THE

LEGAL NEWS.

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CURRENT TOPICS AND CASES.

The vacancy which has existed on the Superior Court bench since the death of the late Chief Justice Johnson, has been filled by the appointment of Solicitor General Curran. Mr. Curran has been over thirty-two years at the bar, and although a good deal of his time of late has been occupied with parliamentary duties, he is known as an able lawyer and an eloquent public speaker. We have no doubt that Mr. Justice Curran will bring to the discharge of his judicial functions the energy which has characterized his career at the bar and in Parliament.

Mr. Justice Cross has not long survived his retirement from the Court of Queen's Bench. In fact his resignation was a step which ill-health obliged him to take. Although far from being a fluent speaker, and usually hesitating in oral judgments, Mr. Justice Cross was very profound and thorough in his work, and held high rank both as a lawyer and as a judge. Some of his written opinions are not only extremely lucid and able, but have a terse-

ness and literary stamp that render them models of judicial deliverances.

Some correspondence, which is inserted elsewhere as a matter of history, shows that resentment was expressed in certain quarters at the proposed filling of the position now held by Mr. Justice Curran by other than an English speaking judge. The gentleman whose name was first mentioned in connection with the position, it may be remarked, was personally worthy, and no objection could have been urged to the appointment on the score of ability or character; but the vacancy having occurred in one of the few positions held by the minority in this province, it was according to precedent that it should be filled by a gentleman of the same nationality. In a newspaper interview with Mr. Ives, which has appeared, that member of the government is represented as stating that the position was offered to no less than four English speaking members of the bar—Messrs. D. Macmaster, H. Abbott, J. S. Hall and A. W. Atwater, and declined by each in turn. Mr. McGibbon is also reported to have said that he might have had it, but was unwilling to accept it. It is unfortunate that the smallness of judicial salaries in this country prevents lawyers in remunerative practice from accepting seats on the bench. But if the leading English lawyers persistently refuse judicial positions, they cannot complain if the bench be soon entirely occupied by French speaking judges, for we do not think a government would be justified in lowering the standard by the appointment of second or third rate men merely because they are English-speaking so long as better men of the other nationality can be obtained. Lawyers should be willing to make some pecuniary sacrifice for a position on the bench. Although the salary is small, discreditably small, it must be remembered that there is the provision for a pension which adds to the value of the position. But an earnest effort should be made to pay the city judges better.

A meeting of the Montreal bar, which was rather thinly attended, adopted a resolution adverse to the admission of Bachelors of Arts to the study of the profession without examination by the bar. This is part of the reaction caused by the recent proposal to admit graduates in law to the practice of the profession without examination. There is no real analogy between the two things, and we hope the law as it stands with regard to graduates in Arts will be let alone. The meeting at Montreal was so small that it was evident that no great interest was felt in the matter, and resolutions passed at small meetings in favor of repealing laws do not possess much significance.

SUPREME COURT OF CANADA.

OTTAWA, 6 May, 1895.

Ontario.]

LEWIS v. ALEXANDER.

Municipal corporation—Petition for drain—Use of drain as common sewer—Connection with drain—Nuisance—Liability of householder.

Ratepayers of a township petitioned, under sec. 570 of the Municipal Act of Ontario, for a drain to be constructed "for draining the property" described in the petition. The township was afterwards annexed to the adjoining city, and the drain was thereafter used as a common sewer, it being as constructed fit for such use. An action was brought against a householder, who had connected the sewage from his house with said drain, for a nuisance resulting therefrom at its outlet.

Held, affirming the decision of the Court of Appeal (21 Ont. App. R. 613) Taschereau and Gwynne, JJ., dissenting, that sec. 570 empowered the township to construct a drain not only for draining off surface water but sewage generally, and the householder was not responsible for the consequences of connecting his house with the drain by permission of the city.

Where a by-law provided that no connection should be made with a sewer except by permission of the city engineer, a resolu-

tion of the city council granting an application for such connection on terms which were complied with and the connection made was a sufficient compliance with said by-law.

Appeal dismissed with costs.

McCarthy, Q. C., & Fraser, for appellant.
Gibbons, Q. C., & Cameron, for respondent.

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6 May, 1895.

Ontario.]

TORONTO RY. CO. v. CITY OF TORONTO.

