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THE LICENSE QUESTION—THE TEST CASE.

Written constitutions would be very admirable things if they rendered it impossible for anybody to infringe the rights they ostensibly guarantee. Unfortunately, experience teaches us that they are as subject to violation as unwritten constitutions, and the very attempt to commit constitutional rules to writing, from abstract considerations of what it is desirable to establish, gives rise for the most part to a new peril. The chief dangers to which all constitutions are exposed, however, arise from the calculated attacks of one or other power in the state with a view to undermine all other powers, and of this we have numerous examples, both on the part of the Dominion and of the local governments. On the one hand we have the local authority claiming equality with that of the Dominion, and denying its supremacy, and one local official has even had the hardihood loudly to proclaim the proposition that all powers not specially conferred on the Dominion by the B. N. A. Act belong to the Provinces. On the other hand the Dominion Parliament hardly hesitates to legislate on any subject, and by enlarging the application of laws has, not altogether unsuccessfully, robbed the local legislatures of powers evidently intended to be conferred on them.

We are not disposed to whine over these contests, which seem to be the accompaniment of every institution no matter how dexterously framed, but the license question is now being put into a shape which presents a new and very formidable menace to provincial powers. We learn from a special to the *Montreal Gazette*, dated Ottawa, 15th June, that "The reference to the Supreme Court of the Dominion Liquor License Act is made under authority of the 26th section of 47 Vict., chap. 32, passed last session, which provides that, whereas doubts have been raised as to the constitutionality of the the license act, it may be referred to the Supreme Court, before which the provinces may be represented by counsel, the decision of the Supreme Court to be final, unless leave be granted to appeal to the Privy Council." The finality thus to be established is intended to decide the following important questions, which, we learn from the same authority, form part of the case:

"1. Question—Are the following Acts in whole or in part within the legislative authority of the Parliament of Canada, namely: 1. The Liquor License Act, 1883; 2. An Act to amend the Liquor License Act, 1883?

"2. Question—If the court is of opinion that a part or parts only of the said Acts, are within the legislative authority of the parliament of Canada, what part or parts of said Acts are so within such legislative authority?"

One can scarcely help asking by what authority the Dominion Parliament passed such an Act? A very able supporter of the government, who does not generally speak at random, addressing his constituents, recently, put forward what, we may presume, is the best justification of the Act. He said: "This, therefore, is not an attack on the rights of anybody—it is simply an attempt to procure a complete legal decision from the highest courts, of the powers of the Dominion and provincial authorities on a subject upon which grave doubts existed, and relative to which it was most important to have these doubts set at rest."

It is always important to set doubts at rest; but, however desirable this may be, the object will scarcely be attained by appealing to an imaginary authority. It is nothing to say that "the provincial authorities have concurred." Their concurrence or disapprobation can neither add to nor diminish the powers of parliament. It is a considerable tax on credulity to require us to believe that this is is a *bona fide* attempt to have a complete decision of a vexed question. The wicked promptings of the mind lead one rather to suppose that it is an attempt to snatch an advantage. Else, why should the suit not have been allowed to run a regular course? The decisions of higher courts are only better than those of inferior courts in

this—that they are rendered on re-hearings. If the former are turned into courts of first instance they lose this advantage. Again, why make the decision of the Supreme Court final? If the decision of the highest courts is really desired, it seems strange to restrain the appeal to the Privy Council.

We venture to affirm further, that the Dominion legislature has no authority to pass such an Act. Its exceptional power to create courts is contained in sec. 101 B. N. A. Act, 1867. That section allows Parliament (1) to create a Court of Appeal for Canada; (2) to establish additional courts for the better administration of the laws of Canada. The Act in question neither creates a Court of Appeal nor an *additional* court, for the administration of the laws of Canada. The Supreme Court is called upon to act as a court of first instance, and to decide on an Imperial Act which is not exclusively a law of Canada.

