# THE LEGAL NEWS.

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## CONTENTS OF VOL. IX., No. 44.



Montreal:
GAZETTE PRINTING COMPANY.
1886.

# NOTICE.

**Mr. Richard Lynch has been appointed Travelling Canvasser and Collector for Gazette Printing Company, and is the only travelling representative authorized to collect moneys on account of this Company.**

**RICHARD WHITE, Man. Dir.,**
**Gazette Printing Co.**

Montreal, 1st Nov., 1886.

The Legal News.

Vol. IX. OCTOBER 30, 1886. No. 44.

The "Birmingham Uniformed Collection Agency" is the latest device for debt-collecting, but we are afraid that the ingenuity of the scheme will not protect it from the charge of violating the law. The object of the agency is described as being "the recovery of bad, doubtful or troublesome debts." The circular, after mentioning the difficulty which exists in recovering debts by ordinary legal methods from people who do not wish to pay, continues: "Why is this? Because there is no actual publicity in county court actions which can shame such an individual in the eyes of his neighbours, as would be the case from repeated visits of the uniformed gentlemen who will act as our collectors. Yes, we intend to make life very pleasant for the man who owes debts around this neighbourhood, and is able to pay, but won't. We are in business to collect accounts from just such customers, and if there is one who does not come down after we have turned our batteries on him, we are afraid it will be an awkward case. The way of the Uniformed Collection Agency (this title is copyright) is this: Such persons as desire our services become subscribers to our plan, and pay a fee of 5s. per annum. When the agency receives a case, an ordinary and gentlemanly collector is at once sent to the debtor to solicit payment of the amount due. If this is of no avail, we send another collector, who wears a striking uniform with the word 'collector' in very distinct letters on the band of his hat. This collector visits the debtor at his private residence and business address three successive days (if necessary). If the third visit does not result in obtaining the money the collector then wears a hat on the band of which are the words 'Collector of Doubtful Debts.' His orders are to call daily on the debtor, both at his private residence and place of business, and demand payment as often as is necessary. These calls soon attract the attention of the neighbours, and become the talk of the neighbourhood—the very effect our agency aims at, and the very shame of which produces the desired effect; for who could boldly face more than half a dozen calls from the gentleman with the suggestive uniform and hat-band? The consequence is that an arrangement satisfactory to the creditor is almost always effected." The first two visitors may be tolerated, but "the gentleman with the suggestive uniform and hat-band" will soon find himself in trouble together with his employers.

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The Salvation Army, it appears, have overstepped the strict line of the law by one of their regulations, which prohibits the marriage of officers under the rank of captain. The order reads as follows: "That in future no sanction will be given to courting or any engagement of any male lieutenant. He must get promoted to the rank of captain before anything of the kind can be recognized." Contracts in general restraint of marriage are absolutely void in England, but contracts in partial restraint are valid. The *Solicitors' Journal* cites *Perrin* v. *Lyon*, 9 East, 170, where the Court of King's Bench, eighty years ago, held that a condition against marriage with a Scotchman was valid. So in *Hodgson* v. *Halford*, L. R., 11 Ch. D. 959, it was held that a condition against marriage with any person who did not profess the Jewish religion was good. And in *Jenner* v. *Turner*, 29 W. R. 99, it has been recently decided that a condition against marriage with any person "being or ever having been a domestic servant" was valid.

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The Maryland Court of Appeals, in *Wood* v. *State*, July 15, 1886, refused to allow the plaintiffs counsel fees paid by them in procuring a dissolution of the injunction, as damages in a suit on an injunction bond. The Court relied upon *Wallis* v. *Dilley*, 7 Md. 237. In that case the defendant's prayer was, "that the plaintiffs are not entitled to recover upon the bond in suit for any counsel fees which they or any of them may have proven themselves to have paid for the defence of their interests in the equity proceedings offered in evidence." This language covers fees paid

for procuring the dissolution of the injunction. The court said this prayer should have been granted, and explicitly added: "Whatever may be the justice of the rule, it seems to be well established that on all matters arising *ex contractu*, the successful party is not entitled to recover the fees which he may have paid his counsel," and referred to *Day* v. *Wentworth*, 13 How. 363. The case of *Oelrichs* v. *Spain*, 15 Wall. 211, was a case in equity to enforce liabilities for damages arising under certain injunction bonds and to marshal assets. In considering the report of the master and the decree of the report below, the Supreme Court says: "We think that both the master and the court erred in allowing counsel fees as a part of the damages covered by the bonds." The court then cites the case of *Day* v. *Wentworth*, and says: "The point here in question has never been expressly decided by this court, but is within the reasoning of the case last referred to (13 How. 370), and we think substantially determined by that adjudication; in debt, covenant and *assumpsit* damages are recovered, but counsel fees are never included. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large the expenses to which he may have been subjected. The parties in this respect are on a footing of equality. * * * We think the principle of disallowance rests on a solid foundation, and that the opposite rule is forbidden by the analysis of the law and sound public policy."

