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THE LAW REPORTER.

JOURNAL DE JURISPRUDENCE.

LA PEINE DE MORT.

Au dernier terme de la Cour du Banc de la Reine, siégeant en matière criminelle à Québec, F. X. Julien fut convaincu de meurtre sur la personne de son beau-père, et condamné a être pendu le dix-sept du courant.

Une Requête signée par des milliers de citoyens, demandant la commutation de la peine capitale, a été présentée à Son Excellence l'Administrateur du Gouvernement.

Le trois du courant une proclamation de Son Excellence annonce que la sentence du condamné est commuée, à un emprisonnement perpétuel au pénitentiaire.

Tous les Journaux Français et la majorité de la presse Anglaise du Bas-Canada, d'accord en cela avec l'opinion presqu'unanime de notre population, ont vivement applaudi à l'Acte de clémence que le Gouvernement vient d'exercer, et se sont unis pour exprimer à Son Excellence les sentiments bien mérités de leur reconnaissance. Pour nous, nous ne croyons pas devoir laisser s'échapper cette occasion tout en nous joingnant à la presse pour approuver entièrement l'intervention du Gouvernement dans cette circonstance, de dire un mot sur le système de bascule qui prévaut dans le pays depuis quelques années.

Nous approuvons sincèrement, comme nous venons de le dire, la commutation de la peine du malheureux Julien, mais nous croyons de notre devoir d'appeler l'attention de la Législature sur ce sujet. Chaque fois qu'il a plu au représentant de notre Souveraine d'user de sa prérogative de miséricorde, nous nous en sommes réjouis dans l'intérêt de l'humanité, tout en regrettant néanmoins de voir s'introduire cette pratique de réduire au néant les arrêts des Cours de Justice. Si le Gouvernement, en commuant la peine de mort que des tribunaux se trouvent avoir à prononcer de temps a autre, reconnait par là qu'elle n'est plus d'une nécessité indispensable pour la protection de la société. il semble qu'il vaudrait beaucoup mieux l'effacer du livre de nos lois, que de laisser la société dans l'incertitude, sur cette terrible peine.

L'arrêt que prononce le Juge après le *verdict* devrait être exécuté. Il y a, ce nous semble, une importance bien grande à ce que les membres de la Société connaissent la peine qui leur sera irrévocablement

appliquée s'il en violent les lois. Si l'on croit à l'efficacité du gibet pour prévenir le meurtre, qu'on le laisse exister, si au contraire, l'idée de l'échafaud n'arrête pas le meurtrier dans l'accomplissement du crime, hâtons nous de déclarer qu'il n'existe plus de telle chose par nos lois, qu'une exécution capitale. Il ne peut résulter de bien sous aucun rapport de faire intervenir l'Exécutif dans les décisions des tribunaux. Si les lois telles qu'elles existent, ne conviennent pas à nos mœurs et aux besoins de la société, que les ministres présentent un projet de loi aux Chambres—qu'ils réforment et changent ce qui doit être changé et réformé. Très bien, mais tant que la loi existe elle doit être respectée.

An amusing scene took place in the Court of Appeals last Saturday morning. It appears that the records from Quebec had been despatched in time, in the usual course, to be here at the beginning of term, but had not arrived; and that in reply to the numerous telegraphic despatches of the Clerk, who naturally felt rather uneasy at the non-arrival of his charge, no satisfactory answer had been returned. The absence of these papers having become the subject of remark, Mr. Justice Rolland suggested the possibility of their being found lying in some stable at Three Rivers, and Mr. Beaudry, catching at the hint, asked the Court to authorize him to send a special messenger to look for them; but the Court informed him that it could give no such authority, that he must apply to government for the means of preserving his records. But this scene may give rise to serious as well as to amusing reflections. It is by no means a joke to suitors to be told that papers, upon which their most important interests may depend, are carted about between Quebec and Montreal with no other or better protection than the driver of an express van. We do not know where the blame rests; but it is clear, that censure is due in some quarter. It is really too bad that, with an overflowing Treasury, so important a branch of the public service should be insufficiently provided for. But, indeed, it is not alone the Court of Appeals that is deprived of the ordinary appliances for carrying on its business; in one of the most important and largest of the Country Circuits, where from 800 to 1000 cases are taken out every year, there is not a single chair in the Court-house the property of Government, and at late sittings the *Hall of Justice* is lighted by stinking farthing dips borrowed of an ill-paid keeper. That amid such squalid destitution, a proper feeling of respect for the Judiciary should exist, is hardly to be expected, and that those sentiments of awe, so useful in reproving the freedom of licentious witnesses, should prevail, is out of the question. We feel persuaded that the want of that state, necessary to keep up the dignity of the Court, is not unusually the cause of the extraordinary evidence—we would not use a harsher expression—unfortunately but to frequent in civil cases.