We should be glad to know what is meant by the concluding words, "unless leave be granted to appeal to the Privy Council." By whom is leave to be granted in the test suit? Is it supposed that if the Supreme Court decides that the License Act of 1883 and its amending act are within the authority of Parliament, the first liquor seller prosecuted will be precluded from pleading that the law is null? If so, we are to have *arrêts portant réglement*—an anomaly in the British system.

R.

THE BOUNDARY QUESTION.

While our local legislators have been amusing themselves and the public with resolutions and counter resolutions autonomous, which really signify nothing, important questions of federal politics have been progressing unheeded. All this may be for the best. It may be as effectual to steal an advantage as to cut the Gordian knot, but such deft operations look better at a distance than when performed under our noses.

From the personal and fashionable intelligence of Toronto dailies we learned, some little time ago, that Mr. Attorney-General Mowat had taken his departure for London, there to prepare for his expected triumph on the Boundary Question. It will be remembered that in the speech of the Lieutenant-Governor of Ontario at the opening of last session, we were told how glad Mr. Mowat was to have it in his power to state, that a case had been agreed for a reference of the dispute respecting the intercolonial boundary between Manitoba and Ontario, to the judicial committee of Her Majesty's Privy Council. "The first question to be decided under that reference is the validity of the award made by the arbitrators in 1878," &c.

As the pre-eminence given to this branch of the case has been thought deserving of such exceptional notice, it is not unfair to suppose that it is considered as a diplomatic victory of some moment, and perhaps the cause of Mr. Mowat's well-known dislike to a reference to the Privy Council being changed to gladness. It may be a crumb of comfort, for on the real question as to the boundaries of Ontario there is no sort of difficulty.* Probably Mr. Mowat over-rates the result of his diplomacy. Much reliance need not be placed on the unwillingness of the Privy Council to disturb an award concurred in by an English Ambassador. Nor can one of Mr. Mowat's legal experience hope that the judicial committee will seek to escape from the examination of the ponderous historico-legal argument on the merits by deciding so slim a *question préjudicielle* as the validity of the so-called award.

Equitably the award has no claim to be favourably considered. It is notorious that the Dominion Government sold the battle. The real question, then, was between Ontario and Quebec, and yet the Chief Justice of Ontario and a former representative of Upper Canada and of Ontario, with the Ambassador thrown in to give some show of fairness to the preconcerted decree, were selected to decide the matter.† There was no attempt

* The only other view than that of the height of land and the due north line from the junction of the Ohio and Mississippi Rivers, that can be sustained with any show of reason, is that put forward by Mr. Justice Armour. I understand from the answers of the learned judge that he maintains the height of land to be the whole boundary to the north and west of Ontario as being the territory always occupied by the former province of Upper Canada. There is much that is equitable in this view; but the learned judge hastens to observe that the decision in the *Reinhardt* case is an authoritative protest.

† See with what care the Imperial Parliament deemed it necessary to provide for impartiality in the selection of arbitrators. Section 142 B. N. A. Act of 1867.

to lay down a legal boundary, and the Commissioners did not think it worth while to conceal their disregard for the arguments of counsel.

Fortunately for the predominance of truth, Mr. Mowat's hobby is as unfounded in law as it is unsupported by equity. The Dominion Government had no more power to extend the boundaries of Ontario by an award than to extend them arbitrarily by a donation. A valid submission to an award implies the power to transact, *i.e.*, the power to compromise. It will scarcely be contended that the Dominion Government could, by a compact with the Government of Ontario, have altered the boundaries of the Province. This is elementary.

It would lead to greater length than our space can spare room for, to develop this proposition fully. It is sufficient to refer to section 3, "Declaration of Union," section 5, "Four Provinces"; section 6, "Provinces of Ontario and Quebec," to establish that under the Act of 1867, the provinces forming the union were determinate bodies, legally circumscribed, and that no power but the Imperial Parliament could alter them. Their limits were to be decided as all legal questions by the courts. This has been admitted, for by the Act of 1871, special power was given to increase, diminish or otherwise alter the limits of any province. (Section 3). Nay more, it was questioned whether the Dominion Parliament had power to create a new province out of territories forming part of the Dominion, but not included in any province (section 2); and section 5 of the same Act confirms the Acts of Parliament establishing a temporary government for Rupert's Land and the North-west Territories and for the "government of the province of Manitoba."