Negligence—Obstruction of street—Accumulation of snow—Question of fact—Finding of jury.

An action was brought against the city of Toronto to recover damages for injuries incurred by reason of snow having been piled on the side of the streets, and the Street Railway Company was brought in as third party. The evidence was that the snow from the railway tracks was piled upon the roadway, and that from the sidewalks was placed there also. The jury found that the disrepair of the street was the act of the Railway Company which was therefore made liable over to the city for the damages assessed. The company contended on appeal that the verdict was perverse and contrary to evidence.

Held, affirming the decision of the Court of Appeal, that under the evidence given of the manner in which the snow from the track had been placed on the roadway immediately adjoining, the jury might reasonably be of opinion that if it had not been so placed there, the accident would not have happened, and therefore the verdict was not perverse.

Appeal dismissed with costs.

Laidlaw, Q.C., & Bicknell, for appellant.
Fullerton, Q.C., for respondent.

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6 May, 1895.

Ontario.]

NORTHERN PACIFIC RY. CO. v. GRANT.

Railway Company—Carriage of goods—Carriage over connecting lines—Contract for—Authority of agent.

E., in British Columbia, being about to purchase goods from G. in Ontario, signed, on request of the freight agent of the North-

ern Pacific Railway Company in British Columbia, a letter to G. asking him to ship goods via G. T. Railway and Chicago and N. W., care N. P. Railway at St. Paul. This letter was forwarded to the freight agent of the Northern Pacific Railway Company at Toronto, who sent it to G. and wrote him, "I enclose you card of advice and if you will kindly fill it up, when you make the shipment send it to me, I will trace and hurry them through and advise you of delivery to consignee." G. shipped the goods as suggested in this letter, deliverable to his own order in British Columbia.

Held, affirming the decision of the Court of Appeal (21 Ont. App. R. 322), and of the Divisional Court (22 O. R. 645), that on arrival of the goods at St. Paul's, the N. P. Railway Company was bound to accept delivery of them for carriage to British Columbia and to expedite such carriage; that they were in the care of said Company from St. Paul's to British Columbia; that the freight agent at Toronto had authority so to bind the Company; and that the Company was liable to G. for the value of the goods which were delivered to E. in British Columbia without order from G. and not paid for.

Appeal dismissed with costs.

McGregor, for the appellant.
Wells and *U. Nesbitt*, for the respondents.

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6 May, 1895.

Ontario.]

THE TORONTO RAILWAY CO. v. GRINSTED.

Negligence—Street railway—Ejectment from car—Exposure to cold —Consequent illness—Damages—Remoteness of cause.

In an action by G. against a street railway company for damages in consequence of being wrongfully ejected from a street car, the evidence was that G. had paid his fare and been transferred to the car from which he was ejected; that he was in a state of perspiration from his altercation with the conductor, and had to wait twenty minutes for another car; and that the weather being severe he caught cold and was laid up for some time with bronchitis and rheumatism. His medical attendant testified that when he left the car his physical condition was such as would make him liable to contract the illness which

ensued. The jury gave a verdict for G., severing the damages, allowing $200 for the ejectment, and $300 for the illness, finding that it was a natural and probable result of the ejectment. The company appealed from the assessment of $300.

Held, affirming the decision of the Court of Appeal, Gwynne, J., dissenting, that under the circumstances the jury were justified in finding that the illness was the natural and probable result of the ejectment, and that the cause of damage was not too remote.

Appeal dismissed with costs.

Bicknell, for appellant.
McWhinney, for respondent.

Ontario.] 6 May, 1895.

TORONTO RY. CO. v. GOSNELL.

Negligence—Street railway—Management of car—Excessive speed—Contributory negligence.

G., while driving a coal cart along one of the streets of Toronto, started to cross a street railway track, and before getting across the cart was struck by a car coming along the track, and G. was thrown out and injured. In an action against the Railway Company for damages the evidence was that G. did not look to see if a car was coming before going on the track; that when he went on the car coming was 70 or 80 feet away; and that it was going at an excessive rate of speed. A verdict for G. was sustained by the Divisional Court and Court of Appeal.

