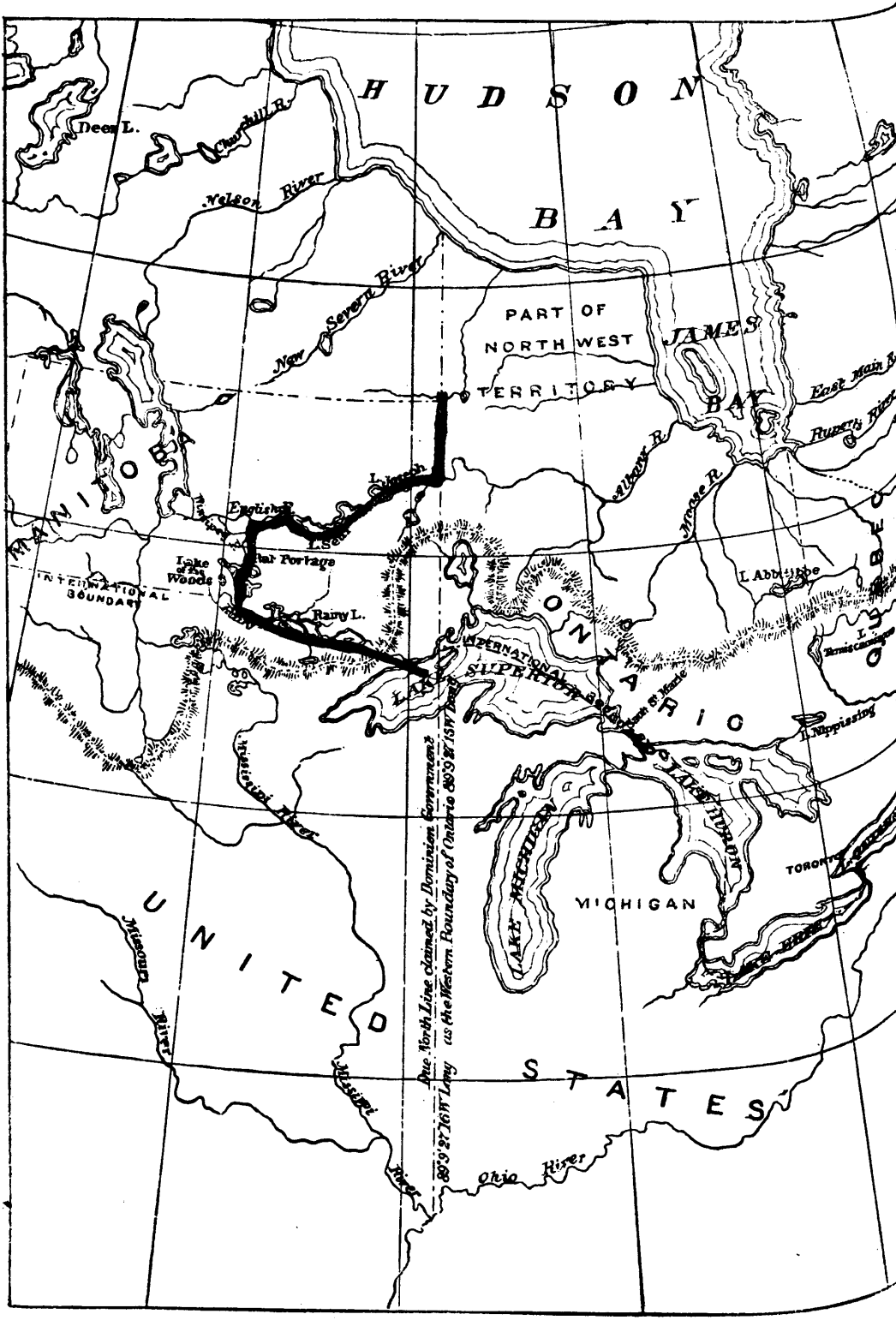
HUDSON
BAY
Deer L.
Churchill R.
Nelson River
New Severn River
PART OF
NORTH WEST
TERRITORY
JAMES
BAY
East Main R.
Rupert's River
MANITOBA
Albany R.
Moose R.
English R.
L. Winnipeg
Lake of the Woods
Rainy Portage
INTERNATIONAL BOUNDARY
Rainy L.
L. Abbitibbe
ONTARIO
LAKE SUPERIOR
Sault Ste Marie
L. Nipissing
LAKE HURON
LAKE MICHIGAN
MICHIGAN
TORONTO
Mississippi River
UNITED STATES
Missouri River
Mississippi River
Ohio River
True North Line claimed by Dominion Government
89° 9' 27" W Long. as the Western Boundary of Ontario
89° 32' 15" W Long.