It seems clear, then, that without the powers conferred by the provisions of the Imperial Act of 1871, no power existed in the Dominion Parliament to alter the limits of a province. In the submission to the arbitrators, did the governments of Canada and of Ontario pursue the powers so conferred? Clearly not. It is the Parliament of Canada which may, with the consent of the legislature of any province, alter the limits of such province, not the governments.

The object of the foregoing remarks is only to resume the questions raised, and to draw the attention of the Government of Quebec to the right and duty of that province to be represented before the Privy Council. From the isolated position of the majority of the population of Lower Canada, it became necessary, at the time of confederation, to provide special protection for their rights. To secure this protection to some extent, it was determined to make Quebec the unit, to some extent, of confederation. Population was to decide the number of representatives each province might send to Parliament, provided Quebec should never have fewer than sixty-five (Sections 51 and 52). Then, as to senators, there were three groups—Ontario, Quebec and the Maritime Provinces. Therefore it is, I have said, the real interest as to the award was between Ontario and Quebec. It was manifestly the interest of Quebec to prevent the neighbouring province of Ontario becoming by increase of territory an "Empire" province, and so disturbing the equilibrium of confederation. R.

NOTES OF CASES.

PRIVY COUNCIL.

LONDON, April 7, 1884.

Before LORD BLACKBURN, SIR BARNES PEACOCK, SIR ROBERT COLLIER, SIR RICHARD COUCH, SIR ARTHUR HOBHOUSE.

CALDWELL, Appellant, and McLAREN, Respondent.

[Concluded from p. 200.]

So understanding the finding, the question, which though raised as to many places may most conveniently be dealt with as if it related to one only, seems to be this.

The waters have formed a stream or river, which for many miles is capable of floating logs and timber, at least during freshets, down towards a market, but at a part of it where the soil on both sides of the stream belongs to the plaintiff, there is a natural obstacle such as a rapid and waterfall which renders it impracticable in any commercial sense to float timber down the stream at that part.

The plaintiff, or those through whom he claims, have made improvements, consisting

substantially of dams above the waterfall to keep the water back, so as to make the rapid deeper and slower, and made slides over the top of the dam and down to below the falls, so that timber can by means of these slides be carried safely over the waterfall. The defendant proposes to bring the timber from the part of the stream above the obstacle by means of these improvements. He does not claim to do this by any common law right, but by virtue of certain statutes of Upper Canada. And it cannot be disputed that the Legislature had full power to confer such a right; whether they have done so or not must depend on the construction of the statutes.

The defendant has always been ready and willing to pay for the use of the improvements; that is obviously fair and just, but it is not pretended that the statutes provide in terms that if he uses such improvements he shall pay for them. Had either of them done so, the intention of the Legislature to authorize him to pass over the obstacle by means of the improvement would have been quite clear. The absence of any such provision is strongly relied on as showing that the Legislature did not so intend.

The plaintiff relies on his common law right, as owner of the soil, to prevent any one from using his soil in any way which he does not choose to allow, unless, by statute, that right is abridged, as it may be.

There has been a considerable diversity of opinion amongst the Judges in the Courts below. Their Lordships have pursued their opinions with much advantage, and have with great care considered the reasons of those from whom they differ. In the result they come to the conclusion that the judgment of the Court of Appeal for Ontario is right and should be restored.

They think that there can be no doubt that by the law of England the owner of the soil on both sides of a running stream, whether it be navigable or not, is *prima facie* at least, owner of the soil which forms the bed of the stream, and as owner of this land covered by water, has all the rights of a landowner. But this is subject to all rights of the owners above him to have the water flow away from their land, and to all rights of the owners below him to have the flow come down to them as it was wont. It is also subject to any rights which the public have over it.

