convenience in regard to consulting authorities, but such a Review would obviate these defects by affording the Judges from the country the opportunities now wanting to them.

As regards the ideas that have got abroad respecting decentralisation, the original design when the present location of the Courts and Judges was established, was not merely the scattering of the Judges into the country parts, but more essentially the bringing of justice to every man's door, that is, bringing the Courts within convenient distance of all the inhabitants of the Province. In this sense decentralisation of the administration of justice was urgently called for, and had become a necessity at the time of its introduction; it is more so than ever at the present day; but when the Legislature has prescribed the duties of the Judge, and when and where they have to be performed, it has fulfilled its functions, without taking up the question where the Judge has to reside. It is his business to be at hand when and where his duties call him. If he accepts an office that renders necessary his presence at particular times and places, he is bound to make himself available for these duties or is responsible for failing in their performance. Judges are properly appointed for the Province, their jurisdiction is everywhere within it, and to whatever locality they are assigned for such duties they should see to their performance in that locality: where they lodge or sleep is a secondary matter.

As regards the constitution of the Court of Appeals, I have a strong conviction that it is proficiency in its members, and not addition to thier numbers, that is desirable. In matters of skill, science or experience nothing is gained, although much may be lost, by multiplying those who have to deliberate and decide. The well-known opinion of Jeremy Bentham in regard to this is worthy of consideration, but more important still are the views of the late Daniel Webster, of his time the great statesman and jurist of the United States, more particularly enunciated in his speeches on the reorganization of the Supreme Court of the United States, where he so forcibly demonstrates the baneful influence of divided responsibility in a numerous judicial tribunal.

For my own part, I would have more confidence in an appellate tribunal of three than of five, assuming that its members were carefully selected in view of their ability and experience. A court composed of four members has been recommended by high authority as a rational number, judgments to be affirmed when it was equally divided, because they would thus have in their favor a majority of judges. This seems to me to be an unobjectionable court.

As regards the arrears in the Queen's Bench at Montreal, the recent arrangement of Terms will probably overcome the difficulty; it is one inherited by the present judges from their predecessors, and, I think, not increased, but slightly diminished. The delays of *délibérés* have also considerably diminished; although some additional celerity might possibly be obtained by the action of the judges, it would be at the risk of the judgments being more crude and less satisfactory. Whatever additional diligence might be bestowed on the part of the judges, it is to be remarked that this has little to do with the block occurring on the Roll. Very little of the regular Terms is taken up in rendering judgments, for which days

out of Term are usually appointed; and when it is taken into account that it is not unusual for a single case to occupy from two to three days in argument, the consumption of a great part of the available time is explained, from other causes than the inaction or want of diligence on the part of the judges. I fear that attempts to stimulate their activity would lead to bad judgments. As they always adjudge the causes argued, the most urgent necessity is that there should be more completed arguments, which could readily be accomplished if the Bar would agree to a rule—prevailing in at least some of the United States—limiting the argument of each counsel to an hour's duration.

We have no lack of reformers, each confident in the efficacy of his scheme, and each ready with unsparing hand to sweep away what already exists. It is a matter of surprise how little that amounts to a practical facility or a tangible amelioration is really suggested. It should be borne in mind that the reconstruction of the courts, the re-arrangement of the times and places of the holding of their sessions, the fixing anew of the legal delays of procedure, add but little to the facilities of legal business. With judges well disposed and lawyers attentive to their duties, extreme delays can be avoided; although legislation and extra diligence may shorten them, great rapidity is almost impossible of attainment.

