The Legal News.

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TAKING CASES ON SPECULATION.

We print elsewhere an extract from *The Nation*, summarizing a controversy between Judge Countryman and a United States contemporary on the subject of contingent fees. We may remark that the law in the Province of Quebec appears to be more rigorous than amongst our neighbors, for it has been positively ruled by our highest provincial tribunal, that a lawyer is not allowed to bargain that he shall have a share of the proceeds of the suits which he carries on (*Dorion & Brown*, 2 Legal News, p. 214). Mr. Justice Ramsay remarked in that case: "Such a bargain has never been maintained in England, and cannot be here."

If the rule were otherwise, it may be remarked that the attorney who had stipulated for a share of the winnings would be virtually a party to the suit, and the consequence would be that under our Code of Civil Procedure, art. 176, the judge might be recused if related or allied to the attorney "within the degree of cousin-german inclusively."

We append the opinions of two well known jurists, Messrs. Dillon and Cooley:—

Judge Dillon writes: "A delicate sense of propriety hardly consists with taking a case 'on speculation,' as I understand the phrase. I have never taken such a case nor a case upon an *expressed* contingent fee. Most professional charges, however, are *sub modo* contingent, that is, a lawyer charges more for the same skill and labor where they lead to a successful result than where they do not. Exceptional cases *may* justify a contingent fee; but the tendency of the practice and the abuses resulting from it are such that it ought not to be favorably regarded."

Judge Cooley writes: "1. A member of the bar is a minister of justice. He is licensed to assist the court in the administration of the law; and in the performance of his special functions he puts legal claims and defences in due form for an orderly determination, assists in eliciting the truth upon legal issues, aids the court by his investigations and arguments to right conclusions upon the law, and attends to the execution of the judgments which are awarded. As experience is thought to demonstrate that a just result is most likely to be reached when each party to a controversy has his special counsel to examine, prepare and present his side, the lawyers called in must assume antagonistic positions, but each is supposed to have his attention directed to the final attainment of a right conclusion, and the profession itself has no justification for its existence except as it fulfills its mission as above indicated.

"2. In the performance of professional functions, the lawyer owes duties to his client, to the court, and to the State. To his client he owes fidelity and unreserved confidence; to the court he owes respect, obedience, frank and truthful advice, and generous support, and to the State he owes the duty of making his office, like that of the judge, conducive to the general good by means of a just administration of law.

"3. Clothed with such functions, and charged with such important duties, a lawyer is permitted to charge a reasonable compensation for his services, which is sometimes regulated in advance by the law, and sometimes left to negotiations or the testimony of witnesses after the services are performed. In many cases lawyers have not been content with this reasonable compensation, but have entered into arrangements with their employers for contingent fees, on the no cure no pay plan of medical charlatans, or have stipulated, when suing for the recovery of property or damages, that they shall receive in case of success a certain proportion of the recovery in lieu of fees. As such arrangements are most often made with persons of limited means, who can ill afford the expense of unsuccessful litigation, they are made to wear a benevolent aspect, as arrangements whereby injured poverty may be enabled to obtain its due. But that they are corrupting, and affect injuriously all the relations which the lawyer enters into is believed to be unquestionable.

"4. The first injurious consequence of such a practice is that it tempts lawyers to deal deceitfully with those who go to them for advice; to express doubts of results when they feel none, to suggest difficulties which they do not really anticipate, to magnify the probable

cost of litigation; in short, to do anything rather than express a frank opinion of the actual case and its probabilities, with a view if possible to bring the client to the point of proposing a part of the property or damages claimed, if by means thereof he shall be put in possession of the remainder. If, for example, the lawyer can so far discourage his client as to obtain from him an offer of one-half of property worth $20,000 for the performance of services worth not to exceed $500, and success seems reasonably certain, he is manifestly interested to the extent of $9,500 to deal disingenuously with his client; and if the practice is recognized as legitimate, the temptation will often prove too great to be resisted. If suit is instituted without any such arrangement, there is then the temptation to permit delays, annoyances, trouble and cost to the client that might be avoided, with a view to the same end; and no doubt some lawyers who consider themselves high-minded and honorable unconsciously lose the spur to diligence in their suits, when discouragement to their clients seems likely to prove more profitable to them than would the energetic pursuit of a remedy. Thus the practice invites and tempts the lawyer to conceal from the client his real views, and to antagonize the interest of the client; a condition in which the law contemplates he shall never be placed.