One of the practically most important rights of the owner of a portion of the soil of the river is the right to use the water for a mill, and in order to do so, or indeed for any other lawful purpose, to erect a dam on it. The public may have rights to navigate the stream, and whenever such a right exists the right of the mill-owner and the right of the public come into conflict. They may co-exist, but when they do, one or other must be modified.

The rights of the public to navigate a stream may be created either by prescription or by dedication by the owner of the land within time of legal memory. And in an old settled country like England it could seldom be material to enquire further than as to those modes of creating such a right. But when the law of England was taken out to a new, unsettled country where prescription could not exist, and dedication could rarely exist till after the country was to some extent settled, it became important to enquire whether the principles of the common law did not give such a right independent of any user, wherever the stream was, in its nature, capable of being navigated. No question arises in the present case as to this right of navigation; and, at all events, up to a period later than 1849, it was a question of great doubt what the law of Upper Canada was on this subject. The right now claimed to use streams, not navigable for general purposes, to float down timber, was one, which in England, if it existed at all, from the nature of the country, could not be important; it never came into question in any case of which we are aware. It was one which, in a new wild country overgrown with timber, might be very important, and it must be a question of doubt what was the right.

The owner of the land covered with water, over which a stream flows, has the unquestioned right to erect a mill on it, if he does not thereby infringe on any right of the proprietors above or below him, or on the public rights. The doubts as to what was the extent of the public right over such streams cast a doubt on the extent to which it was lawful to erect mill dams.

It is obvious that it was very desirable that, for the purpose of encouraging the development of the country, these doubts should, as soon as possible, be solved. And as the Legislature of Upper Canada had full power to enact what should be the law in that country, the real question is, what did they enact?

The statutes of Upper Canada have been consolidated and afterwards revised; but the Acts under which this is done are merely consolidation and revision Acts, and do not alter the effect of those statutes which bear on this question. The first statute which it is necessary to notice is the Act of 25th March, 1828.

After a preamble that it is found expedient and necessary to afford facility to the inhabitants of the Province engaged in the timber trade in conveying their rafts to market (as well as to the ascent of fish) in various streams now obstructed by mill dams, it enacts that every occupier of "any mill dam, which *is* or *may* be legally erected," where timber "is usually brought down the stream on which such dam is erected," shall, under a penalty, "construct and erect a good and sufficient apron to his dam." The 2nd section describes the kind of apron:—"Such apron shall not be less than eighteen feet wide, by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height. Where the width of the stream will admit of it, where such stream or dam is less than fifteen feet wide, the whole dam shall be aproned in like manner, with the same inclined plane."

Without encumbering the case by considering any question relating to the fish, the intention of the Legislature seems obvious. They contemplated that there might be mill dams then or thereafter legally erected on streams down which lumber was usually brought. And without inquiring what were the conditions necessary to make such an erection legal, the Legislature, for the purpose of affording facility to those engaged in the lumber trade in conveying their rafts to market, impose a duty on the mill-owner to add to his mill an apron so as to let the rafts pass over it. This did to some extent impose on the owner of the dam, by supposition legally erected, the burthen, without any compensation, of building an apron; but it is clear that the Legislature did intend for the good of trade to impose that burthen on them. Probably it was not supposed to be very heavy. The Act, however, is in terms confined to those streams down which lumber was "usually" brought.

Several statutes were referred to on the arguments, which their Lordships think do not much affect the question.

Then comes the Act of 30th May, 1849.