In consideration of the delay in the arrival of the records of the Court of Appeals from Quebec, mentioned above, the Court, this morning, (Friday, 10th March,) passed the following rule:

It is ordered to ensure the despatch of business before this Court that henceforth the Clerk, in due time before the commencement of each term, shall cause the records in all causes to be disposed of, to be rendered under his superintendence, or that of his deputy, from the Cities of Quebec and Montreal, as the case may be, to the place where the Court shall be by law appointed to be held at such term.

Below we give the Rules of Practice lately promulgated by the Superior Court. We are disposed to doubt whether these rules are likely to be generally approved of by the members of the Bar, and there are one or two of them to which very serious objections can be made. For instance, we cannot well conceive what is the object of adding additional restrictions to the already difficult process of inscription *en faux* (No. V of the New Rules for the Superior Court). In this District, at all events, it has never been the habit of parties to inscribe *en faux* for the purpose of obtaining delay. In reference to the books of last year we only find three inscriptions for hearing on *inscriptions en faux*, and two of those were against the return of the Sheriff in very peculiar cases. At the same time, it must be evident, that so short a delay as four days, will, almost necessarily, preclude persons living at a distance from inscribing *en faux*, except on special application backed with all the detestable nuisance of affidavits of Attornies and parties interested. As little can we see the advantage to be derived from the III Rule, by which every demurrer to a plea or special answer must contain an assignment of the causes on which such demurrer is founded. It may be said, that such has always been the practice at Quebec, and that it is of importance to assimilate the practice in the two Districts. This we readily admit; but why not in preference have followed the practice established here which is far less cumbrous than the other, as in the greater number of demurrers to pleas and special answers, under this new rule, it will be necessary to set up the pleading preceding that demurred to.

To the last rule, the advantages of which are also extended to the Circuit Court, we should be disposed to object, if we felt perfectly certain that our reading of it was correct; but upon this point we have considerable doubts, and as yet we have not found any one more enlightened than ourselves.

RULES OF PRACTICE.

Rule of Practice made by the Judges of the Superior Court, sitting in the District of Montreal, for fixing and limiting the days for taking *Enquêtes*.

It is Ordered that the first eight days only in the months of February, March, April, May, June, September and October, November and December, and the last eight days only in the month of January, shall be *Enquête* days.

Ordered and promulgated in open Court, 23rd day of September, 1853.

Prothonotary's Office,

SUPERIOR COURT,

Quebec.

On this fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, the Prothonotary of the said Court at Quebec, having on the same day received the same, to that officer transmitted by the Prothonotary of the same Court at Montreal through the Post-office, and having delivered the same over to His Honor the Chief Justice, His Honor Edward Bowen, Chief Justice of the Superior Court for Lower Canada, delivered into the hands of the said Prothonotary at Quebec, the following paper writings—To wit:

Lower Canada,
Superior Court.

Ordered that the following Rules and Orders of Practice be observed in this Court.

That immediately after the delay for filing a contestation to a Report of Distribution shall have issued, if no contestation has been filed, the Plaintiff may give notice that he will move, on the first Juridical Day of the ensuing Term, that the said Report be homologated with costs; and if the Plaintiff omit to give such notice, on the Juridical Day next following the expiration of the delay for the filing of contestations any other party collocated may give such notice.