It is the fashion with many writers on this subject to draw their inspiration from France—to look to her and to her alone for precedents; but her system is evidently unsatisfactory to her own people, for it is at this moment threatened with entire revolution. However much it may be esteemed by its admirers and how suitable soever it may be to an old and settled state of society having abundant suitable material to work it, it is little applicable to our condition. In France the Judges are very numerous; this may be a necessity from the extra amount of labour their system throws upon the Judges. The Bench is recruited from men for the most part little distinguished: they receive very small salaries; many of them have private means and accept the office in great part for the position and respectability it confers. The judicial labour is so distributed that no Judge is likely to be assigned a burthen greater than he can sustain. The amount of work done by them could not be obtained for the same money on this side of the Atlantic, nor would it be economy for us to muliply our Judges in the same proportion as theirs. I cannot think that their system would be desirable for us. I would rather look for precedents to England and to the neighbouring Republic. It will be found that the one Judge system is the rule there, except in the Appellate Courts, and that even in them the tribunals do not consist of large numbers,considering the wealth and population over which they have jurisdiction, nor have they anywhere an excessive number of Judges. Those who look especially to France for light would do well to see what France's neighbours think of her system. I might be allowed to refer to a recent publication of a very enlightened criticism on France, its people and institutions, by a German named Carl Hildebrund, where among other things the merits and defects of the French judicial system are very fairly described. We already possess much of the French system, I have no doubt that we may learn much and profit much by the study of it in its modern and improved condition; but other systems should not be overlooked, and we should approximate that which best suits our condition, without special regard to its origin.

It should not be forgotten that the substance of the matter lies in this, a certain amount of judicial work has to be performed. In what manner can this be attained with the greatest promptitude, the utmost efficiency and at the least cost? The mere facilities of procedure could be easily regulated even by the tribunals themselves without much interference by the Legislature. The re-construction of courts and terms is in itself of little account, the addition to the number of Judges is little required, provided the work be fairly distributed.

Some years ago a leading French statesman and member of the cabinet tried to have a measure passed through the Legislature, to dispense with a certain number of supernumerary judges, but being strenuously opposed by various influences, some of which can be readily imagined, he was obliged to abandon the attempt, remarking rather petulantly on the occasion: *Je vois que nous sommes dans un pays où il est plus difficile de supprimer un tribunal que de renverser un trône.* It would be remarkable if

in our efforts to remedy our present difficulties we should fall into others not so easily cured.

I have omitted to refer to one feature in our system which I intended to notice, viz., the limitation of appeals. In this respect I consider that our system is in advance of many others, especially those of some of the other Provinces. I would favor an extension of the limitation.

To be of any benefit to the party interested an appeal should be worth prosecuting. It seems to me that an appellant who takes a case to the Queen's Bench involving less than $500, not only does what is unjustifiable but what the legislature should prohibit.

Admitting that he succeeds and even establishes an important principle, which is seldom the object of any particular litigant, his success is likely to cost him twice as much as the sum involved, and his adversary has to pay bitterly for the fact that the lower court thought him in the right. The establishment of a principle can very well wait the occurrence of a case involving an amount making it worth while struggling for.

Should the parties happen to be country farmers not possessed of extraordinary means, nothing beyond enjoying a comfortable subsistence from properties of a moderate value, the loser can scarcely fail to be ruined, involving the loss of his farm; the winner also is very likely to meet with the same fate. Similar disaster overtakes others in like circumstances as to means. The case of farmers is given as an obvious illustration of frequent occurrence, and affords a practical application of the maxim *summum jus summa injuria.*

Save titles to lands, annual rents or rights in future, and some other cases excepted by the existing law, I would have the Legislature prohibit appeals to the Queen's Bench in cases where the amount in dispute is less than $500. Instances are of frequent occurrence where the amount involved is little over $100, yet the costs including those in appeal sum up to between $600 to $700.

The present heavy disbursements for taxes and fees other than those of the attorney are a serious burden upon the profession and the litigants, which it is to be hoped may soon be alleviated.

Respectfully yours,

A. CROSS.

Quebec, Sept., 1882.

THE QUEEN v. *WHELAN.*

To the Editor of the Legal News:

SIR,—I understand that a large number of copies of what purports to be my charge in the case of *Regina* v. *Whelan* are being circulated. As all the reports of what I said are very imperfect, and as some papers have referred to my remarks without having the candour even to attempt to report them, I shall feel obliged by your inserting in the *Legal News*, the following summary of what I did say.

Your obedient servant,

T. K. RAMSAY.

Montreal, 30th Sept. 1882.