The preamble is, "Whereas it is necessary to declare that aprons to mill-dams which are now required by law to be built and maintained by the owners and occupiers thereof in Upper Canada" (obviously referring to the Act of 1828 already cited), "should be so constructed as to allow a sufficient draft of water to pass over such aprons as shall be adequate in the ordinary flow of the stream to permit saw logs and other timber to pass over the same without obstruction." This clearly indicates an intention to throw upon those who have dams "legally erected" upon streams a further burthen. The first section with the object contemplated by the preamble cast upon them without any compensation the duty to erect and maintain waste gates, brackets, and slush boards, so as to keep the depth sufficient to allow the passage of "such saw-logs, lumber, and timber as are usually floated down such streams," with a proviso that "no person shall be required to build aprons or slides on small streams unless required for the purposes of floating down lumber."

The fifth section of this Act goes beyond the object mentioned in the preamble; it is, however, perfectly settled that though the preamble aids in the construction of an Act, effect is to be given to the intention of the Legislature if it sufficiently appears though it goes beyond the object of the preamble.

It is upon the construction of this fifth section that their Lordships think this case depends. In the Consolidated Statutes for Upper Canada, cap. 48, it is divided into two sections—sections 15 and 16—and the meaning is made rather clearer by transposing the position of the two provisos at the end of the

section which are made into section 16, but there is no alteration in the substance.

The fifth section is in the following terms:—

"That it shall be lawful for all persons to float saw logs and other timber rafts and crafts down all streams in Upper Canada during the spring, summer and autumn freshets, and that no person shall by felling trees or placing any other obstruction in or across such stream, prevent the passage thereof; provided always, that no person using such stream in manner and for the purposes aforesaid shall alter, injure, or destroy any dam or other useful erection in or upon the bed of or across any such stream, or do any unnecessary damage thereto or on the banks of said stream, provided there shall be a convenient apron, slides, gate, lock, or opening in any such dam or other structure made for the passage of all saw logs and other timber, rafts, and crafts authorized to be floated down such stream as aforesaid."

This enactment, it is to be observed, became law in 1849, and has not been altered since. In 1863, the case of *Boale* v. *Dickson* was decided in the Court of Common Pleas of Upper Canada. The question there was as to a claim for the use and occupation of a slide on the Indian River. The Court of Common Pleas thought that if the slide was on a stream within the meaning of the enactment their Lordships are now considering, the plaintiff must fail; whether, if the statute applies, this consequence would follow, their Lordships need not stop to inquire. So thinking the Court of Common Pleas put a construction on the Act.

The Vice-Chancellor, in the present case, after the evidence was heard, said, addressing the defendant's counsel:—

"I think, Mr. Bethune, you stated that if I considered myself bound by the authority of *Boale* v. *Dickson*, there was little use in arguing the case. It seems to me that I am bound by that case in this respect, that I ought to be bound by and respect the ruling of a Court of co-ordinate jurisdiction, though not in the same sense as I would be bound to follow a judgment of the Court of Appeal. If the interpretation placed upon it in *Boale* v. *Dickson* be the construction this statute is to bear in regard to improvements upon rivers and their floatability, I understand that case to determine that if any improvements are necessary to render streams floatable, the statute does not apply, that it does not alter the character of the private streams, and that the owner of the land over which the stream flows has the right to prevent intrusion upon it. It therefore comes to be a question of evidence as to whether the streams mentioned here can be considered floatable without artificial aids."

The Judges of the Court of Appeal for Ontario, all agreed that Vice-Chancellor Proudfoot had correctly apprehended the construction put upon the statute by the Court in *Boale* v. *Dickson*, and that he could not properly disregard the decision of a Court of co-ordinate jurisdiction, but all four thought that construction wrong; Burton J., though dissenting from his brothers, expressly saying:—

"I quite agree with them in their view of the doctrine laid down in *Boale* v. *Dickson*, and think there is nothing to warrant the qualified construction placed upon Sect. 15 of the 12th Vict., c. 87, by the learned judge who delivered the judgment in that case; but I am unable to bring myself to the conclusion that the mere permission or the recognition of the right to float all streams during freshets makes the entire streams *publici juris*, although, in point of fact, many portions of it may be quite impassable, even in times of freshets, for the smallest description of timber or other article of merchandize.