"5. A further injurious consequence is that it takes from the lawyer the feeling that he is a minister of justice, and enlists his selfishness in a way that precludes his making a just administration of the law his first consideration. The lawyer's legitimate fee is payable irrespective of the result, and he is supposed to occupy a position from which he can contemplate the controversy with a desire that the correct rule of law shall be applied and the truth be expressed in the judgment, whether the result to his client be favorable or unfavorable. The policy of the law is that neither his feelings nor his interest shall be so far enlisted as to tempt him to desire injustice; but a contingent fee makes him a party in desire and anxiety; he becomes disqualified to be the adviser of the court, and the high sense of honor that should actuate all his professional conduct is blunted by the bribe that tempts his fidelity to justice. The court thus loses its proper reliance, and the State loses in great measure the advantages anticipated from this body of officers.

"6. A third injurious consequence is that it leads to the bringing of many suits that ought never to be brought. Such bargains are most often met with in suits for alleged negligent injuries. In the majority of these, corporations are defendants. Many of the suits are justly brought and justly result in substantial recoveries; others are instituted in reliance, not upon justice or the law of the case, but upon the effect of appeals to passion or prejudice. These are often taken as mere ventures, as one might invest in a lottery ticket or in the exploration of an unknown land for possible mineral wealth. Perhaps no other class of suits does so much toward bringing the jury system into contempt, or toward creating a feeling of antagonism between aggregated capital on the one side and the community in general on the other; and lawyers who bring the suits are interested in making the most of this feeling. In no small degree this affects the public confidence in legal proceedings; corporators are made to believe that justice for them is not to be obtained from juries, and the public is made to believe that courts very often improperly interpose to annul just verdicts against great corporate monopolies. And when the court is censured for administering the law impartially, the lawyer who, unaffected by the interest or passion of his client, ought unhesitatingly to give the court his moral support, is found to be himself a suitor in the client's name, and his expressed disappointment and anger, which the public do not know are interested, are vastly more effective in weakening the hold of the court upon public confidence than could be any complaints of the suitor whose interests were known to be at stake. These evils are present more or less in other cases, but are conspicuously present in these.

"7. A further injurious result is that it affects the mind as all gambling does, and not only renders the judgment untrustworthy, but begets a disinclination for the somewhat monotonous routine of daily professional life. If only the customary fee is at stake, it may confidently be expected that the lawyer will bring a cool judgment to the consideration of a proposed suit; but it is easy to see merits when a possible fortune awaits the lawyer at the conclusion;

and whoever is accustomed to take such chances is in great danger of coming after a time to look upon the administration of the law as the turning of a wheel of a lottery, where any venture, however unpromising, may come out a prize. Such a lawyer gradually loses confidence in fundamental and enduring principles; his judgment is confused in the hopeful contemplation of possibilities, when it should seize hold upon and cling to legal verities, and it becomes wholly unsafe and unreliable. Safe legal advice can only be given by one who comes to the consultation in a judicial frame of mind, and dismisses for the time all such selfish considerations as would tend to lead the mind to a particular conclusion. And while this seems plain and unquestionable, it is no plainer than that a lawyer becomes untrustworthy in judgment in proportion as he permits his sense of honor and professional fidelity to be subordinated to his personal interests.

"8. The practice, then, is injurious to the cause of justice, to the court and to the lawyer himself. Rare good fortune may in some cases make it result in pecuniary prosperity, but it must be at such sacrifices as the teachings of the profession should secure one against a willingness to submit to. Under such circumstances it would seem that if poor persons need assistance to enforce their substantial rights, and are unable to pay for it, a lawyer, properly imbued with a sense of the just nature of his calling, will prefer to give assistance as a matter of charity, rather than place himself in a position that antagonizes the interest of the client, at the same time that in great degree it incapacitates him from performing the highest and most honorable of his duties, namely, those which are owing to the court and to the law itself."

THE LAW OF FORGERY.