Gentlemen of the Jury,—As has been remarked by one of the Counsel who addressed you, the present case is one of great importance. All prosecutions for libel are so, for it is the most annoying and provocative of all the minor offences. It is doubly important here, for libel has become so frequent and persistent of late in this country that it has grown almost into a national defect. It is therefore proper to keep clearly before us the principles of the law with regard to it. More than once it has been said that the writer of a newspaper stood in a different position with regard to the law of libel than others. Ignorant people are led into this error by the absurd use of the expression, "the liberty of the press." They think that it means that a man with a stump of a pen, ink, and a printing press at his command, writing a newspaper, has a privilege to publish, or, at all events, that he has some excuse for publishing what it would be criminal in others to write and publish. The liberty of the press is a very important matter, but what it really means is freedom from censorship. In some countries the government only allowed to be published what it desired to make public, and hence arose the demand for the liberty of the press.

The defendant is accused of a libel intended to injure the prosecutor Mr. McNamee. You have heard the article complained of read more than once, and I think none of you will question its defamatory character. I need not therefore enlarge on that at present. Now, by the law existing in this Province up to a very recent date, the truth of a libel could not generally be enquired into. But a case tried in this Court having

drawn attention to the difference which existed as to the law of libel here and elsewhere in the Dominion, a law rendering the criminal remedy for libel uniform was passed. The new Act was chiefly borrowed from an English Statute, known as Lord Campbell's Act. The object of that law was very good, but its execution is defective. It was evidently intended to extend the principle of privileged communication to certain communications made in good faith to the public. This is almost necessary in carrying out popular institutions, but what was done was to give the person accused the right to plead that what he said was true, and that it was for the public good it should be known. If he could prove *both* of these things he was absolved. This is evidently very dangerous, for it gives a great scope to malice. However, it is the law, and we must conform to it, but in doing so the defendant should be held to bring himself strictly within the exception the law has created; that is, he should establish the perfectly truthful and necessary character of his accusation. The law also allows him to take advantage of the plea of "not guilty" as well as of his special plea of justification, why, it is difficult to say.

The defendant in this case has taken advantage of both pleas. Before proceeding to examine the evidence of justification, I shall deal with three questions that have been raised by the defence.

First, it is said that the publication by Whelan is not proved. It is proved by Whelan's own signature and affidavit filed of record in the Peace Office, in which he declares himself to be a member of the *Post* Printing and Publishing Company, and its Managing Director. This is conclusive, unless he can establish that the writing complained of was published without his knowledge, consent or fault. This he has not attempted. Again, the whole tenor of the evidence shows he was the author of the article, and O'Neil, a person employed by the Company, positively swore that the *running* of the paper and the *issue of the editions* was all under the control of the defendant.

Second, it was said that the libel had been written at the invitation of the prosecutor, and a letter has been read in support of this proposition. When we come to look at the letter, we find that such a pretension is unsustainable. The prosecutor, annoyed by slanders and rumours, which he traced to defendant, offered to submit the question of their truth to arbitration, and he concludes by saying, in effect: If you won't do this, I challenge you to formulate your slanders, so that I may indict you for libel. This defendant does, and intimates in so doing that his proof is ready. This is not an authorization to formulate the libel, but a threat of consequences if he does.

The third point is a legal difficulty raised by the defence, with which I shall not trouble you, for though it is well-founded as a criticism of our Act, it has no bearing on this case.

We now come to the merits of the special plea. Curious to say, the defendant has imitated the forms of law in his attack on the prosecutor, and has headed his article "An Indictment." He then goes on to formulate five distinct charges against McNamee. The first is that he was one of the first to introduce Fenianism into Canada. Second, that having done so he betrayed to the Government for money those who had, at his suggestion, broken the law. Third, that before this he had sent a number of men to the States during the civil war there, under pretext of working on a railway, but really to be drafted into the American army, for which he was paid. Fourth, that he had offered a man $500 to shoot an enemy. And fifth, that having done all these things, he had thrust himself forward as a leading Irishman, and so driven almost all respectable Irishmen from taking part in Irish affairs.

