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# BYGONE PHASES OF CANADIAN CRIMINAL LAW

WILLIAM RENWICK RIDDELL<sup>1</sup>

## *Burning at the Stake in Canada*

In a Paper, entitled *Judicial Execution by Burning at the Stake in New York*, in the American Bar Association Journal for June, 1929, I gave an account of the execution by burning at the stake of Negroes in the Colony of New York in 1741, 1742. I have made some investigation to find if this punishment was ever inflicted in Canada: and here give the result of my enquiry.

The Common Law punishment by this form of execution was abolished in 1730, by the Act, 30 George II, c. 48, and consequently it was no longer inflicted by the English Law, when that law was for the first time introduced into Canada by the Royal Proclamation of October 7th, 1763, following the formal Cession of Canada by the Treaty of Paris of the previous February—in which Proclamation, His Majesty said that “all persons Inhabiting in or resorting to” Canada, might “confide in Our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of England.”

Nor have we ever had the irregular form of such execution under the well-known, if execrable Lynch Law—possibly, because we never had any part of our population who required to be kept in order by terrorization of that character.

An investigation of the old French Records does not disclose any instance of the imposition of this punishment in the regular course of justice, though in the later Civil Law upon which the French-Canadian law was based, Witches and Sorcerers might still be submitted to it.

There was, however, one instance of a person being burned at the stake upon the order of the Governor—the victim was not a Frenchman or a French-Canadian but an Indian, an Iroquois, whose people were determined enemies of the French.

In February, 1692, a party of French commanded by M. de Beau-cours made prisoners of sixteen Iroquois near the Island of Tonihata, not fram from the present City of Kingston, Ontario: and took them to Quebec. The Governor, Frontenac, exasperated by the con-

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tinual harrying of the French and their faithful allies, the Hurons, by the Iroquois, determined to check them by a terrifying punishment: and sentenced two of the prisoners to be burnt at the stake. This he did notwithstanding that the Iroquois had been made inimical to the French by the French themselves early taking the part of the Hurons, hereditary enemies of the Iroquois, and slaying some of the finest Iroquois Warriors by a new and horrible weapon which belched out fire and lead, which the most agile and experienced warrior could not avoid by any strength or skill. The Governor, too, was probably influenced by the custom of the Indians of all Nations torturing and burning at the stake such of their prisoners as they did not propose to keep in slavery.

This punishment—if punishment it can be called—was theretofore quite unknown at Quebec: but Frontenac was inexorable. To alleviate somewhat the atrocity of the judgment, the doomed Indians were instructed by the Jesuit Fathers in the Christian religion and received Baptism. One of them finding a knife in his prison, put an end to his life; but the other suffered the full penalty.

The well-known Baron de Hontan gives a horrifying account of the execution—some young Hurons of Lorette, an Indian Village near Quebec, aged only about 14 or 15, dragged the unfortunate man to Cape Diamond, close to the City, where they had gathered a great quantity of wood: he “went to his death” says the chronicler “with more indifference than Socrates would have done. . . . During the execution, he never ceased to sing that he was a brave and intrepid Warrior, that the cruelist manner of death had no terrors for him and could not shake his constancy, that no torture could wring a cry from him; that his comrade was a coward to kill himself for fear of the torture, and that if he should be burned, he had the consolation that he had given the same treatment to many Frenchmen and Hurons. Nor was his boasting without solid basis—he neither shed a tear nor heaved a sigh nor uttered a murmur, but suffered the most terrible tortures imaginable for three hours without flinching or ceasing his song of exultation. For more than a quarter of an hour, large stones heated to redness were applied to his feet, his fingers were thrust into lighted tobacco pipes and used like tobacco; and then the hot pipes were kept close against his hands without his withdrawing them or flinching: his fingers were disjoined, joint by joint, his legs and arms were twisted, causing the most frightful anguish—he was scalped and the torturers were about to throw hot sand handful by handful, upon the bleeding skull, when a slave from the Huron

Village crept up and killed him with a club. This was done on the orders of the wife of the Intendant who desired to shorten the atrocious torments—but not for a moment did the Indian cease his chant from the beginning to the very moment of death. This decent-minded lady was Madame Bochart de Champigny, her husband being Intendant: to her further credit, be it said, she had exercised all her influence with Frontenac to induce him to withdraw his inhuman order. While there are a number of instances on record in which Frenchmen assisted, or at least, stood by without any attempt to prevent the burning at the stake of enemy Indian prisoners by their Indian allies, this is the only instance of this form of death being directed by authority in Nouvelle France: there never was anything like a general rule laid down in that direction.