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## COURT OF QUEEN'S BENCH.

QUEBEC, October 7, 1886.

MONK, RAMSAY, TESSIER, CROSS, BABY, JJ.

LA CORPORATION DE L'AVENIR, Appellant, and DUGUAY, Respondent.

*Road—Obligation to maintain Fences.*

HELD:—*Where a by-road, homologated as being a charge on certain proprietors, without any special mention of the fences, was afterwards adopted by the Municipal Council as a corporation road, it became the duty of the Municipality to maintain the fences jointly with the proprietors.*

RAMSAY, J. Two questions arise on this appeal—1st. Whether a by-road, homologated as being a charge on certain proprietors, without any special mention of the fences, afterwards adopted by the municipal council as a corporation road, obliges the corporation to maintain the fences with the proprietors or not. 2nd. Whether an action will lie before the inspector has apportioned the shares.

Neither of these questions gives rise to any difficulty. Fences are a part of the road, at all events, so far as they augment the liability of the neighbouring proprietor. This would be the common law rule, but it is to be found expressed affirmatively and negatively in Art. 775 C.M. When the route was to be made and maintained at the cost of certain persons interested, the half of the fence of a road in a line (as this by-road was) was at the charge of those obliged to maintain the road. Their obligations, being assumed by the municipality under Art. 535 M.C., were transferred to the municipality. The half of the fencing was one of these obligations and it naturally became the duty of the municipality to maintain the fences.

It is, however, said that the *procès-verbal* might have arranged it otherwise. We need scarcely consider this question, for the *procès verbal* has made no exceptional rule on this subject.

As to the second question, it is not important, for the corporation denies its obligation altogether, and the judgment, which does not decide as to which half the corporation is bound to make, but only that it is bound to make a half, is right.

Judgment confirmed, Cross, J., dissenting on a question of detail.

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## COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 7, 1886.

MONK, RAMSAY, TESSIER, CROSS, BABY, JJ.

LA FABRIQUE DE TROIS PISTOLES (defendant below), Appellant, and BELANGER (plaintiff below), Respondent.

*Pew—Forfeiture.*

RAMSAY, J. The only question presented in this appeal is one of fact. Has the plaintiff forfeited his right to the use of the pew in question by failure to comply with the

conditions of the so-called lease,—properly the faculty to use the said pew?

It seems to me clear beyond the possibility of dispute, that the condition the Fabrique and the respondent established, somewhat a strange one I admit, "*que la dite œuvre et fabrique fut obligée de poursuivre en justice pour en être payée,*" was neither violated in its letter nor in its spirit.

The so-called friendly remonstrance with the respondent, on which some stress is laid, does not affect the plea that this man's pew was sold over his head, when he was in no way open to the accusation of having broken his bargain. This was the view of both courts. The court of first instance thought respondent had acquiesced. It does not appear how he signified this acquiescence. It certainly was not when he persisted in sitting in the pew. Nor when he declined to be talked over by the *curé*. He did the best he could. Staying away from church is not a remedy open to all persons.

Judgment confirmed. Baby, J., *diss.*

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## COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 7, 1886.

DORION, CH. J., MONK, RAMSAY, TESSIER and BABY, JJ.

CLOUTIER (defendant below), Appellant, and TREPANNIER (plaintiff below), Respondent.

*Illegal and wrongful imprisonment—Malice—M. C.*, 300, 301.

HELD:—*Where a Mayor, while presiding at an election of Municipal Councillors, committed a person to prison, for ten days, without a hearing, that, under the circumstances of the case, there was malice and the defendant was liable in damages.*

The judgment of the Court below (S. C. Quebec, Stuart, C. J.,) is reported in 11 Q. L. R. 321.