The Legal News.

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THE BOUNDARY QUESTION.

We have now before us the text of the report of the Judicial Committee on the boundary question. It may have the advantage of setting at rest a troublesome dispute, but there its merit ends. Both in matter and in form it is disappointing. It would have been satisfactory, for those who have taken an interest in the question, to know the grounds of the decision, and the respect and confidence with which their Lordships' opinion would have been received by the public generally, would not have been diminished had they condescended to explain what part of the voluminous evidence had led them to the extraordinary conclusion at which they have arrived. Their lordships must be dwelling in the murkiest mists of officialdom if they fancy that, in this skeptical age, an unreasoning opinion will be received as gospel, even in a colony. It is not safe to presume too far on the assumption of colonial dullness, and our bump of veneration is not so developed as to induce us to accept, with implicit faith, the edicts of oracular wisdom.

The judicial committee has made answer, such as it is, to the three questions put. First, they hold that the award was not binding. As an abstract proposition there was really no doubt on this point. It will, however, be remembered that Mr. Mowat thought it of so much importance that in the Lieutenant-Governor's speech, it was specially alluded to as a triumph of the Attorney General's diplomacy, that the validity of the award was to be treated as a preliminary question. The learned gentleman has lost the saddle but not the horse, for their Lordships hurry on to say that, nevertheless, the boundary lines laid down by the award, so far as they relate to the territory in dispute between Ontario and Manitoba, are "substantially correct."

Perhaps it may be a subject of regret, that the judicial committee, being of the opinion that the award was "substantially correct" so far, did not confine themselves to confirming what they could not amend. The terms of the award are, at all events, coherent, those of the judicial opinion are not.

It is not the object of this paper to discuss the verbal inaccuracies of their Lordships' composition. We need not stop to enquire how the true boundary between the *Western* part of the Province of Ontario, and the *South-Eastern* part of the Province of Manitoba can ever be described, nor is it necessary to take up the point raised so effectually by Mr. W. Mc. D. Dawson. As plain as words can put it, the report says, after describing another line as the "true boundary," that a line drawn due north from the confluence of the rivers Mississippi and Ohio "forms the boundary eastward of the Province of Manitoba." What is amusing in the matter is that this palpable blunder of redaction makes the judicial committee say precisely what the act of 1774 enacted in terms too clear for equivocation. But the Act of 1774 dealt with what was then British territory, whereas their Lordships have coolly annexed a part of the United States.

The object of this paper is to point out the strength of the old argument, now that we have a proposition, defined in a manner, to combat. We shall, therefore, presume that their Lordships intended to answer the question secondly submitted to them, that is what was, on the evidence, the true boundary *between* the Provinces; that is, that they did not intend to go further than to describe, as the dividing line, any line that had not Ontario on one side and Manitoba on the other, and that the allusion to the international line and to the due north line was only incidental, or to exclude the presumption that Manitoba extended to the south of Ontario, or that Ontario extended north of the Albany River. This will reduce the report to that part of the line beginning at the Lake of the Woods, and going "to the most north-western point of that lake *as* runs northward," &c., to where it strikes the due north line from the confluence of the Mississippi and Ohio Rivers.

In this way we shall cut off the somewhat alarming *tracé* their Lordships have indulged in of the international boundary between

Canada and the United States, and the remarkable admission that the due north line is the eastern boundary of Manitoba, and escape lengthy discussion as to matters not essential.