That the said notice shall not be served on the parties, but that the same shall be posted in the Prothonotary's Office, at least four days.

That every demurrer to a plea or special answer shall contain an assignment of the causes on which that demurrer is founded.

That a party served with a Rule to answer interrogatories upon *faits et articles* shall give his answer before the closing of the *enquête* of the party who has obtained the Rule, and that no answers shall be afterwards received, except by leave of the Court obtained on a special application for the same.

That a motion for leave to inscribe *en faux* against an exhibit fyled, shall be made within four days of the filing of the exhibit, and not afterwards, unless allowed on special application for the same.

That it shall be lawful for a Defendant, by leave of a Judge of this Court, to pay into Court the sum of money which such Defendant

acknowledges to owe to the Plaintiff, and thereupon, unless the Plaintiff shall accept thereof in full discharge of his suit, the said sum shall be struck out of the declaration and paid out of Court to the Plaintiff, and upon the trial of the issue the Plaintiff shall not be allowed to give evidence for the sum so acknowled to be due.

Signed, "Edward Bowen," Chief Justice. "Chs. D. Day," J. S. C.
"Charles Mondelet," J. S. C. "J. Duval," J.
"Ed. Caron," J. S. C. "W. C. Meredith," J. S. C.

Registered in the Prothonotary's Office at Montreal, 13th January, 1854.

Prothonotary's Office,
SUPERIOR COURT,
Quebec.

On the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, the Prothonotary of the said Court at Quebec, having the same day received the same, to that officer transmitted by the Prothonotary of the same Court at Montreal through the Post-office, and having delivered the same over to His Honor the Chief Justice, His Honor Edward Bowen, Chief Justice of the Superior Court for Lower Canada, delivered into the hands of the said Prothonotary at Quebec the following paper writings.—To wit:

It is ordered that the following additional Rules and Orders of Practice be and the same are hereby established and declared to be the Rules and Orders of Practice for the Circuit Court for Lower Canada.

That within four days after the return of any writ of execution, and after the Bailiff's return thereto, certifying that there are monies in his hands subject to the order of the Court, the Clerk shall prepare and file a report of distribution.

That the clerk shall prepare a list of all such reports filed, and that such list be posted up in some conspicuous place in his office.

That any party intending to contest such report shall file his contestation at the office of the Clerk, on or before the expiration of four days next after the filing of such report; provided always, that if the report of distribution be filed on any other day than a Monday, the delay for filing the contestation shall be computed from the Monday next following, the day on which such report shall have been filed.

That immediately after the delay for filing a contestation to a report of distribution shall have expired, if no contestation have been filed, the Plantiff may give notice that he will move on the first Juridical Day of the ensuing Term, that the said report be homologated

with costs, and if the Plaintiff omit to give such notice on the Juridical Day next following the expiration of the delay for the filing of contestation, any other party collocated may give such notice.

That the said notice shall not be served on the parties, but that the same shall be posted in the Clerk's office at least four days.

That it shall be lawful for a Defendant by leave of a Judge of the Court, to pay into Court the sum of money which such Defendant acknowledges to owe to the Plaintiff, and thereupon, unless the Plaintiff shall accept thereof in full discharge of his suit, the said sum shall be struck out of the declaration and paid out of Court to the Plaintiff; and upon the trial of the issue, the Plaintiff shall not be allowed to give evidence for the sum so acknowledged to be due.

Signed,	"Edward Bowen," Chief Justice.	"J. Duval," J.
	"W. C. Meredith," J. S. C.	"Ed. Caron," J. S. C.
	"Chs. D. Day," J. S. C.	"Charles Mondelet," J. S. C.

Registered in the Prothonotary's Office at Montreal, 17th January, 1854.

ENGLAND.