### *Suicide and Its Consequences in Old French Canada*

Nowadays, a Coroner's Jury finds as of course "Suicide, when of unsound mind"; and there is an end of the matter.

It will be remembered, however, that the Common Law of England looked upon Suicide very severely—the Coroner directed the body to be buried in the highway, at the cross-roads, with a stake through his body, a practice that was not abolished until well within the last century, when the Statute of 4 George IV, by cap. 52, sec. 1, put an end to the postmortem atrocity. So, too, all the suicide's goods and chattels were forfeited to the King, a consequence in which even Blackstone admits, "the letter of the law . . . borders a little upon severity"—a specimen of meiosis hard to excel: Blackstone's Commentaries, Vol. IV, p. 190, and Notes.

Every lover of Shakespeare will remember the famous "Gravediggers' Scene" in Hamlet with its "Crowners Quest Law," imitating and scarcely parodying the noted case of *Hales v. Petit* in the spacious times of Elizabeth and duly reported at length in the quarto pages of Plowden, pp. 242, *sqq.*

It may be considered worth while to see how Suicide was looked upon in Canada under the old régime: this is carefully sought for and given us by the learned Archivist of the Province of Quebec, M. Pierre-Georges Roy, in the recent publication by his Department, *La Ville de Québec sous le Régime Français*, Vol. II, pp. 139, 140, from which I take the material for this Article without shame or apology.

The practice in the old law of Nouvelle France was not unlike that in the Common Law: the deceased was subjected to an investiga-

tion, corresponding to a Coroner's Inquest; and his body was dragged upon a hurdle and then cast "à la voirie," cast away like carrion and deprived of Christian burial rites.

The Government, the "Conseil Souverain," had no great liking for these infamous proceedings, and where they reasonably could, they mitigated the horrors.

When in 1689, one Pierre Lefebvre, a resident of Fargy in the Seigniory of Beauport was found dead in his barn, having committed suicide, the decision of the Court of First Instance was that his body should be drawn on a hurdle by the Common Executioner from one end to the other of Fargy, twice, and then hung by the feet to a gibbet which was to be placed in front of the barn to remain there for four winters and then "traîné à la voirie": and all his goods were confiscated to the Seigneur. This judgment having been given, September 26th, 1687, Jean Clouet, who had been made Curator of the body, appealed to the Sovereign Council: and that body, October 20th, set aside the judgment and ordered that the widow be given the goods and permitted to exhume the body and give it Christian burial.

An attempt at suicide was made early in 1699 by Étienne Chipault *dît* Beauport, a soldier of the Degrais Regiment, by hanging. The Lieutenant-General of the Prévôté of Quebec, April 4th, 1699, who conducted the first proceedings found that his rash act had been caused by despair in a boundless passion he entertained for a girl, upon a report being made to him that it had been determined to part them. The despairing soldier was condemned "to be taken by the Common Executioner from the prison, brought before the principal door of the Parish Church of Quebec, naked except for his shirt—a rope round his neck and a flaming torch in his hand, and there kneeling with bared head, ask forgiveness of God, the King and Justice for his criminal attempt." Then, he was to be taken back to prison, there to remain until means should be taken to embark him on a ship to go into perpetual banishment from the country.

On appeal, the Sovereign Council revised the sentence and ordered him to "be whipped, naked, upon the shoulders with rods by the Common Executioner of Quebec, and at the four-corners and usual places in Quebec," at each place receiving seven strokes of the whip—then to be banished from the country. He was also sentenced to pay fifty livres to the use of the King and a similar sum to the Treasurer of the Bureau for the Poor in Quebec.