The Judges in the Supreme Court thought that the construction put upon the statute in *Boale* v. *Dickson* was right, and the Chief Justice, Sir W. Ritchie thought, that even if wrong, it ought to be maintained on the ground taken by Lord Ellenborough in *Doe* and *Otley* v. *Manning*, 9 East 71, that in questions of conveyancing it was important to adhere to decided cases even if convinced they were originally wrong. This doctrine has often been recognized. The maxim "*Communis error facit jus*" is peculiarly applicable to conveyancing questions. But this is not a question of conveyancing, and their Lordships do not think that there is any ground for saying that *Boale* v. *Dickson*, if wrong, should be followed.

And their Lordships agree with the Judges in the Court of Appeal for Ontario in thinking that there is nothing to justify any Court in construing the words "all streams" as meaning such streams only as are at all places floatable. They do not think that every little rill, not capable of floating even a bulrush, is a stream within the meaning of the Act. But when once it is shown that there is a sufficient body of water above and below the spot where the natural impediment renders the stream at that spot practically unfloatable, it does not make it cease to be a part of the stream in the ordinary sense of the words.

It has been argued that though this might have been the natural meaning of the words, if the enactment had been "that it should be lawful to float saw timber rafts and craft down all streams in Upper Canada at all seasons," that the legislature here confined the enactment to making it lawful "during the spring, summer and autumn freshets." And that, it is argued, shows an intention to cut down the large words "all streams." Their Lordships do not assent to this argument. Probably the Legislature confined the enactment to the seasons during which lumberers ordinarily ply their trade, thinking it better to leave the rights of all parties at all other seasons untouched. Whatever was their motive, it seems clear, on the construction of the enactment, that if a lumberer claims a right at any other period than during the freshets to float timber along a portion of a stream, he must rest his claim on something else than this enactment. It is not, however, an objection to his right under this enactment to float during freshets, that he may, on the same part of the stream be entitled, on other grounds, to float at all times.

Their Lordships do not think that the limitation of the right in the stream to one period of the year prevents that from being a part of the stream which would otherwise, in the ordinary sense of language, be a part of the stream, even if the existence of an impediment there makes it not practically available for the purposes of the lumberer even in freshets. The respondent's construction of the enactment seems to them to require the introduction by implication of some such words as these, "except on such parts of the streams as are, owing to the presence of an impediment such as a waterfall, not practically available for the purpose of floating timber, until some improvements are made."

There does not seem to their Lordships to be any sufficient reason for implying this or any similar qualification.

It is quite true that it is not to be presumed that the Legislature interferes with any man's private property without compensation. But if the whole stream is floatable during the freshets it cannot be doubted that the Legislature did mean, with the object of affording facility to lumberers, to carry their timber to market, to say that they should have the right to float down the stream at these seasons without obstruction by the owners of the bed of the river—without paying them anything. If, as seems to be the opinion of Burton, J., the principles of the common law could be worked out so as to give this right, at any rate the Legislature in 1849 did not know this, or mean to declare it. Without declaring what the law then was, they enacted that "from this time, 1849, forward the law shall be as we now enact."

It is, however, quite true that no power is given by the statute to make practically floatable spots which are not so in their natural state, and that the Legislature, who must be taken to know that such streams as this Upper Mississippi were likely to exist in the unimproved parts of the country, must have contemplated that, before the right they gave became practically useful, something must be done which would be a trespass if done without the authority of the owner of the soil.