Held, affirming the decision of the Court of Appeal (21 Ont. App. R. 553) Gwynne, J., dissenting, that the verdict should stand; that persons crossing the tracks had a right to rely on the cars being driven moderately and prudently, and if not so driven the Company was responsible for injury resulting therefrom; and that G. was not guilty of contributory negligence, for if he had looked he would have seen that he had time to cross, assuming that the car was going at a moderate rate of speed, and he should not be in a worse position by not looking than he would have been otherwise.

Appeal dismissed with costs.

Osler, Q. C., & Laidlaw, Q. C., for appellant.
Fullerton, Q. C., for respondent.

Quebec.] 6 May, 1895.

LABERGE v. EQUITABLE LIFE ASSURANCE SOCIETY.

Contract—Insurance company—Appointment of medical examiner—Breach of contract—Authority of agent.

The medical staff of the Equitable Life Assurance Society, at Montreal, consists of a medical referee, a chief medical examiner, and two or more alternate medical examiners. In 1888, L. was appointed an alternate examiner in pursuance of a suggestion to the manager by local agents that it was advisable to have a French-Canadian on the staff. By his commission L. was entitled to the privilege of such examinations as should be assigned to him by, or required during the absence, disability or unavailability of, the chief examiner. After L. had served for four years it was found that his methods in holding examinations were not acceptable to applicants, and he was requested to resign, which he refused to do, and another French-Canadian was appointed as an additional alternate examiner, and most of the applicants thereafter went to the latter. L. then brought an action against the company for damages, claiming that on his appointment the general manager had promised him all the examinations of French-Canadian applicants for insurance. He also alleged that he had been induced to insure his own life with the company on the understanding that the examination fees would be more than sufficient to pay the premiums, and he asked for repayment of amounts paid by him for such insurance.

Held, affirming the decision of the Court of Queen's Bench (Q. R., 3 Q. B. 512) which reversed the judgment of the Superior Court (Q. R., 3 S. C. 334), that by the contract made with L. the company were only to send him such cases as they saw fit, and could dismiss him or appoint other examiners at their pleasure; that the manager had no authority to contract with L. for any employment other than that specified in his commission; and that he had no right of action for repayment of his premiums, it being no condition of his employment that he should insure his life, and there being no connection between the contract for insurance and that for employment.

Appeal dismissed with costs.

Greenshields, Q. C., for appellant.

Macmaster, Q. C., for respondent.

Ontario.] 6 May 1895.

HAMILTON BRIDGE CO. v. O'CONNOR.

Negligence—Use of dangerous machinery—Orders of superior—Reasonable care.

O. was employed in a factory for the purpose of heating rivets, and one morning, with another workman, he was engaged in oiling the gearing, etc., of the machinery which worked the drill in which the rivets were made. Having oiled a part the other workman went away for a time during which O. saw that the oil was running off the horizontal shaft of the drill, and called the attention of the foreman of the machine shop to it and to the fact that the shaft was full of ice. The foreman said to him, "run her up and down a few times and it will thaw her off." The shaft was seven feet from the floor, and on it was what is called a buggy which could be moved along it on wheels. Depending from the buggy was a straight iron rod, into the hollow end of which was inserted the drill secured by a screw, and attached to the buggy was a lever over six feet long. O., when so directed by the foreman, tried to move the buggy by means of the lever, but found he could not. He then went round to the back of the spindle and not being able then to move the buggy, came round to the front, put his two hands upon a jacket around the spindle and put the weight of his body against it; it then moved and he stepped forward to recover his balance, when the screw securing the drill caught him about the middle of the body and he was seriously injured. In an action against his employer for damages it was shown that O. had no experience in the mode of moving the buggy; that the screw could have been guarded, and that the mode adopted by O. was a proper one.

Held, affirming the decision of the Court of Appeal, (21 Ont. App. R. 596), and of the Divisional Court (25 O. R. 12), Gwynne, J., dissenting, that the jury were warranted in finding that there was negligence in not having the screw guarded; that as the foreman knew that O. had no experience as to the ordinary mode of doing what he was told he was justified in using any reasonable mode; that he acted within his instructions in using the only efficient means that he could; and that under the evidence he used ordinary care.

Appeal dismissed with costs.

Bruce, Q. C., for the appellants.

Staunton for the respondents.

31 Oct., 1895.

New Brunswick.]