It appears that there is but little doubt that the Courts of Law will be removed from Westminster to the neighbourhood of the Inn's of Court. The site which seems to be most popular with the authorities and the bar is that proposed by the Incorporated Law Society, on the borders of the cities of London and Westminster, with the Strand and Fleet Street on the south, and Carey Street on the north.

RESULT OF HILARY TERM EXAMINATION.

The number of candidates who gave notice of their intention to appear before the Examiners was 108, but only 85 produced satisfactory testimonials of due service. We regret to hear that of these, no less than 23 did not pass.—*London Legal Observer.*

SCOTLAND.

IMPORTANT RAILWAY DECISION.—Railway tickets can be used only to the stations marked on them. Two cases respecting the right of passengers, on the Glasgow and South-Western Railway, to leave

the train at intermediate stations, were decided by Sheriff Anderson, in the Small Debt Court at Kilmarnock, on Thursday. It appears that the fare for the *whole* distance from Campbelton to Glasgow, by steamer to Ayr, and by railway to Glasgow, is considerably *less* than to several of the stations betweeen Glasgow and Ayr, and that persons have been in the practice of taking out Glasgow tickets at Cambelton, and then leaving the train at the intermediate stations, thus paying less than if they had taken tickets to the station to which they actually intended to travel. To put a stop to this practice, the railway company brought small debt actions against two passengers for the difference of fare between what they actually paid and what they would have paid had they taken tickets to Dalry. During the discussions the sheriff repeatedly expressed his opinion that, while the company might, if they thought proper, allow passengers to leave the train at intermediate stations, no person could demand it as a right.—*North British Mail.*

This important, or as it should more properly be called extraordinary, decision we copy from the North British Mail, and can only regret that we are not in possession of the learned Sheriff's reasons for this judgment.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint Alexander Stuart Logan, Esq., Advocate, to be Sheriff of the Shire or Sheriffdom of Forfar.—*From the London Gazette of the 7th Feb..*

The religious feelings of a certain Baronet, hight Sir James Colquhoun, of Luss, whose estates extend along the romantic shores of the Gareloch, were weekly outraged by the sight of steamboat-loads of the smoke dried slaves of toil from Glasgow, who, preferring the fresh mountain air to the gin-palace, came to pass their Sundays on his shores.

Sir James' prohibition to the steamboat company to land their passengers on his wharves having been disregarded, and having equally unsuccessfully tried force to repel the invaders, the worthy Baronet applied to the Court of Session for an interdict which was refused. In giving judgment the Lord Justice Clerk said, that the applicant had not shown any patrimonial right to these wharves, and that "there was no public law which shut up piers, harbours or highways on the Sunday; there was no law against travelling on Sunday by sea or land, entitling the toll-keeper to shut his gates, and the harbour-master to exclude vessels from his port."

On Friday, (3rd March,) the Court Martial reassembled to try Private Whelan, of the 26th Regiment, on a charge of having fired off his musket, on the evening of the 9th of June last, without orders. To this charge the prisoner pleaded "not guilty"; upon which the Judge

Advocate stated that, "it was not the intention of the Court to bring forward any evidence against him." The Court was than declared closed.

The sentence of Julien, condemned to death for the murder of his father-in-law, has been commuted to imprisonment for life in the Provincial Penitentiary.

An Act in Relation to Libel.—The people of the State of New York, represented in Senate and Assembled do enact as follows:

Section 1. No reporter, editor, or proprietor of any newspaper, shall be liable to any action or prosecution, civil or criminal, for a fair or true report in such newspaper or any judical legislative, or other public official proceedings, of any statement, speech, argument, or debate in the course of the same, except upon actual proof of malice in making such report, which shall in no case be implied from the facts of the publication.

Sec. 2. Nothing in the preceding section contained shall be so constructed as to protect any such reporter, editor, or proprietor, from an action or indictment for any libellous comments or remarks superadded to and interspersed or connected with such report.