A sensible decision has been rendered by the the Court of Cassation in Austria, under the law of forgery. The circumstances were these: Caroline J., a waiter in the service of Colonel P., took a blank check from his check-book, and got her son to fill it up for an amount of 200 florins, date it, sign Colonel P.'s name to it, and present it to S. M. Rothschild for payment. The filling up of the blank check was awkwardly done, and the signature did not in the least resemble that of Colonel P. The forgery was, therefore, detected and payment refused. The parties being indicted and brought to trial, the lower court directed a verdict of acquittal, on the ground that the false check was not at all adapted to deceive. The Government appealed, and the Court of Cassation has reversed the judgment below, saying: "The punishment of an attempt is based upon this, that it manifests the intention to commit an offence, in a manner endangering the order of law. Such danger, as is generally recognized in the Austrian decisions and doctrine, can only be denied where the attempt is made with means completely and unqualifiedly (*in abstracto*) unfit to attain the object. If the cause of failure was only in the manner of execution, or in the concrete quality or operation of the object used (so in fraud of him whose deceit was planned), then a punishable attempt is to be assumed. The acquittal was erroneous. A forged instrument is adapted to deceive."

HORÆ SUBSECIVÆ.

The *Canada Law Journal* thinks "there is no reason why editors of legal journals should not have some vacation as well as their brethren." It is proposed, therefore, to publish the journal named during vacation only "as circumstances may require." It is a mistake to imagine that editors need holidays. It is fun and play with them all the year round. However, out of consideration for their readers, it may be desirable that publication should be suspended sometimes for a while.

AMERICAN BAR ASSOCIATION.

The fourth annual meeting of the American Bar Association will be held at Saratoga Springs, on Wednesday, Thursday and Friday, August 17th, 18th and 19th, 1881. The sessions will be held at 10 o'clock a.m. and 7 o'clock p.m. on Wednesday and Thursday, and at 10 o'clock a.m. on Friday, at Putnam's Music Hall, corner of Broadway and Phila street, opposite the United States Hotel. On Wednesday the address of President, Edward J. Phelps, of Vermont, will be delivered at the opening of the session. Papers will be read by Thomas M. Cooley, of Michigan, on "The Recording Laws of this Country;" U. M. Rose, of Arkansas, on "The Progress of Codification;" Leonard A.

Jones, of Massachusetts, on "Legislative Control of Railroads." On Thursday the morning session will be opened by the annual address, by Clarkson N. Porter, of New York, to be followed by the reports of the standing committees, reports of special committees, nomination and election of officers. On Friday, unfinished business, new business, general debate. If the other business of the session will permit, a short paper on "The advantages of a National Bankrupt Law" will be read by Samuel Wagner, of Philadelphia.

THE LATE LORD BEACONSFIELD.

It is stated, on the authority of Mr. Ralph Disraeli, that the late Lord Beaconsfield, after serving for a certain time as articled clerk in the Old Jewry, entered as a student of Lincoln's Inn and kept several terms, although he was not called to the bar. "J. C. B." states that Lord Beaconsfield became nominally a pupil of his cousin, the late eminent conveyancer, Mr. Nathaniel Basevi, "who told me, some years afterwards, that 'Ben Disraeli' showed no liking for law, and generally occupied himself at chambers with a book, brought somewhat late in the day by himself. The work I remember as having been particularised was Spencer's 'Faerie Queen', bound in green morocco."

Mr. George H. Parkinson, of the central office, Royal Courts of Justice, has published the following extract from his diary of 1852, when he was clerk to Baron Parke:—"Saturday, June 12, 1852. Mr. Disraeli, the new chancellor of the Exchequer, came down about two, to be sworn in. He was quite alone; and Davis, the usher, showed him into the judges' private room, where I happened to be arranging some papers. I placed him in a chair, and said I would go and tell the judges he had arrived. In a few minutes they came in—Lord Chief Baron Pollock, Barons Parke, Alderson, Rolfe and Platt. All seemed to know him, and all talked and laughed together. His new black silk robe, heavily embroidered with gold bullion fringe and lace, was lying across a chair. 'Here, get on your gown,' said Baron Alderson; you'll find it monstrously heavy.' 'Oh, I find it uncommonly light,' said the new chancellor. 'Well, it's heavy with what makes other things light,' said the Lord Chief Baron. 'Now, what am I to say and do in this performance? was the next question. 'Why, you'll first be sworn in by Vincent, and then you'll sit down again; and if you look to the extreme left of the first row of counsel you will see a rather tall man looking at you. That is Mr. Willes out of court, but Mr. Tubman in court; and you must say, 'Mr. Tubman, have you anything to move?' He will make his motion, and when he sits down you must say, 'Take a rule, Mr. Tubman,' and that will be the end of the affair.'