RAMSAY, J. This is an action of damages for the illegal and wrongful imprisonment of respondent. In 1885, appellant was Mayor of the parish of Chateau Richer. An election of Municipal Councillors was to take place, and the Mayor was called upon to preside. The Mayor opened his proceedings with a display of force and menaces of his intention to act with severity if there was any disturbance. This, it seems, produced the effect, it is alleged, it was the intention of the Mayor to prevent, and some agitation ensued. The Mayor was menaced, and he immediately directed, secretly, the secretary to prepare warrants directed against the respondent and five others. These so-called warrants were not executed till the morning after the election, and they turn out to be, not warrants of arrest, but commitments, on conviction, for ten days to the common jail. The respondent was thereupon committed, in execution, and he was only released on *habeas corpus*. Appellant pleaded to this action, that he was justified by the articles of the Municipal Code; that if he was not justified by the law he was in good faith, and that acting in a public capacity he was not to be punished for an error of judgment. And he urges, as a third reason for reversing the judgment of the Court below, that the damages were excessive.

The articles of the Municipal Code relied upon are Arts. 300 and 301. These articles are a fair specimen of our legislative attempts to make things clear. The natural method is to make up one's mind what it is desirable to enact, and then endeavor to express it. The method in vogue is, obscurely to conceive and redundantly to express something which, from its vagueness, may perhaps be tortured into an excuse for whatever turns up. Open as these articles are to criticism, it seems to me that it requires some force of imagination to believe that they justify appellant's proceedings, or to credit his appeal on the ground of good faith.

Article 300 merely gives the powers of a Justice of the Peace, temporarily, to the president, within the limits of the municipality. Had the law stopped there, its application would have given rise to no unprecedented difficulty. But article 301 goes on, *en outre*, to give him other powers, *à l'effet de maintenir la paix et le bon ordre.* Here the confusion begins. He may commit on view "*à la garde d'un constable ou de toute autre personne durant quarante-huit heures au plus, quiconque enfreint la paix ou trouble le bon ordre.*"

There may be, perhaps, some difficulty in understanding this article. It seems to me, however, that it is meant to authorize the

president to commit, on view, any one disturbing the peace, and to remand him for any time within 48 hours. But the interpretation of this disposition is of no importance in the present case, for the President did not act under sub-section 3. He did not commit on view, according to his own story. He convicted respondent without a hearing and committed him to prison for ten days as a punishment. There is no mystery about the conviction on view. All commitments are necessarily executed on view. But neither on view, nor otherwise, can there be a commitment as a punishment without a conviction.

Mr. Cloutier had, however, a power,—it was to award imprisonment for ten days against any such delinquent. There is nothing to say that he could do that without trial. It was a special punishment he could inflict, according to the ordinary course of the jurisdiction of a justice of the peace, for a certain offence. If there be no trial and no conviction, how is it known that the respondent was a delinquent? Appellant says, "that doesn't signify, for I could *commit* on view." This answer is absurd.

We are told that the President was in good faith. The whole nature of the proceedings shows the reverse. When the arrest was made, the temporary authority of the appellant was almost at an end, and the election was over. It was evidently a malicious act. Even the factum breathes personal ill-will. The respondent is the *"chef d'une bande de tapageurs."*

The Court is of opinion that the imprisonment was illegal, and the majority of the Court is of opinion that an imprisonment *in pœnam*, without lawful authority, and without even the semblance of a trial, establishes malice, and, therefore, that the judgment appealed from should be confirmed with costs.

Judgment confirmed with costs, the Chief Justice and Monk, J., dissenting.

*Montambault, Langelier & Langelier*, for appellant.

*Larue, Angers & Casgrain*, for respondent.

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## COURT OF QUEEN'S BENCH.

QUEBEC, October 7, 1886.

MONK, RAMSAY, TESSIER, CROSS, BABY, JJ.

DANJOU (deft. below), Appellant, and THEBERGE (plff. below), Respondent.

*Procedure—Premature adjudication on the merits.*

RAMSAY, J. The appellant was sued in an hypothecary action, and by plea, filed as a preliminary plea, he demanded security, that the property should be sold for a price sufficient to cover an hypothecary debt he had paid, and which was a prior hypothec to that of plaintiff. There was an inscription for hearing on the preliminary plea, and it was dismissed, and without further proceedings, the court gave judgment for the plaintiff. It is of this appellant complains. The respondent contends that the pretended preliminary plea is not a preliminary plea, but a plea to the merits. The court cannot adjudicate on the merits without regular proceedings on the merits, or the acquiescence of the parties in irregular proceedings.