In order that our descriptive powers may not turn out to be as feeble as those of their Lordships, a map has been prepared to show what it is presumed they meant to hold. By looking at that map and following the red line, it will be seen that the line bounds Ontario on the south from the west of Lake Superior to the Lake of the Woods, by the international line, then by the Lake of the Woods and the flow of waters into that lake up to the head waters of Lake Seul, then from the head of Lake Seul to the head of Lake St. Joseph, till it reaches the due north line from the confluence of the Mississippi and Ohio Rivers, and then, so far as Ontario is concerned, it ends. Their Lordships then evidently intend to say that the due north line there struck forms the eastern boundary of Manitoba, so far as that Province goes to the north.

In a most inartistic way, then, they have answered the second question affirmatively and negatively. Affirmatively in this, that Ontario and Manitoba are coterminous from the Lake of the Woods to the point described in Lake St. Joseph; and negatively, that Manitoba does not touch the international line east of the Lake of the Woods, and that Ontario does not go north of the Albany River.

There is still one thing to note, which may perhaps be explained, but which the writer is unable satisfactorily to account for. Why did the judicial committee refer to the confluence of the Mississippi and Ohio due north line at all? In no statute is it given as the limits of Manitoba. Is it a coincidence? In the map accompanying the Ontario award papers, Manitoba is brought up to that line. Is there any authority for this; or did their Lordships inhale this with the rest of Mr. Mowat's deftly put propositions?

Let us pass to the real argument. We may now say two propositions constituted the boundary dispute. The one, the due north line from the confluence of the Ohio and Mississippi. The other, that marked in red on the accompanying map. There is no longer any question of Mr. Mowat's vague contention of eleven years ago, or of his alternative proposition before the Privy Council. He formally gives up "the point further west," and admits that Ontario has her full share of territory, now that she is only limited to the westward by the system of waters which may be generally described as beginning at the Lake of the Woods, and ending at the mouth of the Albany River.

But how can the red line be defended? It is perfectly clear that by no system of interpretation can it be evolved from the Act of 1774. The only way of making a show of supporting it on the statute was by talking vaguely of a point further west, which might mean the Rocky Mountains or the mouth of the Columbia river. Therefore it is we heard all these semi-intelligent, scattering suggestions, which numerically strong bodies substitute for argument, in ages of unreason.

The arbitrators omitted the opportunity afforded them of telling us how, according to the common sense intelligence of non-professional men, which Sir Francis Hincks so vastly prefers to the narrow refinement of legal training, it was that this ram's horn line became the boundary of Ontario. Less daring than another famous knight, Sir Francis was compelled to give, or seem to give a reason. Let us not deride him by unfair comparison. Falstaff knew not the "Interviewer." Sir Francis was badgered into giving a lecture, semi-autobiographical, and amongst other things he touched on the award. Absolute silence could not, however, have been more mysterious than Sir Francis Hincks' explanation. A popular Minister's first lesson is "how not to do it;" his second, how not to give any information in answering a question. We were therefore told something about a Proclamation and the Act of 1791 which authorized the Proclamation; but not a word to explain by what constitutional process the terms of the statute could be varied by the Proclamation which was to give it effect.

Next, Mr. Attorney-General Mowat had to deal with the argument; but he preferred to talk about it and not to formulate any legal proposition. All this blinking of the ques-

tion might have aroused the attention of the Judicial Committee to the importance and delicacy of the operation they were called upon to perform. One member, at any rate, of that body, was competent to understand what he was about. It is, in some sort, distressing to discover that our idols have feet of clay, and that European and Metropolitan superiority is principally an illusion of distance. One regrets to learn that Lamartine manufactured his books by the intervention of scribes, just as a Manchester cotton-spinner fabricates his goods with a generous compound of sour flour,—that the sculptor's art is frequently confined to the skilful guidance of a stonemason, and that the opinions of great lawyers are frequently those of their registrars or clerks.