MERRITT v. HEPENSTAL.

Negligence—Master and servant—Contributory negligence—Admission of evidence.

M., a grocer, sent out a man in his employ with a horse and wagon to deliver parcels. After delivering all but one, the man went to his supper, after which, without returning to the place where he had been before starting for home, he proceeded to deliver the remaining parcel some two or three blocks distant therefrom, and on his way a child was struck by the wheel of his wagon and seriously injured. In an action by the father of the child against M., evidence was admitted, subject to objection, of the nurse who attended the child, to the effect that, in her opinion, a urinary trouble, from which the child suffered was the result of the accident. The medical attendant testified that such trouble might have been caused by the accident, but that it was a very common thing with children. The judge who tried the case, without a jury, gave judgment for the plaintiff, with $250 general damages, and $50 damages for the urinary trouble. A verdict for defendant or a new trial was moved for on the grounds of contributory negligence; that when the accident occurred the driver had not returned to his master's employment; that the evidence of the nurse was improperly admitted, and that there was no evidence to justify the $50 assessed as special damages. The judgment of the trial judge having been sustained by the full Court,

Held, affirming the decision of the Supreme Court of New Brunswick, that the servant of M., having one parcel to deliver after his supper, resumed his master's employment as soon as he started for the purpose and with the intention of delivering it, and consequently was on his master's business when the accident happened; that the evidence showed negligence on the part of the servant in not looking out for persons on the street, and there was no evidence of contributory negligence; that the evidence of the nurse, not being given as expert evidence was admissible, but if not, the case having been tried without a jury, the Court on appeal could deal with the whole evidence just as the trial judge could, and there was sufficient to warrant the

verdict for the plaintiff if the testimony of the nurse was rejected; and that the whole of the damages assessed were fully warranted.

Appeal dismissed with costs.

C. A. Stockton, for appellant.

Armstrong, Q. C., for respondent.

"*BREACH OF TRUST.*"

We call attention here to the meaning that has been judicially attached to the phrase "Breach of Trust," as it occurs in the Statute-book, and hereon, first, to that phrase as used in section 6 of the Trustee Act, 1888, now replaced by section 45 of the Trustee Act, 1893. These two sections, for the purpose of the phrase now under consideration, are identical; and we therefore only transcribe the latter, which is as follows: "Where a trustee commits a *breach of trust* at the instigation or request, or with the consent in writing, of a beneficiary, the High Court may, if it thinks fit (and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation), make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate, by way of indemnity to the trustee or person claiming through him."

The "instigation or request" of a beneficiary need not be in writing; the words "in writing" are applicable to cases where the 'consent' only of a beneficiary is relied on (*Griffiths* v. *Hughes*, 62 Law J. Rep. Chanc. 135; L. R. (1892) 3 Chanc. 105; a decision approved by Lord Justice Lindley in *In re Somerset*, 63 Law J. Rep. Chanc. 46; L. R. (1894) 1 Chanc. 231).

In re Somerset was a decision of the Court of Appeal (Lord Justices Lindley, Smith, and Davey) which reversed Mr. Justice Kekewich on the construction of "Breach of Trust" as used in section 6 of the act of 1888; but herein, as we have said, that section does not differ from section 45 of the Act of 1893. The keynote of the decision was given by Lord Justice Lindley when he said: "The section ought not to be construed as if the word 'Investment' had been inserted instead of 'Breach of Trust.'"

The facts, briefly stated, were that the beneficiary wished that £35,000 trust money should be shifted and invested on Lord Hill's

Hawkestone estate, because he thought the fund would thereby be better secured; he knew the estate, its extent and locality; he undertook the negotiations with Lord Hill as regards the proposed advances; he pressed the trustees to make advances against the Hawkestone estate, and signed a written consent in that behalf—but he did *not* know that the rental of that property was only £1,079 a year, and there was evidence that he was told by Lord Hill's agent that it was £1,700; and he did not know of the surveyor's report and valuation (obtained by the trustees), from which it appeared that the estimated value of the estate (£42,750) could only be arrived at by taking the real rental at forty years' purchase. The Court found that the security was wholly insufficient for an investment of trust funds amounting to £35,000, and held that, accordingly, there had been a breach of trust, but not such a breach of trust as entitled the trustees to indemnity out of the interest of the beneficiary, because though he had instigated the *Investment* he had not instigated or requested or consented to the "Breach of Trust."