The judgment should be reversed in so far as it decides the merits, and the case sent back to be proceeded on anew in the court below.

Judgment reversed.

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## COURT OF QUEEN'S BENCH.

QUEBEC, October 7, 1886.

DORION, CH. J., MONK, RAMSAY, TESSIER AND BABY, JJ.

THE MAGOG TEXTILE AND PRINT CO. (plff. below), Appellant, and DOBELL (deft. below), Respondent.

*Company—Action for calls—Subscription for shares.*

HELD:—*That a subscription for shares in a company to be formed, where the subscriber's name was omitted in the letters patent, and no shares were ever allotted to him, is not binding.*

The company appellant sued the respondent for $5,000, being the amount due on calls on the stock of the company, said to be subscribed for by respondent.

On the 1st of February, 1883, respondent signed a paper or schedule purporting to be a share list, for fifty shares, equal to an amount of $5,000. At the head of this schedule there was the following undertaking:—

"We, the undersigned, hereby respectively agree to take the number of shares of one hundred dollars each in the capital stock of a company to be formed under the name of the Magog Textile and Print Company, herein below set after our names respectively, and to pay the amounts of all calls thereon at the office of the Company in Montreal at such times as the Provisional Directors, or the Directors of the Company when incorporated may direct."

Subsequently some eight or nine subscribers petitioned for and obtained Letters Patent constituting the company, to be composed of the petitioners "and such other persons as may become shareholders," leaving out the name of the respondent.

So constituted, the directors, without the privity or consent of respondent, made important financial arrangements, over which the respondent had not, and could not have, any control, and no allotment of shares ever having been made to him.

The Court held that the company had no action against respondent.

Judgment confirmed.

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## COUR DE CASSATION.

(Ch. des Requêtes).

24 février 1886.

Présidence of M. BÉDARRIDES.

MAUREL v. COMITÉ DES COURSES DE CONSTANTINE.

*Responsabilité—Délit ou quasi-délit—Auteur principal—Personne civilement responsable—Recours—Faute commune—Répartition.*

*La personne civilement responsable d'un délit ou d'un quasi-délit commis par son préposé, a, en principe, un recours contre celui-ci, qui, par son fait, a causé le dommage qu'elle a été condamnée à réparer.*

*Mais lorsque, indépendamment de la responsabilité civile, qui lui incombe, le maître a participé au délit ou quasi-délit, les tribunaux sont autorisés à répartir, entre lui et l'auteur direct du dommage, le montant des réparations dues, dans certaines proportions, suivant la gravité des torts imputables à chacun d'eux.*

LA COUR,

Sur le moyen unique tiré de la violation des art. 1382 et suiv. Code civil, ainsi que de l'art. 7 de la loi du 20 avril 1810:

Sur la première branche:

Attendu, en droit, que la personne civilement responsable a un recours à exercer contre celui qui, par son fait, a causé le dommage qu'elle a été condamnée à réparer; que lorsque, indépendamment de la responsabilité civile qui lui incombe, elle a participé au délit ou quasi-délit, les tribunaux sont autorisés à répartir entre elle et l'auteur direct du dommage le montant des réparations, dans certaines proportions, suivant la gravité des torts imputables à chacun d'eux;

Attendu que le jugement, confirmé avec adoption de motifs par l'arrêt attaqué, constate qu'à la suite de l'accident du 5 octobre 1879, Maurel, entrepreneur de la construction des tribunes, Pelletreau, ingénieur, et Ouzeneau, l'agent de Maurel, ont été, par jugement du 8 mars 1880, confirmé par l'arrêt du 19 juin suivant, condamnés correctionnellement; que plusieurs victimes de cet accident ont alors introduit devant le tribunal civil des instances en responsabilité civile et réparation du dommage résultant de leurs blessures contre les membres du comité des courses; qu'il a été statué sur ces instances par six jugements rendus à la date du 2 mars 1882 et confirmés par arrêt du 27 juin 1883, lesquels ont condamné solidairement les membres du comité à payer aux parties lésées diverses sommes à titres de dommages-intérêts; que les membres du comité avaient appelé Maurel en garantie, et qu'il a été statué par les jugements du 1er février 1883, confirmés par l'arrêt attaqué, lesquels déclarent que, suivant les jugements du 2 mars 1882, la responsabilité civile du comité des courses a pour base la faute de l'entrepreneur son préposé, coupable d'avoir livré une construction édifiée contrairement aux règles de l'art, ainsi que la faute de Pelletreau, délégué du comité, qui n'a pas exercé sur l'exécution de