"The ushers were summoned, and all marched to the Bench—Baron Platt as junior Baron first, Mr. Disraeli last, immediately preceded by the Lord Chief Baron. Mr. Vincent, the Queen's Remembrancer, administered the ancient oath in Norman French, I think. Mr. Tubman (afterwards Mr. Justice Willes) made some fictitious motion, was duly desired to 'take a rule,' and the chancellor and barons returned to the private room. 'Well, I must say you fellows have easy work to do, if this is a specimen,' said Mr. Disraeli. 'Now, don't you think that, or you'll be cutting down our salaries', replied one of the judges. 'Take care of that robe,' said Baron Alderson; you can leave it to your son when the Queen makes him a chancellor.' Oh, no; you've settled that business,' said the new chancellor; 'you'd decide that was fettering the Royal Prerogative.' There was a general roar at this witty allusion to a very important case just decided in the House of Lords, in which the Peers had held that a large monetary bequest by the late Earl of Bridgewater to his son, on condition that he should obtain the title of Duke within a certain time, was void, on the ground that it was a fettering of the Royal prerogative."

TAKING CASES ON SPECULATION.

The *Albany Law Journal* and Judge Countryman have been carrying on an ethical controversy, more curious than edifying, we fear, to the laity, on the subject of taking cases on "speculation." The judge says that the practice is perfectly right, and even praiseworthy; that poor suitors, if they could make no arrangements to retain counsel out of the proceeds of the suit, would often find themselves unable to prosecute their rights, and that such arrangements are sanctioned by the courts. The *Law Journal*, on the other hand, strongly reprobates this view; insists that though the courts may tolerate the

practice, that does not settle the matter, since many things are tolerated in courts—such as the use of decoys and informers, pleas of infancy, usury, etc.,—which no one thinks are in themselves fine or laudable. But at the same time, it admits that cases must occasionally be taken on "speculation," and states the difference between the judge and itself to be that "we would take just as few cases of this kind as possible, he would get just as many of them as he could."

If this could be taken as a fair statement of the position of the two disputants, we should say that the *Law Journal* was undoubtedly right.

The strong feeling which still exists among conservative members of the bar on the subject grows out of the dangerous tendency of the practice, and this is not affected by the fact that now and then it may be for the interest of litigants to resort to it. In new countries, and in countries where the bar has long ceased to be a close corporation, and law is carried on like any other business, the inherited tradition with regard to taking cases on "speculation" is pretty sure to be supplanted in a measure by the feeling that such a practice is often for the mutual advantage of lawyer and client. The story of the eminent western lawyer, who, on being asked to what branches of the profession he had chiefly devoted himself, replied, "Champerty and Maintenance," illustrates a condition of professional sentiment which it would still hardly be possible to imagine existing in New York, but toward which some years ago the bar seemed to be making rapid progress. Until very recently, will-contests on a speculative basis were positively encouraged by a statute (now, we believe, repealed) permitting large allowances out of the estate to the unsuccessful party's counsel, and it was out of the practice founded upon this that the unscrupulous rapacity and ferocity that used to distinguish such contests in this city chiefly grew. The evil tendency of speculative lawsuits is reason enough for discouraging the practice wherever it can be done; but the question of how far it can be done is very like that other question of legal ethics which every few years or so comes up for discussion—how far a lawyer may go in defending a client.

Many moralists, from the time of Dr. Johnson down, have undertaken to settle this, but with so little success that Lord Brougham's suggestion, that when a lawyer undertakes his client's case his duty is to throw overboard all moral principles, is still regarded in many quarters as being the prevailing professional view of the subject. The question is one of those which cannot be decided one way or the other abstractly. It is necessary to know the facts in each particular case before deciding whether a breach of professional ethics has been committed; but it is certainly safe to agree with the *Law Journal* that any one who tries to get as many "speculative" cases as he can will not earn the approval of the conservative part of the bar.—*N. Y. Nation.*

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, August 2, 1881.

[In Chambers.]

Before RAMSAY, J.

Ex parte CLARA LEFEVRE, and Ex parte EXILDA DUFRESNE, Petitioners for writ of Habeas Corpus.