To form a correct idea of what must be the reasoning on which their Lordships' decision is founded; or, rather which is implied in the opinion they have consented to have put into their mouths, we must recapitulate the essential points of the discussion.

The story is this,—the Act of 1774 laid down the boundaries of the old Province of Quebec, and legislatively they have never been changed. Now that Act indisputably made the western boundary of the Province a due north line from the confluence of the Mississippi and Ohio till it struck the Hudson Bay Territory. No other construction of the sentence would make it a boundary at all. But it is said, granting that, the boundary was changed by the effect of the Act of 1791, in this way. When the Act of 1791 was before Parliament, the King sent a representation to Parliament as to what the division of the Provinces of Upper and Lower Canada was to be. Parliament authorized the King to divide the Province by Proclamation, without in any way recognizing the correctness of the King's description, and thereupon the King did divide what he called Canada into two Provinces.

Now the legal proposition, based on these presumed facts, is, that Parliament is presumed to have repealed a previous statute, because it was in possession of the knowledge of the fact at the time of passing the Act of 1791, that the King believed that the previous Act said what it did not say.

But this is not all, when we read this famous paper we find that it makes no mention whatever of the eastern boundaries of the old Province of Quebec. It only seems to contradict the Act of 1774 by carrying the line dividing the Provinces about to be created up to Hudson's Bay, but that with the limitation that it was not to extend beyond the "country commonly called or known by the name of Canada." (See p. 463, App. A. P. C. Papers.)

The Proclamation follows the words of the paper, with its limitations; but Mr. Mowat contends that what was called or known as Canada, was the Canada of gossip, and of defunct pretentions, and not of the law.

The whole proposition is so absurd that it is scarcely matter of surprise that no one will own it, except concealed in a scurry of words. Nevertheless, it has carried the day.

The answer of the judicial committee to the third question is about as curious as the answer to the second. They don't know whether the joint legislation of the Dominion and of the Provinces of Ontario and of Manitoba could give force to their opinion, but they think it "desirable and most expedient that an Imperial act of Parliament should be passed to make this decision binding and effectual." This last piece of advice is so much the more acceptable that "this decision" is such a mass of nonsense that if no legislation were to give it authority it would merely, like the award, furnish a new element of discord—an extension of the field of unprofitable discussion.

There is, however, one lesson their Lordships have given us, perhaps unwittingly, and that is to abandon abnormal modes of ending disputes; and above all, not to trouble their Lordships again respecting questions they know nothing about, and which they don't intend to take the least pains to understand. As far as getting an intelligent opinion on such a question is concerned, we might just as well have appealed to Og, Gog and Magog or to the Beef-eaters at the Tower. Juge Bridoye's mode of guiding the scales of justice, is miserably over-looked, *par les temps qui courent.*

Mr. Gladstone has announced his intention to reform the House of Lords, if it won't con-

sent to be muzzled like the minority of the House of Commons. Let us hope, if he is permitted to experimentalize much longer in altering the British constitution, he may be more successful in transfiguring the House of Lords, than he has been in remodeling the Privy Council. R.

CRITICISM OF MAGISTRATES.

Magistrates in England do not appear to be especially sensitive to criticism upon their decisions; at least one would so infer from the fact that remarks like the following (from London *Truth*, Aug. 14, 1884) passed without notice:—

"At the Westminster Police Court, last week, David Butler was charged with assaulting Margaret Dibben, also with assaulting Mr. Edward Halsey, who interfered to protect her, and with biting a policeman's thumb. The prisoner knocked the woman down without the slightest provocation, and was proceeding to kick her, when he was prevented by Mr. Halsey. A policeman then came up and was bitten while taking the prisoner to the station. One would naturally have expected that Butler would have been sentenced to a few months' hard labour, but Mr. D'Eyncourt, with a leniency *alike scandalous and inexplicable*, fined him five shillings and costs for each assault. It is certainly not surprising that decent women are afraid to cross some parts of London alone, if this is the way in which magistrates treat their assailants."