cette construction la surveillance à laquelle il avait été commis ; que l'arrêt déclare, en outre, que la négligence du comité à faire vérifier l'état des tribunes, ne saurait relever ledit entrepreneur de la responsabilité qu'il a encourue ; mais que le comité s'était engagé par le cahier des charges à faire creuser les trous qui devaient recevoir les poteaux montants destinés à soutenir les prélarts, et que ces trous avaient une profondeur insuffisante ; que de ce chef, le comité a manqué à des engagements directement pris par lui et participe aux vices de construction qui ont amené l'écroulement des tribunes ; que par suite en faisant, entre l'entrepreneur et le comité des courses, suivant la gravité des torts imputables à chacun d'eux, la répartition du montant des réparations, et en fixant la part du premier aux deux tiers et celle du second au tiers, l'arrêt attaqué n'a violé aucun texte ni aucun principe de droit ;

Sur la deuxième branche du moyen (sans intérêt) ;

Rejette.

NOTE.—Ces solutions ne paraissent pas devoir faire difficulté. V. Aubry et Rau, t. IV, § 447, p. 767 ; Duranton, t. XIII, nos. 722 et 725 ; Larombière, Obligations, t. V, art. 1384, nos. 31 et 43 ; Sourdat, traité de la responsabilité, 3e édition, t. II, § 771, p. 16 et suiv. Ce dernier auteur, prévoyant spécialement le cas d'une faute comme aux deux parties, l'auteur direct du dommage, et la personne civilement responsable, émet une opinion expressément favorable au partage des responsabilités en pareil cas. " Les tribunaux doivent alors, dit-il, fixer la part, qui revient à chacun dans les dommages-intérêts. La partie civilement responsable est toujours tenue pour le tout vis-à-vis des tiers, et si elle paie la somme entière elle n'a recours que pour la somme mise à la charge personnelle et définitive de ce dernier. Si le jugement n'a rien statué à cet égard, le recours est de droit. L'action du moins est recevable. La question peut être débattue entre la personne responsable et l'auteur du délit, car le jugement, qui prononce au profit des tiers la condamnation de l'agent et de la personne civilement responsable, n'a pas l'autorité de la chose jugée sur le point de savoir si ce dernier doit être garanti par l'autre des conséquences de la condamnation." Comp. aussi Cass. 22 novembre 1848 (S. 48.1.700).

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## *INSURANCE EXTRAORDINARY.*

On Tuesday, the 12th inst., the New York Court of Appeals handed down a decision in the matter of Annie M. Dwight and others, executors of Walton Dwight, against the Germania Life Insurance Company, and ordered a new trial. This case is regarded by the leading lawyers of the New York bar as the most remarkable one of its kind on record, and a recapitulation of its salient points must prove of general interest. The Germania Insurance Company was sued by Annie Dwight and others, to recover, on a policy granted to Walton Dwight, of Binghampton, N.Y., for $15,000. The suit was brought as a test case, and the decision was eagerly awaited by the Equitable Insurance Co.; the Manhattan Life Insurance Co.; the North Western Insurance Co., of Milwaukee; the Ætna Insurance Co. of Hartford ; New York Life, Union Mutual, Mutual Benefit of New Jersey ; Travellers' Co. of Hartford ; National,of Vermont ; Washington Insurance Co.; Berkshire, of Pittsfield ; United States ; Massachusetts of Springfield ; Metropolitan ; State Mutual of Worcester ; New England Mutual of Boston ; National of the United States ; Home Life, Brooklyn ; and the Homœpathic Insurance Co.—in all of which Walton Dwight had effected insurance in sums varying from $5,000 to $50,000. At the time the policies were issued, Walton Dwight was penniless, which was proven on trial, and, besides, he was going through bankruptcy, with liabilities of $450,000. The premiums on his policies amounted to $9,000 per annum, but were to have been paid quarterly. He paid the first quarter's premiums with borrowed money, which was also shown on trial, and the defence naturally claimed that " the obtaining of the insurance policies was in pursuance and execution of a scheme to defraud."