There does not seem to be any great difficulty in holding that, if all that was done was to remove some existing obstruction, as by blowing up a rock which impeded the passage, and thus putting the bed of the stream into the state in which it would have been if the rock had never existed, a right to float timber down that spot might be exercised, even though the blowing up of the rock could not be justified against the owner of it. There is more difficulty in dealing with the case of a dam maintained by or with the assent of the owner of the soil for the purpose of making the part of the stream practically floatable,

which was not so in its natural state. There is certainly no obligation on the person who makes and maintains such a dam to continue to maintain it; if he ceases to do so, it becomes useless, and can only, if at all, be made useful by forming a joint stock company for the purpose of doing so; and if the Court of Common Pleas in *Boale* v. *Dickson* were right in thinking that, if the statute applies, a promise to pay slidage for the use and occupation of such works, in consideration that the plaintiff would allow the defendant to use them, should not be enforced, the Legislature have improvidently reduced the inducement to make the stream at such a part practically floatable. But, though this may be so, the question remains whether the words of the Legislature do not express an intention that, when the part of the stream could be used, it should be lawful for all persons to use it.

It does not seem to their Lordships that the private right, which the owner of this spot claims, to monopolize all passage there, is one which the Legislature were likely to regard with favour, and in the earlier legislation they had, without scruple, cast on the owners of "dams legally erected" the obligation, at their own expense, to make such dams passable for lumber; if the law was, (contrary to what is laid down in *Boale* v. *Dickson*), that reasonable compensation should be payable for the use and occupation of works maintained for the purpose of rendering the portion of the stream practically useful for floating purposes, there would be no hardship at all; if the Legislature had inserted a provision that such should be the law, there could have been no doubt of their intention. They have not inserted such a provision; but, though that makes the case somewhat difficult, their Lordships do not think it enough to justify what seems to them a somewhat violent departure from the plain meaning of the words.

Their Lordships will therefore humbly advise Her Majesty that the judgment of the Supreme Court should be reversed and that of the Court of Appeal restored. They do not think there is any reason for departing from the general rule that the costs of the appeal should be borne by the unsuccessful party, the respondent.

Judgment of Supreme Court reversed.

Bethune, Q.C., (of the Ontario Bar), and *Jeune*, for the Appellants.

The Solicitor-General, *McCarthy*, Q.C., (of the Ontario Bar), and *Crump* for the Respondent.

LEGISLATION AT QUEBEC.

Au Rédacteur du LEGAL NEWS :

Monsieur,—Par la section 1ère du chapitre 26, de la 46ième Victoria, il était statué comme suit: "Tout jour juridique sera reputé jour de terme excepté pour l'instruction des causes inscrites sur le principal, etc."

Dans les districts ruraux où les termes de cour sont nécessairement rares, ce statut a fait un bien immense aux justiciables et à la profession en facilitant l'expédition des causes, chose tant désirée par tout le monde. Nous pouvions tous les jours procéder avec les exceptions préliminaires et défenses en droit, soit sur le mérite ou par motions pour les faire rejeter ou pour amender, de sorte que ces procédés, qui servaient généralement à retarder les causes, en perdant leur utilité étaient en partie disparus de la pratique. On ne cessait de se louer de ce changement. On s'étonnait d'avoir pu endurer si longtemps un système par lequel un débiteur obtenait quelquefois trois ou quatre mois de délai sur production d'une simple exception à la forme.

A notre grande surprise, voilà que pendant les derniers jours de la session on biffe cette importante section et on nous remet sous l'ancien régime. Pourriez-vous, M. le Rédacteur, nous donner la raison de ce changement rétrograde?

P.

Sherbrooke, 22 juin 1884.

GENERAL NOTES.

The case of Eno illustrates the defects of our extradition laws. It is quite exasperating to a large part of the community that a criminal, guilty of so heinous an offence as he is accused of, may escape by crossing into Canada, and may live there in open luxury, almost within sight and hearing of those whom he has defrauded, and laugh at the laws. It would be well to have our treaties revised, especially our treaties with next door neighbours, and to have them enlarged so as to comprehend many more offences than are now covered by them. The advance of "civilization" seems to have made possible some new crimes, undreamed of forty years ago, and just as worthy of relegation to the offended community for punishment as those now recognized. Even some old and familiar crimes might well be added to those for which extradition will lie. It is worth while for sovereign nations to refuse to become asylums and Alsatias for each other's criminals.—*Albany Law Journal*.