In 1735, Jean Dupuy committed suicide at Quebec: his body was directed to be dragged upon a hurdle behind a cart, head down

and face toward the ground, through the streets as far as la Place Royale, then brought back to his prison, hanged by the feet for twenty-four hours and then cast into the River, without Christian rites of burial: the Sovereign Council made a direction that the body should only be deprived of Christian burial (May 24th, 1835).

By the way, thieves did not have a good time in old Quebec—some of them were hanged, some whipped and some set on a wooden horse, with six pound weights hung on each foot: as the Archivist says: "Until the end of the French Régime, the laws against theft were observed most strictly": and there is no indication that the thieves were better off under the English law introduced by Royal Proclamation in 1763.

*Punishment for Crime in an Old English and an Old French  
Colony in America*

To the student of the history of Criminal Law, especially on this Continent, it is of interest to compare the punishment of crime in the former French Colony and in the English Colonies to the South.

Both Canada and the English Colonies in America had their share of imported criminals, as well as of those of native growth, but neither had a very large element of that character, notwithstanding what some malicious pens have written: this is satisfactory, for as has been said, "Outside of the indisputable influence of atavism, no one would consider it a flattering thing to count among his ancestors, a person who had just escaped the gallows."

In this Paper, I do not intend to dwell on such incidents as that in 1692 when Frontenac simply had to burn an Iroquois Indian at the stake to show these enemies of the French, what to expect if they did not cease their depredations—that was a special case.

I look to the regular administration of Criminal justice in Canada, and compare it with that in Connecticut, which has rightful claims to be considered a typical English Colony in America. For the law of this Colony I go to the well-known publication: *The Code of 1650 of Connecticut* . . . published at Hartford, in the "forty-sixth year of the Independence of the United States of America," as is certified by "Charles A. Ingersoll, Clerk of the District of Connecticut": for the law in Nouvelle France, I go to the recent publication of the Department of Archives of the Province of Quebec: *La Ville de Québec sous le Régime Français* . . . Quebec, 1930.

Of course, Murder was a capital offence everywhere: in Connecticut, "if any man shall conspire or attempt any invasion, insurrec-

tion or rebellion against the Commonwealth, hee shall bee put to death" (p. 29): while in Canada, in 1608, Jean Duval was hanged for plotting against the life of the Governor, Champlain, with a treasonous intent (I, p. 42).

In Connecticut, a robber had to be guilty of the third offence before being liable to the death penalty (p. 26): while in Canada as early in 1542, Michel Gaillon was hanged for the first offence of theft (I, p. 46) just as he would have been in contemporary England. A pitiful story is told in the *Journal des Jésuites* of January 19th, 1649, of a wretched little thief, a girl of 15 or 16, hanged for her crime (I, p. 459); and thereafter the records are full of such cases—as the learned Archivist of Quebec says: "Until the end of the French Régime, the law against theft was enforced most strictly" (I, p. 460). He might with perfect truth have added that the severity of the law against theft was not mitigated nor was the fidelity with which it was enforced at all diminished by the Conquest and Cession of the Colony, when the Criminal Law of England was introduced.

In England, not every thief was hanged: if the article stolen was under the value of twelve pence, the thief was only whipped: and, as Blackstone says, "the mercy of juries will often make them strain a point and bring in larceny to be under the value of twelve-pence when it is really of much greater value . . . a kind of pious perjury . . ." *Commentaries*, Bk. IV, p. 238. In Connecticut, apparently, for the first offence, the thief was branded, for the second, whipped and branded, the branding being on the forehead.

So, in Canada, the thief was sometimes branded with the Fleur-de-lis on the shoulder, the accessory generally received this attention—sometimes imprisoned, sometimes was forced to stand in the public places, with nothing on but a shirt, and with a lighted torch in his hand, compelled to crave the pardon of God and King and Justice for his offence.

Another punishment was the "Cheval-de-Bois," the Wooden Horse, not unlike a high "saw-horse," upon which the culprit was placed, often with a weight of six or more pounds hanging on each foot, occasionally with unfortunate results for the rider, as in the case of a former cook at the residence of the Jesuit Fathers at Three Rivers, in 1645, of whom it is said that when he had been placed on the Cheval-de-Bois, "il se rompit" (I, pp. 152, 459).