When the second quarter's premiums fell due, he had no money to pay them; nevertheless, he had, meanwhile, executed a most marvelous " will," which, the defence claim, disclosed his entire scheme. In this will he

stated that his income for the past year had been $10,000; made liberal provisions for the bench and bar of Broome county; provided for an annual dinner for every poor family in Binghampton; for Sunday School books for a number of churches; bequests to the press and fire department, etc., seeking to interest all classes of the community. These alone amounted to $75,000, but the will also provided that each should be scaled down in equal proportions, in case the whole amount of the policies should not be collected. He then bequeathed $75,000 to his son, and the rest to his wife. In all of this, the defense claim that he showed his fears that difficulty would be met in collecting on the policies.

Now follow the most remarkable facts. The second quarter's premiums were due on November 19, 1878. Walton Dwight had been "ailing" for some days, and on November 15 he died. But one person (not a relative) was with him at the time of his demise. There was an inquest and an autopsy held by several physicians. It was claimed that he strangled himself, there being the marks of a rope round his neck, but the verdict was, "death from natural causes"—the proof of suicide was wanting. Some months afterward, the body was exhumed and the suicide was fully established, to the satisfaction of fifteen doctors. The medical testimony on the trial, however, was conflicting, and the plaintiff got judgment, which was affirmed by general term. Meanwhile, the Equitable and some other companies had settled or compromised, and the plaintiffs had means to contest the issue with the Germania. The case is certainly most peculiar, and not the least remarkable part of it is the will left by the insurer. The testimony at the trial and the details, particularly in relation to Dwight's last hours, are of a most singular character, and contain all the elements of a thrilling romance. The counsel for the defendants are Shipman, Barlow and Larocque. The case was argued for the appellants in the Court of Appeals by Senator Evarts and Mr. Joseph Larocque. It is considered unlikely that a second trial will occur.—*The Court Journal.*

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### *A JUDICIAL ERROR.*

The following remarkable case of conviction on false testimony appears in *La Gazette du Palais* of Aug. 6. It is another illustration of the danger of accepting too readily the statement of the principal witness in such cases:—

Au mois de mai dernier, la Cour d'assises de Loir-et-Cher condamnait à quinze années de travaux forcés une fille Marie Pichon, bergère à Chambord, qui avait écrasé sur une meule la tête de son enfant nouveau-né.

Trois ans auparavant, cette fille Pichon avait déjà comparu devant le jury de Blois, mais cette fois comme plaignante. Elle accusait un nommé Saussier de l'avoir violée dans les bois de Chambord. Cet homme, malgré ses protestations d'innocence, fut condamné à quinze ans de travaux forcés.

Rentré à la prison, Saussier se roula par terre en poussant des cris terribles: il passa plusieurs jours sans vouloir manger, répétant qu'il était innocent, et on dut veiller sur lui de très près pour l'empêcher de se suicider. Enfin il parut se résigner et fut embarqué pour la Nouvelle-Calédonie.

Quand, trois ans plus tard, la prétendue victime de Saussier fut traduite à son tour en Cour d'assises, M. le procureur de la République Degors se demanda si elle n'avait pas accusé un innocent, et reçut, en effet, des aveux complets de la fille Pichon: cette misérable confessa qu'elle s'était livrée volontairement à Saussier et qu'elle ne l'avait accusé que pour se soustraire à la colère de ses parents, qui avaient appris sa faute.

Devant le conseiller-rapporteur nommé par la Cour d'Orléans, la fille Pichon maintint ses aveux en manifestant le plus sincère repentir.

Le 19 juin, le ministère de la justice ordonnait la mise en liberté du malheureux Saussier, après trois ans de bagne.

Quant à la fille Pichon, elle comparaissait hier devant la Cour d'assises pour faux témoignage. La loi, appliquant la peine du talion, veut que le faux témoin subisse exactement la même peine que l'innocent condamné sur sa déposition mensongère. Dans la circonstance la fille Pichon aurait ainsi dû être condamnée à quinze ans de travaux

forcés, comme Saussier, sa victime. Mais le jury lui ayant accordé des circonstances atténuantes, la Cour d'assises, présidée par M. le conseiller Ducoudray, ne lui a infligé que dix ans de réclusion, peine d'ailleurs toute platonique et qui, par arrêt de la Cour, se confondra avec les quinze ans de travaux forcés prononcés au mois de mai contre l'accusée, pour infanticide.