We remember that some time ago, when the Recorder of Montreal was censured in some of the daily papers for undue severity to a young woman charging with loitering on the street, he did not exhibit the same indifference.

PROFESSIONAL PRIVILEGE.

We have an interesting budget of cases this week on the question of professional privilege. In *Ex parte Kavanagh* it was held by Mr. Justice Cross that a lawyer cannot refuse to testify that his client in a previous capias case signed and swore to a particular affidavit, even though the lawyer be retained for the same person in a charge of perjury based on such affidavit. In *Ex parte Abbott*, Mr. Justice Jetté ruled that the Managing Director of a company cannot be forced to produce correspondence between him and the solicitor of the company relating to the suit in which he is examined. In connection with these cases we copy an article on Professional Privilege from the *St. James' Budget*, referring to the case of Cox and Railton, in which it appears to have been held that professional privilege is not to be extended so as to shield a person who has been engaged in criminal acts.

DISTURBANCE OF COURTS BY EXTERNAL NOISES.

At Swansea Assizes recently, Mr. Justice Stephen had occasion to complain of the annoyance caused in Court by the continued hammering on board a ship in the neighbouring dock basin. Having sent once or twice to request that the noise might be discontinued, the learned Judge despatched the High Sheriff to the scene of the annoyance, and he presently returned with the offending workmen. His lordship, after lecturing the men, told them that they must desist, adding, that if it caused them inconvenience to stop hammering, they must let him know. London *Truth* remarks: "It must naturally cause workingmen inconvenience, and probably loss, to knock off work for an indefinite period in the middle of the day; and I fail to see by what right any judge can order them to do so. If the Swansea Courts are unsuited for their purpose, by all means let steps be taken to improve them; but not in this way." Mr. Justice Stephen met with a measure of success; a learned correspondent reminds us that the late Mr. Justice C. Mondelet was not as fortunate, when he sent to the Regimental Band to stop playing upon the Champ de Mars in Montreal. It refused.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, August 8, 1884.

[In Chambers.]

Before CROSS, J.

Ex parte HENRY KAVANAGH, Petitioner for writ of Habeas Corpus.

Privilege of Counsel—Confidential Communication.

On a charge of perjury alleged to have been committed in an affidavit made by the defendant in order to obtain a writ of capias, the counsel for the accused, plaintiff in the capias suit, was asked to prove the identity of the accused as the person who signed and swore to the affidavit. Held, that this was not a private or confidential matter, and further that the fact that the witness was also retained for the accused in the perjury case did not excuse him from answering.

Cross, J. A writ of Habeas Corpus has been issued on the petition of a member of the Montreal Bar, committed for contempt by the Police Magistrate for refusing to answer a question put to him as a witness for the prosecution at the preliminary investigation of a complaint made by one Lewis, a defendant in a previous civil suit, against Gerhardt, a plaintiff in the same civil suit, wherein said Lewis charged the said Gerhardt with perjury, in having sworn to the statements contained in an affidavit produced in that suit to obtain a writ of *capias*.

The petitioner was employed as Attorney and Counsel for the Plaintiff in the civil suit and had drawn the affidavit used for the purpose of taking out the *capias*. He was also acting for the defence of his client on the accusation of perjury brought against him.

As witness on the investigation he was asked who made and signed the affidavit; this he refused to answer on the ground that he would be thereby disclosing a confidential communication made to him as Counsel.

The magistrate held that he was bound to answer, and on his persistent refusal committed him for contempt, from which commitment he now seeks relief, on the ground that any information on the subject derived from his client was in the nature of a privileged communication which he was protected from disclosing.

I take it from the general tenor of the Books of authority on the subject, it will be conceded that the privilege is limited to matters which the witness learned only as Counsel; that is when consulted professionally as Counsel or Attorney, and referring to such a work as Greenleaf on Evidence, § 243, it will be seen that it relates only to private and otherwise confidential communications. The affidavit made and filed with the Clerk of the Court, and the identity of the person who swore to it, involved no matter of a private or confidential nature. They were intended to be made public, and were in effect published by the deposit of the affidavit in Court. In my opinion an affirmative answer to the question put to the witness would not involve the disclosure of a confidential communication.