Sec. 3. This Act shall take effect immediately.—*Montreal Gazette.*

We hope the above Bill may pass into Law, and sincerely wish that the Canadian Legislature would have the wisdom to follow their example. Indeed it appears strange that this protection, so simple and so harmless, has not been sooner afforded to public journalists.

(*From London Legal Observer.*)

Court of Criminal Appeal.

Regina v. *Reid.* Jan. 21, 1854.

MASTER AND SERVANT.—CONVICTION FOR LARCENY.—CONSTRUCTIVE POSSESSION.

R. the servant to N., was sent by him with his cart to bring home some coals, when he took out some and left them at another person's house: a conviction was affirmed of larceny.

This was a conviction for larceny. It appeared that the prisoner was a servant to a Mr. Newton, and had been sent by him with his cart to bring home a quantity of coals, when he took out some of the coals and left them at another person's house. The question was whether the offence amounted to larceny or embezzlement.

The *Court* said, the coals were in the constructive possession of the master, to whom the cart belonged, by his order by means of the prisoner, his servant, and that the conviction for larceny was therefore proper. *Spear's Case*, 2 East's, P. C., 568; 2 Leach, 825; and the conviction would therefore be affirmed.

Regina v. *Greenhalgh and another.* Jan. 21, 1854.

CONVICTION FOR OBTAINING ORDER FOR PAYMENT OF MONEY BY FALSE PRETENCES FROM TREASURER OF BURIAL CLUB.

It appeared that it was the duty of the prisoners, the Secretary and the Collector of a Burial Club, to report the sum payable on deaths to the Treasurer, and they had reported 50s. *to be due on the death of a member's child, and had obtained payment of an order for that amount from the Treasurer. The child was not that of a member.* Held, *that they had been rightly convicted of obtaining an order for payment of money by false pretences.*

This was an indictment against the Secretary and the Collector of a Burial Club, at Bolton, for obtaining from the Treasurer an order for the payment of 2*l.* 10s., by means of false pretences, and also of ob-

taining 2*l.* 10*s.* from the Treasurer by false pretences. It appeared that it was the prisoners' duty to report the sum payable on deaths, and that they had obtained the sum in question on the death of a child of Robert Lord, but who was not a member of the Society, as they had reported. The prisoners were convicted and sentenced to 18 months imprisonment subject to this case.

J. Cross for the prosecution.

The *Court* said, that the conviction on the count charging the obtaining an order for money under false pretences was right, and it was accordingly affirmed.

Regina v. *Burton.* Jan. 28, 1854.

CONVICTION FOR STEALING GOODS.—PROOF OF IDENTITY WITH PROSECUTOR'S GOODS.

A conviction was affirmed against the prisoner for stealing pepper from Dock Company, where he was discovered by an officer coming out of a room in which pepper was stored, and had no business there, and had thrown the pepper away, and said, "I hope you will not be hard on me"—notwithstanding the identity of the pepper thrown away by the prisoner with that in the room could not be shewn.

This was an indictment of the prisoner for stealing a quantity of pepper, and it appeared that one of the officers of the Dock Company, where he was employed, had stopped him on seeing him come out of a room in which he had no right to be, and that the prisoner had said, "I hope you will not be hard on me," and had thrown away the pepper. The Assistant Judge, at the Middlesex Sessions, had over-ruled an objection that as the pepper could not be proved to have been stolen, an acquittal should be directed.

Ribton for the prisoner.

The *Court* said, that the conviction must be confirmed.

Regina v. *Gill.* Jan. 28, 1854.

CONVICTION FOR EMBEZZLEMENT.—SERVANT TAKING MONEY MARKED BY MASTER.

A conviction was affirmed against the servant of a publican for embezzling certain marked money, although it

appeared the money belonged to the publican, who had employed a friend to pay the same for articles purchased, with a view of testing the servant's honesty.

The prisoner was servant to a publican, and had taken from the till certain marked money, which his master had employed to pay for articles purchased, with a view of testing the prisoner's honesty. The money, however, belonged to the master. On the trial at the Middlesex Sessions, the prisoner was convicted.

Clarkson for the prosecution.