Summary conviction—32-33 *Vict. c.* 32, *s.* 17—*Sentence.*

In any case tried under 32-33 *Vict. c.* 32, *s.* 2. *ss.* 3, 4, 5 *or* 6, *if the prisoner be condemned to both fine and imprisonment, hard labor cannot be added to the sentence of imprisonment.*

RAMSAY, J. The applicant was convicted before the Recorder under the provisions of the 32 & 33 Victoria, cap. 32, sect. 17, and condemned to a fine of $100 and to be imprisoned at hard labor for the space of six months. The objection taken is that the Recorder has exceeded his jurisdiction in condemning the prisoner to hard labor, inasmuch as he could only add the penalty of imprisonment, that is imprisonment without hard labor, to the fine.

The question is not a new one. About six years ago it was raised before me in the case of *May Somers*, convicted under the same section. I held the objection good and quashed the conviction. Unless some strong argument could be adduced against the conclusion I then arrived at, I should feel myself bound by that decision. To waver, and change rulings in criminal cases, gives rise to feelings of insecurity, I might almost say of injustice, for it creates inequality where specially there should be none, and naturally brings the administration of the law into contempt. But far from any conclusive argu-

ment having been brought forward, to lead me to think I was wrong, it seems to me that the question is one of elementary simplicity. The statute permits three kinds of punishment:

(1) Imprisonment not exceeding 6 months with or without hard labor.

(2) Fine not exceeding, with the costs, $100.

(3) Fine and imprisonment not exceeding the said period and term.

It is contended for the conviction that the third form of penalty allows fine and imprisonment *with hard labor*. To arrive at such a conclusion we must ignore not only the common use of a technical term, but the plain meaning of a word. Imprisonment evidently does not of itself include hard labor, which is an aggravation of the penalty, just as solitary confinement, bread and water, or whipping. Again, imprisonment, in the language of the common law, has never been held to permit of any addition. Fine and imprisonment are the common law punishments for all misdemeanors, and without the authority of a statute no other punishment has ever been added.

My attention has been drawn to the case of Gustave Charel, decided last January by Mr. Justice Monk. With all due deference to the opinion of my learned brother, delivered after my decision in the case of Somers, I cannot give up my already expressed opinion. It is not because I doubt that it is the duty of the judge to seek the intention of the legislature in interpreting penal legislation as in the interpretation of a civil statute. That is the common doctrine, and Mr. Hardcastle in his "Construction and effect of Statutory Law," really says nothing more. But here it is not a question of interpretation at all. The Recorder out of whole cloth has added a new punishment, perfectly distinct from the others he is authorized to inflict by the law. I think I may venture to say that there is no authority for this. It is a precedent of the most dangerous character and gives opening to the most serious abuses.

I would add one other remark. The decision in May Somers case took place in 1875, it was a decision of the Court of Queen's Bench, Crown side, rendered therefore in open court, and fully reported, yet up to this time Parliament has not thought fit to declare that its intention had been misconstrued. On the Vagrant Act a similar question arose, and Parliament passed a law last session authorizing the punishment of imprisonment in all cases under that act to be either with or without hard labour.

There is another case, on the application of Exilda Dufresne, in which the same point is raised, and some others. I have not thought it necessary to adjudicate on the other points as I think the prisoner must be discharged for the same reason as Clara Lefevre.

St. Pierre & Scallon, for petitioner Lefevre.

O. Augé, for petitioner Dufresne.

J. A. Ouimet, Q.C., for the Crown.

COURT OF QUEEN'S BENCH.

MONTREAL, February 15, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

THE NORTHERN ASSURANCE CO. (defts. below), Appellants, and PREVOST (plff. below), Respondent.

Fire Insurance — Representation — Warranty — Waiver.

Words in a policy represented that the house insured was "à être lambrissée en brique." Held, that this did not constitute a warranty of a promissory nature that the house was to be immediately covered with brick, but merely expressed the intention of the insured to brick the building when circumstances would permit.

Furthermore, the Company, having accepted a renewal premium while the premises were, to their knowledge, in the same state, could not take advantage of the words cited.

The appeal was from a judgment of the Superior Court, Montreal, Sicotte, J., condemning the appellants to pay the sum of $800 for loss under a fire policy.

The premises insured were by the terms of the policy "*à être lambrissée en brique*," and the only question of law was whether the insured was under a warranty to have the house encased in brick within a reasonable delay.

It appeared that the year for which the house was originally insured had expired, and the Company had accepted a renewal premium while the premises were in the same condition.