This is a matter of so much practical importance, and the case seems so near the line drawn by the provision, that a closer attention to the judgments will, probably, not be unacceptable.

The "Breach of Trust" was not the investing of trust moneys on the Hawkestone estate; it consisted in investing *too much* on that property. Hereon the beneficiary had no knowledge, and, as remarked by Lord Justice Smith, "ordinarily, a person can only instigate, request, or consent to what he knows." So Lord Justice Davey said: "In order to bring the case within the section, the beneficiary must have requested the trustee to depart from and go outside the terms of his trust. It is, of course, not necessary that the beneficiary should know the investment to be in law a breach of trust, but he must know the facts which constitute the breach of trust."

With, probably, greater breadth of view, Lord Justice Lindley dealt with the case, and the principles for construing the section, as follows: "In order to bring a case within this section, the *cestui que trust* must instigate, or request, or in writing consent to, some act or omission which is *itself* a breach of trust, and not to some act or omission which only becomes a breach of trust by reason of want of care on the part of the trustees. If a *cestui que trust* instigates, or requests, or consents in writing to, an in-

vestment not in terms authorized by the power of investment, he clearly falls within the section; and in such a case his ignorance or forgetfulness of the terms of the power would not protect him —at all events, not unless he could give some good reason why it should—*e.g.* that it was caused by the trustee. But if all that a *cestui que trust* does is to instigate, or request, or consent in writing to, an investment which is authorized by the terms of the power, the case is very different. He has a right to expect that the trustees will act with proper care in making the investment, and if they do not, they cannot throw the consequences on him, unless they can show that he instigated or requested, or consented in writing to their non performance of their duty in this respect."

Note.—For the rule of the Court, independently of statute, giving a trustee recoupment from a beneficiary instigating a breach of trust, see *Raby* v. *Ridehalgh*, 24 Law J. Rep. Chanc. 528; 7 De Gex M. & G. 104; *Sawyer* v. *Sawyer*, 54 Law J. Rep. Chanc. 444; L. R. 28 Chanc. Div. 595.

"FRAUDULENT BREACH OF TRUST."

The word "Fraudulent" preceding the phrase "Breach of Trust," of course, alters its complexion. By it personal fraud is added, and the breach of trust must then be one accomplished or aided by the personal fraud of the trustee whose conduct is impugned.

This phrase is used in section 8 of the Trustee Act, 1888—a section of that Act which remains unrepealed by the Trustee Act, 1893. By the section just mentioned a trustee may plead the Statute of Limitations in any action against him, "*except* where the claim is founded upon any *fraud or fraudulent breach of trust* to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof, still retained by the trustee or previously received by the trustee and converted to his use." The exception here, as to "fraud or fraudulent breach of trust," connotes actual fraud to which a trustee is party or privy—*i.e.* one in which "he has personally in some way participated" (*per* Lord Justice Lindley, *Thorne* v. *Heard*, 63 Law J. Rep. Chanc. 360; L. R. (1894) 1 Chanc. 599).

The phrase "Fraudulent Breach of Trust" also occurs in section 30 of the Bankruptcy Act, 1883, by which section an order of discharge in bankruptcy does not release the bankrupt from any debt or liability incurred by "any fraud or fraudulent breach of

trust." That section replaces section 49 of the Bankruptcy Act, 1869, in which the phrase was 'fraud or breach of trust'; on which phrase see *The Emma Company* v. *Grant*, 50 Law J. Rep. Chanc. 449; L. R. 17 Chanc. Div. 122; *Ramskill* v. *Edwards*, 55 Law J. Rep. Chanc. 81; L. R. 31 Chanc. Div. 100; see also hereon Williams' "Bankruptcy Practice," 6th edit. pp. 96, 97.—*Law Journal* (London).

JUDICIAL APPOINTMENTS.

The following correspondence has been made public:—

MONTREAL, June 23, 1894.