Me Maurice Roger, du barreau de Blois, a présenté, dans une plaidoirie très élevée, la défense de la fille Pichon. L'honorable avocat s'est associé à l'œuvre de réparation et de réhabilitation qui allait s'accomplir à l'égard de Saussier.

M. le substitut Vigneron, dans son réquisitoire, a regretté vivement que la loi française ne permit pas d'indemniser les victimes des erreurs judiciaires.

## *GENERAL NOTES.*

THE LAW OF MOTHERS-IN-LAW.—In the recent case of *Sawyer* v. *Hebard's Estate*, 2 New Eng. Rep. 189, the Supreme Court of Vermont held that a son-in-law cannot recover for boarding his mother-in-law, unless it is proved that an express contract existed, or a mutual expectation that the board should be paid for. The Court remarked that the case of *Sprague* v. *Waldo* decides that a son-in-law is treated the same as a son in this respect, and added: 'Under the circumstances reported, we cannot regard the intestate's relation to the plaintiff on these several occasions, while staying with her son-in-law and daughter, sometimes at the request and invitation of the daughter, as other than that of visitor. It would be a crime against nature and humanity to give all the courtesies, favours, and visits that are exchanged between parents and children the mercenary quality of dollars and cents.'

THE TWO BRANCHES OF THE LEGAL PROFESSION.—The superiority of English over American judges, of English over American counsel, and of English law reports over American law reports, is due largely to the fact of the existence of a separate professional class known as barristers, whose training is entirely academic and forensic. On the other hand, the frequent failure of barristers in England to be present at the time of trial to attend to the causes in which they hold briefs and the inability of the solicitors who understand the case to appear are, if we may credit our English exchanges, productive of frequent and serious inconvenience. We incline to think that this is a matter to be regulated by that law of natural selection which has built up the legal profession together with the other institutions of civilized life. Experience in America is generally opposed to legislative abridgment of the freedom of contract or of action. In the small town it would be extremely onerous if causes had to be tried by barristers who go out at circuit from large cities, and if the country practitioner were limited to the mere work of preparing causes and instructing counsel. On the other hand, in large cities where the volume of business is great, the very necessity of having a division of labour according to individual taste or adaptability, will in time produce a distinct class of advocates who, though having the power to act as solicitors, will not do so. This has already become so to a very considerable extent.—*American Law Review.*

THE BEEFSTEAK TEST.—The following plan is stated to have been pursued by some officials at the late Worcester Sessions to hasten the decision of a refractory jury who were locked up to consider their verdict. It was past supper time, and the court officials had no relish to pass the night in waiting upon the twelve good men who were so excessively conscientious. A large dish of beefsteak fried with onions, giving off a body of aroma sufficient to fill the largest hall in England, was brought into the passage close to the door of the unhappy jurymen's prison. The bailiff, who wished the "stand-outs" at Jericho, opened the door; the cover was taken off the dish; the aroma of the steaks and onions floated in; it invaded and pervaded every square inch of the black hole; and the jury's nasals were violently affected. Mere mortal Englishman couldn't long stand out against such a remembrance of supper. A second opening of the door and advancement of the dish enabled the jury to find a verdict.—*Irish Law Times.*

A PECULIAR CLAIM FOR SERVICES.—During the civil war, William R. Cripps, of Newport, married Mrs. Elizabeth H. Thurston, whose husband was supposed to have been killed while serving in a Rhode Island regiment; but after the lapse of years the first husband re-appeared, and upon learning the state of things, married another woman. Cripps, a few months ago, turned his wife out of doors, refused to support her, and applied for a divorce, which the judge granted, as the marriage was illegal. The woman was destitute. A lawyer took her case in hand, and brought suit against Cripps for services rendered by his supposed wife as his housekeeper, and secured judgment in the sum of two thousand dollars.

MISCARRIAGE OF JUSTICE.—The London *Daily Telegraph* gives an account of a case in which a very lamentable miscarriage of justice has just been brought to light. It seems that a man, named David Wilby, who was sentenced to five years' penal servitude, for a robbery with violence, last February, has been set free from Chatham Convict Prison "without a stain on his character." He was employed as groom to a retired contractor, living in Ealing, and his master alleged that Wilby attacked him on a dark night and robbed him of a bag containing £180. Subsequently the prosecutor committed suicide, and at the inquest it was shown that his brain was diseased, and that he had been subject to hallucinations for several years. This fact, and the absence of any corroboration of the story of robbery, sufficed to induce the Home Secretary to send the convict back to his wife and children.

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