The following opinion was by

RAMSAY, J. This is an action on a fire insurance policy for $1,200. By the action $1,000 was claimed, and by the judgment $800 was allowed to plaintiff. Defendant resisted the

action on two grounds : First, it was contended that the house, which was of wood, was to be covered with brick, and that it had not been so covered before the fire although there had been sufficient time to cover it, that this was a warranty, and consequently that there was no insurance.

There can be no sort of objection to calling this a warranty ; but it was not a warranty of an existing thing, or a thing on which the insurance depended, and consequently by whatever name it may be called, the failure to execute it could not vitiate the policy. That this is now put forth as an excuse for not paying for the loss is evident from the fact that the insurance was effected on the 17th March, 1877, and renewed on the 17th March, 1878, on the house still "*à être lambrissée en brique.*" If, as Mr. Taylor says, it ought to have been completed in May, 1877, why did he renew the policy in May, 1878 ?

In the second place, it is contended that the house was over-estimated. The evidence principally relied on is the valuation of the municipality. The three valuators are brought up by plaintiff, and they all swear positively that their valuation is relative and not a real valuation of the property. There is then an attempt to prove that the plaintiff would have sold for $1,100. The witness says he hoped he could get the property for this rate ; but he was disappointed in this expectation. This is not the sort of evidence to support an accusation of fraudulent over-valuation. Something more precise is required.

There is also an attempt to prove that the house was set fire to—I presume by the insured. This is not alleged, and evidence as to this ought not to have been admitted. It is, however, quite harmless, for nothing of the sort is proved.

I would confirm.

Judgment confirmed.

Trenholme & Maclaren for Appellants.

I. A. Jodoin for Respondent.

A. Lacoste, Q.C., Counsel.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

SMART, petitioner, and THE CORPORATION OF THE VILLAGE OF HOCHELAGA, Respondent.

Mandamus—License to sell liquor—Discretion of Council to refuse certificate.

The Superior Court has no authority to issue a mandamus to a Municipal Council to compel the Council to grant a license to sell liquor, to a person who presents a certificate signed by twenty-five municipal electors, under 43-44 *Vict., ch.* 11, *sec.* 5.

PER CURIAM. This is a petition for a writ of mandamus, to compel the Corporation of the village of Hochelaga to accede to the wish of Mr. Smart for a confirmation of his certificate, and for a license to sell liquor. The petitioner alleges that he has furnished the requisite certificate signed by 25 electors resident within the limits of the municipality ; that he had a license up to May, 1881, and that the Council refuses now to confirm his certificate and renew his license, without cause.

I have looked to see whether the law has been changed since the case of *Privett* v. *Sexton** was decided in 1874. It was there held that the then License Commissioners at Montreal were not bound, under 37 Vic., c. 3, to confirm the certificate of 25 electors towards a license for keeping a tavern, but had a discretion to refuse to confirm, and the application for a mandamus was in that case rejected.

The law does not seem to be changed in this respect, and I am of opinion that the Council has a discretion to refuse to confirm the certificate if it "sees fit." The petition is, therefore, rejected with costs.

The following order was made :—

"Having heard the parties by their counsel upon the petition of the *requérant* made and filed on the 17th of June instant, praying that a writ of mandamus do issue in the present case, ordering the respondent to confirm the certificate required by law previous to the obtaining his license for keeping a tavern, or *maison d'entretien public*, within the limits of the Corporation of the said village of Hochelaga ; having examined the proceedings and deliberated ;

"I, the undersigned Judge, considering the petition unfounded, and that the *Conseil* might refuse, as it has "seen fit" to refuse, to confirm the certificate referred to in the petition of Smart, do reject the said petition with costs," &c.

O. Augé, for petitioner.

Préfontaine & Major, for respondent.

* 18 L. C. Jurist, 192.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

LEROUX et al. v. DESLAURIERS, NORMAN, opposant, and DUMOUCHEL, *mis en cause*, petitioner.

Alimentary allowance—Contempt.

A person committed for contempt is not entitled to an alimentary allowance, under C.C.P. 790.

The petitioner was a bailiff of the Superior Court who was in gaol for contempt in selling seized goods, in spite of oppositions filed to the seizure and an order from the prothonotary to suspend proceedings. (See *ante*, pp. 173-175, where the case is reported at length). He now asked for an alimentary allowance, under C.C.P. 790, supporting the application by an affidavit that he is not worth $50.