The *Court* said, that in accordance with *Rex* v. *Headge*, 2 Leach, 1033; R. & R. 160, the conviction must be affirmed.

Regina v. *Overton*. Jan. 28, 1854.

INDICTMENT FOR EMBEZZLEMENT.—EVIDENCE.—RECEIPT STAMPS.

On an indictment for embezzlement, the prosecutors gave in evidence a book kept by S. & Co., in which purchases were entered and which was signed by the person authorised to receive payment for the same, in order to prove by the Clerk payment to the prisoner, and his identity. Held, *that it was inadmissable for such purpose without a Stamp, and the conviction was reversed.* Held also, *that the Clerk should have proved payment to the person signing, and then that another witness should have indentified the hand writing in the book.*

This was an indictment for embezzlement. It appeared that Messrs. Shoolbred & Co. kept a book in which purchases made by them were entered, and which was signed by the person authorised to receive payment for the same, and that Messrs. Shoolbred's Clerk had proved payment to the person signing the book, it was produced to the Clerk in order to show the indentity of the prisoner as having signed in respect of goods purchased from his employers, Messrs. Wellstead & Co. An objection on the trial before the Recorder of London, that the entry was not admissable without a stamp had been overruled.

Metcalfe, for the prisoner.
Parry, for the prosecutors.

The *Court* said, that in accordance with *Regina* v. *Hunter*, 2 Leach, 624; 2 East, P. C. 928, the document required a stamp as being an acknowledgment or receipt for the payment or discharge of a sum of money, and a proof of a direct issue between the parties. The course should have been, instead of receiving the whole entry in evidence, to have asked the witness whether he paid the money to the man who signed the book, and then to have proved by another witness, who knew the prisoner's hand-writing, that he signed the book. The conviction would therefore be reversed.

Regina v. *Sharman*. Jan. 28, 1854.

CONVICTION FOR UTTERING FORGED TESTIMONIAL.

An indictment was affirmed for uttering a forged testimonial, purporting to be written by the rector of a parish, recommending the prisoner and his wife as fit and proper persons to undertake the charge of a school, for the purpose of receiving the emoluments of the office.

This was an indictment against the prisoner for forging a testimonial purporting to be written by the rector of a parish, recommending the prisoner and his wife as fit and proper persons to undertake the charge of a schol, and also for uttering the same. On the trial at the Central Criminal Court, he was acquitted on the charge of forging, but found guilty on that of utterring for the purpose of deceiving and of receiving the emoluments of the office.

Clarkson, for the prosecution.

The *Court* affirmed the conviction.

Regina v. *Watts* Jan. 21, 1854.

INDICTMENT FOR STEALING A PIECE OF PAPER. — UNSTAMPED AGREEMENT.

A prisoner was indicted for stealing a piece of paper, the property of P. It appears that it was an unstamped agreement, whereby he agreed to build two cottages for the prosecutor. Held, *that as the agreement was evidence of the rights of the parties, although it could not be given in evidence as an agreement, it was not the subject of larceny, and the conviction was quashed.*

This was an indictment for stealing a piece of paper, the property of a Mr. Francis Pattison; and it appeared that it consisted of an unstamped memorandum of agreement, whereby the prisoner agreed to build and complete two cottages for the prosecutors. On the trial at the Yorkshire North Riding Quarter Sessions, the prisoner was convicted.

Bliss & Simpson, for the prisoner, contended that as the agreement was a subsisting valid agreement, it was not the subject of larceny at common law as a piece of waste paper.

Rice, in support of the conviction.

Cur. ad. vult.

The *Court* (per Lord *Campbell*, C. J., *Alderson*, B., *Coleridge*, *Maule*, *Wightman* and *Williams*, J. J., *Platt*, and *Martin*, B. B., *Crompton*, J., *dissentiente Parke*, B.), said, that the agreement, although not capable of being given in evidence as such, was available as evidence of the rights of the parties, and it could not be the subject of larceny. The conviction would therefore be quashed.