In Connecticut, there was a prohibition against supplying the Indian aborigines with fire-arms or ammunition, as well as against settling among them (p. 53): but there was no prohibition of trading

with them on the traders' "vessells or pinnaces or at their owne howses" (p. 52). In Canada very early, the sale of fire-water to the Indians was forbidden, notwithstanding the wail of the traders that the Indians could get all they wanted of intoxicants in New England—the notorious "New England Rum"—and if they could not buy brandy from the French, they would abandon their close friendship with them and turn to the English, or what was about as bad, to the Dutch to the south. Monseigneur de Laval, the first Bishop of Quebec excommunicated such traders, but that proved ineffective and in 1660, he obtained a Decree prohibiting the sale under penalty of death. Unfortunately (?), this law was of short life: three men did suffer the penalty in 1661 on the orders of Governor d'Avaugour; but when a few days thereafter, a widow was arrested for the same offence, the Priest, Father Lalement, interceded for her, and the Governor, exasperated, declared that if the offence was not to be punished in her, it should not be in the case of men who did the same thing, and he threw the trade open to everybody. However, the Bishop got even with him: he went home to France and persuaded the authorities to recall d'Avaugour and regulate the obnoxious trade (I, pp. 277-8). It may sound somewhat Volsteadian that when the prohibition of the Governor had been lifted for the reason just mentioned and the Bishop was left to his ecclesiastical punishments, he was obliged to raise the ban in February, 1662, "by reason of troubles and extraordinary disturbances."

Drinking a little has in all ages and in practically all countries, been looked on as an amiable eccentricity or, indeed, rather a laudable habit; but drunkenness was everywhere an offence, at least, if indulged in in public: and, consequently, in Colonial Connecticut, if a person "was found drunken, viz., so that hee bee thereby bereaved or disabled in the use of his understanding, appearing in his speech or gecture," in an Inn, he was fined ten shillings; "and for excessive drinking, three shillings foure pence; and for tipling at unseasonable times, or after nine o'clock at night, five shillings for each offense in these particulars . . . and for want of payment, shall bee imprisoned until they pay, or bee sett in the stocks, one houre or more."

Nor was the subject permitted to get drunk the second time on the same terms: he had to pay double the second time, and treble for the third: and, if he did not pay his fine, "then hee that is found drunken shall be punished by whipping," and the fourth time, imprisoned till good security be given against a repetition of the offense.

In Nouvelle France, as early as 1635, getting drunk was punish-

able by the Wooden Horse: and, in December, 1645, de Montmagny, the Governor, to show the Indians what Frenchmen got for being drunk and raising a row, set two men on the Wooden Horse "exposed to a fearful north wind" (I, p. 151).

Blasphemy was punished in the same way (I, p. 151); but in Connecticut it was a capital offence (p. 28). Profanity earned in Canada, the Wooden Horse; but in Connecticut, a fine, in default of the payment of which, the stocks up to three hours (p. 60).

The old Colonist, English or French did not stand any nonsense from his servants—those in Connecticut who deserted their employment were pursued at the public expense, and, when caught and brought back, they had to serve for no wages, thrice the time they had lost by leaving the master.

In Canada, since the means usually adopted by the servant to get away from a service that was distasteful to him was to get drunk and provoke the master to discharge him, in 1663, the Sovereign Council prohibited not only leaving service, but also furnishing servants with liquor or the means of getting it. The eloping servant had a punishment that fitted the crime: we find, in 1673, an assistant cook in the household of the Governor Frontenac, who without reasonable excuse left his master, taken from prison by the Common Executioner to the Lower City, and there in the public Square, placed on a scaffold for three hours with a placard on his stomach, declaring his offence: and then compelled to serve without pay for three years (I, p. 379). In the same year, another domestic servant for the same offence received the same punishment for two hours with a warning that if he repeated the offence, he would be corporally punished (do., do.).

In Connecticut, "no person, howseholder or other" was to "spend his time, idely or unprofitably, under paine of such punishment as the Courte shall thinke meete": and every constable was to "use speciall care and diligence to take knowledge of offenders in this kinde; especially, of common coasters, unprofitable fowlers and tobaccko takers," to be brought to the next Court for trial.