Mr. Kavanagh must be considered as having had two retainers. The first in the *capias* suit, the making and fyling of the Affidavit for which involved no criminality, and up to the time of its statements being impugned by the accusation of perjury there was nothing to prevent him from being examined as a witness regarding these facts (including the identity of the person who made the Affidavit) on any pertinent proceeding where the proof of them might have been required. The lodging of the complaint of perjury made no difference in this respect, it neither made a communication confidential, which, prior to that event, had no such aspect, nor could it excuse Kavanagh from answering what he would have been bound to disclose had no such accusation been made. His second retainer to defend his client from the criminal charge did not place him in a different position as regards the previous facts, although the identity of the person who made the affidavit then became a link in evidence necessary to a conviction. This fact had not been of a private or confidential nature, and the making of the criminal charge could not convert it into what it was not originally.

It might have been otherwise if he had sworn that his only knowledge of the making of the affidavit, and the identity of the person who made it, was obtained by him through confidential communications made to him by his client on his second retainer for the defence on the perjury charge. This he had not done, and it was improbable from the circumstances that he could do it, but if such were the fact, and he were still willing to declare it on oath, I think he would be entitled to the protection he seeks. As, however, the record now stands, I think he has not made out a case of privilege and I must order his remand. A case of sufficient declaration on oath to

entitle a party to be excused from further answering will be found in the House of Lords' Appeal Cases, Part 1st. of Reports, in March, 1884. It is the case of *Lyell* v. *Kennedy*, and cases illustrative of the extent to which the privilege is carried will be found cited in the 3rd volume of "Russell on Crimes," by Prentice, at p. 549.

I order the remand of the Petitioner.

J. N. Greenshields and *E. Guerin* for the Petitioner.

M. Hutchinson for the private prosecution.

SUPERIOR COURT.

MONTREAL, Sept. 30, 1884.

[In Chambers.]

Before JETTE, J.

Ex parte ABBOTT, Petitioner.

Privileged Communication — Attorney and Solicitor.

Communications between solicitor and client are privileged, and accordingly it was held that the managing director of a company could not be forced to produce letters written to him by the solicitor of the company touching the suit in which said company was defendant.

Mr. H. Abbott, Jr., was named commissioner to take evidence in the city of Montreal, in a suit pending before the Court of Queen's Bench, at Winnipeg, in Manitoba, wherein the Imperial Bank of Canada is plaintiff, and the Guarantee Company of North America is defendant.

Mr. Edward Rawlings, managing director of the company defendant, being asked to produce letters referring to the suit, received by him from Mr. J. S. Ewart, solicitor of the company in Winnipeg, objected on the ground that communications between solicitor and client are privileged.

The Commissioner reserved the objection, and ordered the witness to answer.

The witness persisting in his refusal, the Commissioner petitioned the Superior Court for an order that the witness produce the correspondence.

J. C. Hatton, for the defendant, cited *Hamelyn* v. *White*, 6 P. R. (Ont.) 143: "Communications between solicitor and client are privileged no matter at what time made, so long as they are professional and made in a professional character." Also *Wilson* v. *Brunskill*, 2 Chancery Chamber Reports, (Ont.) 137: "In a case between vendor and purchaser, where a defendant who was called on to produce a certain letter which he refused to produce on the grounds 'that the same is and contains an opinion from the said Magrath, who was then acting as my counsel and solicitor in the matter of the purchase of the lands and premises, upon my title to the said lands and premises, and because the same is a communication between myself and my solicitor, relative to my said title,' it was held to be a privileged communication."