It is evident that the last of these charges depends entirely on what precedes. It amounts to this,—for all these things already mentioned you are a shame to your name and race. I question much whether a general charge of this kind could in any case be justified. The libellous charge should be something precise that can be contradicted. Again, how can this charge be published for the public good? The charge that Mr. McNamee had introduced Fenianism into Canada was not very strongly denied by him, and it seems to be pretty clear, from the testimony of McGrath and O'Meara, that whatever the Hibernian Society was at first, it almost immediately became a Fenian organization, and O'Meara, on discovering that the funds were being secretly employed by O'Mahoney in New York, left the association.

McGrath says distinctly it was understood that the money would be employed in the purchase of arms to overturn the Queen's Government and to establish a republic in Ireland. If, therefore, the defendant had confined himself to this he probably would not have been prosecuted, or he would have readily been discharged. But the second charge is much more serious. To accuse a man of laying himself open by his acts to indictment, and to the risk of being hanged, is doubtless a libel, but the moral guilt is as nothing compared with the accusation of entrapping others into crime for the purpose of denouncing them to justice. It is impossible to conceive a more horrible accusation. Yet this is what is charged. Now, what is the proof on which the defence relies? It is said McNamee left the Hibernian Society just after founding it, and that his action points to the conclusion that he sold his knowledge of the organization to the Government. The defence does not even pretend that there is any evidence beyond this. The three witnesses on whom they relied to prove payments to McNamee deny all knowledge of anything of the kind, and one, being pressed, says not only he does not know of any such thing, but that, from what he knows, he does not believe it to be possible. I think the conclusion the defence wishes you to arrive at is most unfair. If Courts decided on such presumptions, no one would be safe against the wildest charge. But, in addition to this, the reason of McNamee's leaving the Hibernian Society is fully proved by one of defendant's witnesses.

The third accusation is almost as injurious as the second. It is a charge of having sold his countrymen to fight the battles of a foreign State—to become, in fact, akin to wholesale murderers. Again, of this charge there is no direct evidence, and, I must say, it seems to me to be in the last degree improbable. We are asked to believe that the prosecutor sent 2,000 men out of Canada in the space of three months, in violation of the Foreign Enlistment Act, and yet not one man, so entrapped, has been produced, and no charge was ever brought against him at the time. I was then the representative of the Attorney-General, and I had numerous cases of this kind. Public excitement against foreign enlistment was very great, and there was no difficulty in getting evidence and convictions against guilty parties. Yet, this man, who was ostensibly sending off men by the hundred to work on a railway that, we are told, did not exist, escaped without even a trial.

There is only one point, but I think not a very important one, in which I cannot agree with the prosecution, and it is as to the story McNamee told about the railway. It is certainly very odd that he should have gone to all this trouble and expense to raise men without some security from McDonald, the contractor, or from his principals. Again, McDonald's story does not agree with McNamee's. But these differences do not prove the accusation made by the defendant.

There is a little more evidence as to the shooting story than as to the others, but again I don't think it justifies defendant. Has he proved his accusation? If McNamee were on his trial for the offence of hiring O'Reilly to murder the person in question, would you, without any corroboration, believe O'Reilly's story told years after the event, and by an avowed enemy? If not, defendant has not proved his charge to be true. Besides, O'Reilly tells us he told Whelan that McNamee might be in joke. What right then had Whelan to make the charge implying necessarily that McNamee spoke in earnest?

If you are not convinced that all the accusations are proved to be true, and that it was for the public good that they should all be published, the prosecution is entitled to a verdict of guilty against the defendant. In conclusion, I have to repeat, as the contrary has been so earnestly insisted upon, that journalists have no more a mission to spread about evil stories of their neighbor than you or I have, and that when they speak of their duty—their sacred duty—in this respect, it is mere cant and rubbish. They have greater facility to do good or evil in this way than others and that is all, and therefore they should be held to the most rigorous account.

[Verdict, Sept. 28: *Not Guilty.*]

APPOINTMENTS.

The Hon. J. C. Aikins, senator, has been appointed Lieutenant-Governor of Manitoba, from the 2nd of December next, *vice* the Hon. J. E. Cauchon, whose term of office will expire on that day.