To the Right Honorable SIR JOHN S. D. THOMPSON, K.C.M.G., Ottawa:

DEAR SIR JOHN THOMPSON,—In view of the fact that several items have appeared in the press, stating that the judge to be appointed to succeed the late Sir Francis Johnson is to be a French Canadian, and inasmuch as considerable apprehension exists, not only among the English-speaking members of the Bar, but among that section of the community generally, lest there should be some foundation for the rumor, I venture respectfully to say that any such nomination would cause very grave dissatisfaction.

It is only common fairness that Judge Johnson should be succeeded by an English-speaking Protestant judge. The judicial appointments now held by English Protestants in this province are few enough, in all conscience, and entirely disproportionate, both to the volume and importance of the legal business contributed by the class they are supposed to represent, and to the general interests of that class in the province.

If this proposition is controverted, facts and figures can be easily adduced. I hesitate, however, to enter upon a distasteful task, unless absolutely necessary, and I trust and hope that you will be able to assure me that it is not the intention of the Government to name, in Judge Johnson's stead, any other than an English Protestant lawyer, and thus to render a regrettable discussion unnecessary.

Permit me further to say that whilst I am disposed to be tenacious of what I consider to be the rights of the numerical minority to which I belong, and to resent firmly and decidedly any violation of them—especially in the present instance—I do not desire for a moment to question the ability or fairness of the French judges, for whose impartiality I have almost without exception a high respect.

I would add that in bringing this letter to your personal attention, rather than through the channel of your colleagues from Quebec, I do so for two reasons: firstly, as Minister of Justice, your own reputation is peculiarly involved in the matter of judicial appointments, and, secondly, I feel, and feel strongly, that such questions should be dealt with apart from local or political considerations, and in a spirit of equity and fairness.

I would, in conclusion, explain that I am not at present referring to the office of Chief Justice, but solely to the vacancy on the Superior Bench, caused by the death of an English-speaking Protestant judge. I should be delighted to indulge in the hope that one might look forward to the time when in Canada, as elsewhere, the only consideration to be thought of in judicial appointments might be the fitness of candidates. One must, however, take things as one finds them, and, being as they are, the other claims I have referred to are, in my humble opinion, entitled to be respected.

I need hardly say that I shall be gratified to hear from you on the subject at your early convenience.

With much consideration, I am, dear Sir John Thompson,

Yours very faithfully,

(Signed) R. D. McGIBBON.

Honorable J. A. OUIMET, Q.C., M.P., Minister of Public Works, Ottawa :

MY DEAR SIR,—In connection with the vacancy upon the Bench of the Superior Court, caused by the death of the late Sir Francis Johnson, you are probably aware that an effort is being made by some of the French Canadian members of the Bar to have a French Canadian appointed in the place of the deceased judge.

You must be aware that the position is one which having been filled by an English Protestant, fairly and properly belongs to that element, and that unless some very substantial reason exists for a disturbance of the proportion upon the Bench, and can be adduced, the successor of the lamented Chief Justice should be one speaking the same language and professing the same faith.

I am quite persuaded, as are almost all the English members of the Bar, and, I may add, every member of the English commercial community to whom I have spoken on the subject, participates in the same view, that not only is there no reason for any effort to interfere with the existing state of things, but that on the contrary, if any change is to be made, it should be rather in the direction of increasing the representation of the English community upon the Superior Court Bench. However, dealing with the case actually in hand, I trust that you, as one of the ministers from the Province of Quebec, and as the one supposed to represent the district of Montreal, will see that justice and fair play are done to the numerical minority in your district.

You will pardon me if I ask you to acquaint me with the attitude which you propose to assume with regard to this appointment, as, in the case of the last appointment upon which I had the honor of addressing you, until the appointment was actually made—on the score that Mr. Vanasse was a broken-down politician who had to be provided for, and that, therefore, the position, which, up to that time, had always been filled by an Englishman must be given to him,—I had not the pleasure of hearing from you.

In the present instance the interests involved are too important—and in this view I am sure you will agree with me—to leave any precaution which can be taken, neglected, and it is for this reason that I venture respectfully to ask that you give me the information I desire.

I may state that the English population of Montreal, both professional and mercantile, feel very strongly on this subject, and if we are to be exposed to a contest with respect to every vacancy in the public service, the sooner we know it the better.

You will pardon my frankness on the subject. I have addressed a remonstrance to Sir John Thompson, but think it only proper, in view of the unfortunate efforts which have been instituted, that you should be apprised of the views which I, in common with most Englishmen in your district, entertain with respect to this appointment.