R. C. Smith, contra.

PER CURIAM. The petitioner was appointed commissioner to take evidence in this city in a suit of the Imperial Bank of Canada against the Guarantee Company of North America which is pending in the Court of Queen's Bench in Manitoba. The managing director of the defendants was called as a witness before the commissioner, and was asked by the plaintiff's counsel to produce letters received by him from the company's solicitor in Winnipeg relating to the suit in which the evidence was being taken. The defendant's counsel objected to the production of the letters on the ground that communications between client and solicitor are privileged. The commissioner reserved the objection for the decision of the court in Manitoba, and ordered the witness to produce the letters. The witness still refusing, the commissioner petitions this court for an order to the witness to produce the papers. The court is of opinion, upon the authorities cited, that the witness is not bound to produce the letters. The petitioner will therefore take nothing by his petition.

Maclaren, Leet & Smith for Imperial Bank.

J. C. Hatton for Guarantee Co. of North America.

COUR DE CIRCUIT.

MONTRÉAL, Mai 1884.

Coram MOUSSEAU, J.

LAURIN v. LA CORPORATION DE LA PAROISSE DU SAULT-AU-RÉCOLLET.

Procédure—Exception à la forme—Art. 793, Code municipal.

JUGÉ: *Que l'avis de huit jours et le dépot de dix piastres, exigés par la section 26 du chapitre 36 de la 45 Victoria, pour l'émanation de l'action accordée par l'article 793 du Code municipal, ne sont pas requis dans les actions civiles intentées contre les corporations municipales à raison du mauvais entretien de leur chemin.*

Qu'une exception à la forme basée sur le défaut d'avis et de dépôt devait être renvoyée.

Mercier, Beausoleil & Martineau pour le demandeur.

Préfontaine & Lafontaine pour la défenderesse.

PROFESSIONAL PRIVILEGE.

No other tribunal is so impressive to look at as the full court for Crown Cases Reserved; and it decided last week a question of an importance commensurate with its dignity. The ten judges, being all agreed as to their conclusion, gave judgment at the close of the arguments; but reserved their reasons for enunciation upon some future occasion. It is, however, apparent from the course of the proceedings what were the substantial grounds of their decision; and there is therefore no impropriety in stating briefly the nature of the case.

Two men named Cox and Railton were convicted three months ago, before the Recorder of London, of a conspiracy to defraud a gentleman named Munster of the fruits of a judgment which he had obtained against them. The action in which this judgment was obtained was for libel; and the defendants had consented to a judgment against them for forty shillings and costs "as between solicitor and client." The successful plaintiff, having taxed his costs, issued execution against Railton, and was about to seize his goods. Railton and Cox were partners, and they consulted a solicitor as to whether, if Railton gave Cox a bill of sale over goods belonging to the firm, that would save them from being taken in execution. The solicitor replied that, as the partnership would be in existence at the time of making the bill of sale, this device would be ineffectual; and the two men thereupon paid his fee and went away. Railton then executed a bill of sale, falsely dated at a time before the partnership was entered into, purporting to convey the property in the goods to Cox; and the deed of partnership between the two men was endorsed with a memorandum, also antedated and not consistent with the conditions of the deed itself, declaring that the partnership was dissolved at a time prior to the execution of the bill of sale. When the evidence of the solicitor was tendered at the trial, it was objected to, on the ground that everything which passes between a solicitor and his client is privileged and cannot be given in evidence until it is independently shown to be probable that the latter was committing or meditating some kind of fraud. The Recorder admitted the evidence, and upon the conviction of the defendants reserved a case for the consideration of the court; which, after hearing it argued twice—the second time before no fewer than ten judges, who would have been eleven but for the illness of the Lord Chief Justice—unanimously held that the evidence was properly received, and affirmed the conviction.