In Canada, begging was forbidden in 1676: and, on the formation in 1688, of a Bureau for the Poor, begging was forbidden on pain of corporal punishment (I, p. 485).

I do not find that the use of tobacco was in itself an offence in Quebec, perhaps because the use of Quebec tobacco, "tabac canadien," is itself sufficient punishment: but in Connecticut, "no person under the age of twenty-one years, nor any other, that hath not already accustomed himselfe to the use thereof" was permitted to "take

any tobacco, untill hee hath brought a certificate under the hands of some who are approved for knowledge and skill in phisick, that it is useful for him, and, allso, that hee hath received a lycense from the Courte for the same," Besides, "no man within this colony . . . shall take any tobacco, publicly, in the streett highways or any barne yardes, or uppon training dayes, in any open places, under the penalty of six-pence for each offense. . ." (p. 96). An amusing Frontispiece is inserted in this volume, showing "The Constable seizing a tobacco taker"; the officer has the tobacco-user by the throat, shouting: "Chaw Tobacco, will you?" while the rascal whispers: "Say nothing—you shall have some of the Tea." Meanwhile the wife of the constable stands near with five children, one of them saying: "Mam, Dad has catcht a man chewing tobacco"; and she replies: "My child, he will have his dserts."

Perhaps enough has been said for this time of these old time punishments.

#### *Some Punishments in Old French Canada*

To a student of the Criminal Law, it is always interesting to see what have been considered crimes in the past, as well as the methods of preventing or of punishing them.

Nouvelle France, French Canada, furnishes interesting examples of both of these.

Taking first, what was considered a crime in Old Canada, I transcribe an account of a criminal and his crime: and, incidentally, his punishment.

On February 4th, 1671, an irreverent French-Canadian called Pierre Dupuy, and also known as Lamontagne, living in Saint-Louis de Chambly, was sentenced for the atrocious crime of speaking ill of Royalty, in the person of the King of England, the "Martyr Monarch," Charles I. The ribald actually said that the King did not amount to anything, that he had nothing of that kind (i. e., Royalty) about him or anything else but looking after his own interests; that the English were perfectly right in executing their King, and the like. For this hideous crime, real Lèse Majesté, although not against his own King, "Pierre Dupuy dit Lamantagne" received suitable if condign punishment. He was sentenced to be taken from prison by the Common Executioner, and to be led by him through the streets, clad only in his shirt, with a rope round his neck, and a lighted torch in his hand to the front of the Chateau St. Louis; there he was to ask pardon of the King, and then, he was to be taken to the gibbet

of Lower-Town, and have a fleur-de-lis branded upon his cheek with a red-hot iron, and afterwards to stand in the Pillory for half-an-hour. After this, he was to be reconducted to prison, and suffer imprisonment for the time stated. This took place in the City of Quebec.

It may be noted that a few years before this time, in 1664, the Sovereign Council at Quebec had made an agreement with some of the Indian Chiefs, whereby the Indians were to be subject to the same criminal laws as the Whites.

The severity of the French Criminal Law was followed in Canada—one example will suffice.

In that law, everyone was considered a murderer who slew or wounded so that death ensued within forty days. Murder was punished with the gibbet in the case of the common people and decapitation in the case of the noblesse. Murder by lying-in-wait (*le meurtre commis avec guet-apens*) earned the wheel. A suicide did not escape attention; there was a solemn trial, and the body of the suicide was dragged on a hurdle and his goods were confiscated. Those familiar with the old English Criminal Law will remember the elaborate discussion in the case of *Hales v. Petit* in Queen Elizabeth's time, reported in old Plowden, p. 253, as to the forfeiture of the goods which Sir James Hales, one of Her Majesty's Justices was possessed of at the time he committed suicide—it is believed that this was the original from which Shakespeare drew the amusing graveyard scene in Hamlet, when the gravediggers so learnedly discuss law, believing that, at any rate, they had some knowledge of "Crowners Quest Law." It will, of course, be remembered that in the oldest period, the Common Law looked upon killing secretly, *homicidium quod nullo vidente, nullo sciente, clam perpetratur*, which corresponds to the French, *le meurtre commis avec guet-apens*, or our murder by lying-in-wait, as *Murdrum*, and the only *Murdrum*. See the account in Blackstone's Commentaries, Bk. 4, pp. 195, 196.