I am, yours faithfully,

(Signed) R. D. McGIBBON.

MONTREAL, September 24, 1895.

(*To the Editor of the Gazette.*)

SIR,—I have no desire at present to enter into any lengthy criticism on your article of this date, but as completely answering the conclusion at which you so laboriously arrive, I beg to enclose you a copy of a representation made to Sir John Thompson, before his lamented death, and presented to him by Sir Donald Smith, which I think will completely sustain the position which I have taken.

I have no desire to discuss now the copy-book philosophy of some junior members of the Bar, who so sententiously enunciated the platitudes you refer to. I would simply ask one question. How is it, if merit has been the consideration in the appointment of judges in the past, that men like Edward Carter, W. H. Kerr, T. W. Ritchie, Strachan Bethune, L. H. Davidson, John L. Morris, and others have never received the appointments to judgeships, while it is generally admitted that there have been in the past, and are at present, on the Superior Court Bench, and other benches, gentlemen of decidedly inferior legal attainments and abilities.

The *Gazette* has never, in my humble opinion, been tenacious of the rights of the Protestant minority in Quebec, nor can I claim for the Bar that it has ever respected itself sufficiently; but it is a long lane that has no turning, and I believe that the time has now come when we ought to assert ourselves.

I therefore humbly request the right to address you further on the subject at a later day, asking that you will be good enough to publish the enclosed copy of memorial to Sir John Thompson.

I have the honor to be, Sir,

Your obedient servant,

R. D. McGIBBON.

(COPY.)

To the Honorable Sir J. S. D. THOMPSON, Minister of Justice and Attorney-General of Canada:

HONORABLE SIR,—The undersigned beg respectfully to represent that the vacancy on the Judicial Bench of the Superior Court for the District of Montreal, caused by the death of the late lamented Sir Francis Johnson, should be filled by the appointment of an English-speaking member of the Bar; and would advance the following reasons in support of their representation:—

1. The vacant seat on the Bench was occupied by an English-speaking judge.

2. It has always been the custom to fill vacancies on the Bench with members of the Bar speaking the same language as the judge vacating the seat.

3. That out of the twenty-eight judges actually appointed for the Province of Quebec, out of the thirty authorized by the revised statutes of Quebec, there are only seven English-speaking judges on the Bench.

We have the honor to be, Sir, your obedient servants,

Meredith B. Bethune, L. H. Davidson, J. E. Martin, C. J. Fleet, R. C. Smith, C. B. Carter, John Dunlop, W. W. Robertson, R. D. McGibbon, H. Abbott, Chas. A. Duclos, W. D. Lighthall, F. Topp, M. Hutchinson J. N. Greenshields, C. H. Stephens, H. A. Hutchins, C. Lane, Jas. O'Halloran, Q.C., J. F. Mackie, R. T. Heneker, N. T. Rielle, Frederick E. Meredith, Francis McLennan, M. Goldstein, A. G. Cross, M. S. Lonergan, J. P. Cooke, Peers Davidson, Geo. F. O'Halloran, R. A. E. Greenshields, A. G. B. Claxton, D. McCormick, A. W. Atwater, Seth P. Leet, Selkirk Cross, Albert J. Brown, Chas. M. Holt, Jas. S. Buchan, W. E. Dickson, Henry Tucker, Charles Raynes, J. Cassie Hatton.

MR. JUSTICE CURRAN.

Mr. Curran is a son of the late Charles Curran, a native of county Down, who came to Canada early in the present century. He was born in Montreal, February 22nd, 1842, and educated at St. Mary's college, Montreal, and at Ottawa university. He graduated as a B. C. L. at McGill in 1862. He was called to the Bar in 1863, and was appointed a Q.C. in 1882. The Manhattan college, under the presidency of Cardinal McClosky, conferred the degree of LL. D. on him in June, 1881, an honor also conferred on him by Ottawa university. He unsuccessfully contested Shefford for the Commons at the general elections of 1874, being defeated by the late Hon. L. S. Huntington. He was first returned to Parliament for Montreal Centre in 1882, was re-elected in 1887 and at the last general election. He was appointed Solicitor-General on the 6th December, 1892.