The difficulty in the case was to draw a line between two contending or, so to speak, conterminous principles. On the one hand, the general rule that solicitors are not to reveal communications made to them by their clients in professional confidence is manifestly necessary, in order that people may be able to instruct their solicitors upon any subject at all with the unreserve which is essential to success. On the other hand, it is clear that such privilege ought to afford the least possible protection to crime—either where the solicitor is an accomplice, putting his special knowledge at the service of his principals, or where, as in this case, there is no suggestion of any impropriety in his conduct. The merits of the case were not in any doubt. The "privilege" which protects statements made to solicitors is a privilege in fact as well as in name; and as such it clearly ought not to be extended to shield a person who has sought to abuse it by making it facilitate the commission of a crime. That Mr. Clarke, Q.C., who conducted the case on behalf of the convicted men felt obliged to admit this, appeared from his basing his argument upon the proposition that the

judges could not decide the case in the light of the evidence whose admissibility was disputed, but must decide as if they did not know what the effect of that evidence was. He insisted that, as the case was stated by the Recorder, nothing appeared except that the witness was a solicitor, and had been professionally consulted by the defendants before the commission of their crime. This being so, he urged, no questions ought to have been asked as to the nature of their communication, until the prosecution had established a reasonable suspicion, on independent grounds, of fraud on the part of the accused; which he submitted that the case stated did not show to have been the fact. Whether or not his main proposition is good law, it seems plausible enough to the lay mind; and it may pretty safely be assumed that, when the detailed judgments of the Court come to be given, it will appear that they do not concur in his assertion that in this case no such grounds of suspicion had been shown as he declared to be necessary to rebut the presumption of privilege. The judgments will be awaited with great interest, as they will form the leading authority upon a subject of the first importance; and it is to be hoped that they will, as far as possible, establish the principles which regulate the privilege allowed to communications made by accused persons to their solicitors upon a permanent and intelligible footing.—*St. James Budget*, 5th July, 1884.

FRANCE AND CHINA.

The recent relations of France and China are without exact parallel since the existence of international law was first recognized. Naval battles have been fought before now, and forts bombarded, without declaration of war. England herself has created more than one precedent for that. Reprisals as bold, though perhaps more susceptible of justification than the seizure of Keelung, have been carried out again and again by many nations. But we know of no instance where elaborate hostile operations have been carried on between two sovereign powers, neither of whom admits that a state of formal war exists between them. The contention put forward on behalf of the French government, that its late operations on the river Min are compatible with a "state of reprisals" and nothing more, is still more anomalous. Reprisals, as hither understood, may have included the "seizure of pledges," and possibly even the *quasi* hostile occupation of territory. But the term has never yet been allowed in international law to cover regular battles, involving immense slaughter, and terminating in the destruction of an arsenal, a fleet, and numerous forts. As well might it be called a reprisal if a French army had beseiged and captured Pekin, and dictated its own terms in the Chinese capital. When the English government bombarded Alexandria, and subsequently prosecuted a formal campaign, ending in a pitched battle, it was regarded in many quarters as rather a bold euphemism to describe the operations as "a measure of police," and deny them the character of formal war. But technically the distinction was justified by the fact that the English operations were authorized by the lawful ruler of the country, against whom the enemy was in more or less formal rebellion. In China, on the other hand, two sovereign powers have been in collision. It, of course, rests primarily with the parties themselves whether or not their relations are to be considered those of belligerents. Either is at liberty, when it suits his convenience, to substitute a state of formal for one of irregular hostility, by a formal declaration of war. At present both France and China have evident reasons for deferring that step. In the event, however, of a repetition of such proceedings as those on the Min, it is far from improbable that delicate questions affecting the rights of third parties will be raised, which will require the relations of the two principals to be decided by the rules of international law and those only. Moreover, it may be added that, though they are in a minority, many eminent authorities have doubted the justifiability of hostile acts unpreceded by declaration of war. Grotius himself appears to adopt the opinion of a great Roman jurist that "enemies are those who have publicly declared war on us, or we on them—the rest are thieves or robbers." The most eminent French authority, De Vattel, is on the same side. If there is any foundation for a recent statement that the Chinese government has set a price upon the heads of Frenchmen, the Chinese would seem to be of a similar opinion. In denying to China the right to formalities, which whether necessary or not, have been commonly observed between civilized powers, much has undoubtedly been done to impart undue ferocity to the strife. On every ground, therefore, a continuance of the present irregular relations of the two governments is to be deprecated.—*Law Times.*