MACKAY, J. The opposant, Norman, has answered in law, that this is not a case in which an alimentary allowance can be asked for. I find that Judges Torrance and Jetté have so ruled here, and also Judge Stuart at Quebec. The application is, therefore, rejected.*

The following order was added to the judgment dismissing the petition:—

"And seeing the affidavit of Dumouchel at the end of his petition, from which affidavit it appears that he is unfit to be continued a bailiff of the Superior Court, he is dismissed."

A. Mathieu, for petitioner.

Desjardins & Lanctot, for Norman.

*See *Cramp* v. *Cocquereau*, 2 Legal News, p. 332; *Vermette* v. *Fontaine*, 6 Q.L.R., 159.

GENERAL NOTES.

The Assize Court at Heibron, in Wurtemburg, had lately before it a case which is probably unique in criminal annals. A laborer who was laid up with a broken leg was charged with embezzlement, and was summoned to appear before the *juge d'instruction*. Overwhelmed with the disgrace, perhaps unable to exculpate himself, he ordered his son to hang him. The son, who also was a laborer, obeyed his father's wish, and carried him to the house loft, where he hanged him effectively from one of the beams. The court sentenced the prisoner to imprisonment for three years and nine months.

Vacation is at hand, and the lawyers "should not make things unnecessarily long," as the English judge told the lawyer who talked about *nolle prosequi*, with the accent on the second syllable. In *Gaines* v. *Lizardi*, 3 Woods, 77, counsel "argued seventeen days." Judges also need a word of caution on this point. The *Southern Law Review* for June-July, in a notice of 102 U. S. Reports, says:—"After perusing twenty-six solid pages of a concurring opinion by Justice Clifford, in *Railroad Company* v. *National Bank* (Justice Harlan, at the close of eleven pages of the opinion of the court, had added, 'Further elaboration would seem unnecessary'), and the ten pages of opinion by him in *Parks* v. *Booth*, which constitute his contribution to this volume, a half-guilty sense of satisfaction steals over the reader as he appreciates that these are the last of those famously elaborate disquisitions by which that learned judge has so often, during more than twenty-two years, exhausted at once the law of the case and the strength and patience of the readers."

CIRCUMSTANTIAL EVIDENCE.—A lawyer in Central New York gives the following account of one of his first cases: "My client sued a neighbor for the alleged killing of a favorite dog. The proof consisted in the mysterious disappearance of the animal, and the possession of a dog's skin by the defendant, which, after considerable argument, was brought into court in evidence. It was marked in a singular manner, and was positively identified, with many tears, by the plaintiff's wife and daughter as the undoubted integument of the deceased Bose. In summing up to the jury, I was in the midst of a highly colored picture of the virtues of the deceased, and the love of the children for their four-footed friend, when I was interrupted by a slight disturbance in the crowd near the door of the little school-house which served as court-house. Looking around, I saw my client's youngest son, a tow-headed urchin of twelve, coming forward with a dog whose skin was the exact counterpart of the one put in evidence. The dog wagged his tail with good-natured composure, and the boy cried in his childish treble, 'Paw, Bose has come home.' I gathered up my law-books and retreated, and I have never had perfect confidence in circumstantial evidence since."

A singular case on the "measure of prudence," is *Bloomington* v. *Perdue*, Illinois Supreme Court, 1st June, 1881, 13 Cent. L. J. 39. It was there held in an action by a young lady against a city, to recover damages for an injury to the uterus, caused by a fall on a defective sidewalk, that on the question of the plaintiff's freedom from negligence, instructions which do not refer as a standard of caution to "what ordinary young ladies would do," but to the conduct of "an ordinarily prudent person," and of "a woman of common or ordinary prudence," are not faulty in respect to the standard referred to. The defendant proved that the plaintiff did not take proper care of herself after the injury, by remaining quiet, as showing negligence on her part, increasing the injury. On cross-examination of the physicians called by the defence, the plaintiff proved, over defendant's objection, that an unmarried woman, not informed of the anatomy of the womb, could not be expected to act as promptly and intelligently as one understanding it, or as a medical man would; and that it was a common thing for women to suffer from a displacement or injury of the organ spoken of, without themselves knowing the trouble. *Held*, that there was no error in allowing the evidence.—*Albany L. J.*