To take a concrete example of severe punishment, I shall adduce that of Charles Alexis dit Dessessards, who was, March 6th, 1673, convicted at Quebec of having murdered (*convaincu d'avoir tué de guet-apens*) his comrade on a fur-trading trip, one Herme, and stolen his clothes and furs. He was sentenced to be taken by the common executioner to the place of execution, at 3 o'clock in the afternoon of a Monday, and there upon a scaffold to be erected for the purpose, he should have his arms and legs broken by four blows, which he should receive alive; then he was to be strangled and thrown upon the

wheel there to remain until 7 o'clock; thereafter his body was to hang upon a gibbet until it rotted away.

The Archivist of the Province of Quebec, M. Pierre-George Roy, informs us that a sentence of this kind was carried out as follows: "In the middle of a scaffold or platform, a St. Andrew's Cross was fixed; the criminal was stretched upon that cross, face upwards, and tied at every joint. Moreover, the head was raised up on a stone, so that the strangling could be effected according to the sentence. The executioner with a bar of iron, square, broke the arms, the reins, the thighs and legs of the condemned man. If he was not to be 'broken alive,' strangling preceded the breaking. At one corner of the scaffold was placed a coach-wheel, horizontally with the projecting hub removed; after the execution, the body of the convict was stretched on this wheel for the time fixed by the sentence. Sometimes, the execution took place upon the public highway, and in that case, the body was left there."

No change took place in the old French law, until the English Criminal Law was introduced along with the English Civil Law by the Royal Proclamation by King George III, in 1763, after Canada had been ceded to Britain.

It has been mentioned, *supra*, that in 1664, an agreement was come to between the Sovereign Council at Quebec and some of the Indian Chiefs that the Indians in French territory should be subject to the same criminal law as the Colonists. The occasion of this arrangement was a criminal assault by an Indian upon a French-woman; the Indian was pardoned, reserving to the injured woman her civil rights against her assailant. Before this time, even in French territory, and afterwards in territory not under French control, the Indians had their own criminal processes; and it may be worth while, to give some account of their methods, by adducing a concrete example.

In August, 1636, an Iroquois was brought down to Quebec, to be put to death by the Indians after their own fashion; and the *Relations des Jesuites* for that year has a lurid description from the report of an eyewitness, Father de Quen; this I give in substance, translating somewhat freely from the French. As soon as the unfortunate man set foot on the ground, the Indian women seized him and dragged him into their cabins. There they made him dance, while a Fury appeared armed with a cat-of-nine-tails, with which she lashed him with a force paralleling her rage; another woman struck him on the breast, the abdomen and stomach with a huge stone and a third

gashed his shoulders, making the blood stream. Some time afterwards, a dried-up, skeleton-like Indian who had been sick for some months, recovered his strength at the sight of the wretched victim, sprang at his neck, seized him by the ear like a dog, tore it in pieces from him, and forced it into his mouth; the prisoner took it without any objection, chewed it for some time, and, not being able to swallow it, spat it out into the fire. . . . Then they gave him rest, and treated him to the best food the cabins afforded; and, what seems incredible, the man received it with as much satisfaction as if he had received information of a release. In the evening, they dragged him, bound with cords from cabin to cabin, while an infuriated woman scourged him to the accompaniment of a song; it is said that further cruelties were committed on him, which would make the very paper blush if written down. The Governor being informed of what was being done, had them notified of his displeasure at these cruelties, and ordered them to remove elsewhere so as not to wound the sight of the French by committing such atrocities before their eyes. This somewhat lessened their insanity; they crossed the River St. Lawrence and strangled the prisoner, roasted his body and gave his flesh to the dogs, throwing the bones into the River.

It was the act of an Indian man criminally assaulting a French-woman that impelled the French authorities to insist that the Indians within their territory should be governed by the French criminal law.

In purely Indian territory, there was no interference with the aboriginal customs, the Indians being intefered with as little as possible; and, indeed, that was the only safe course to follow. The French used every means to ingratiate themselves with the Indians; for example, we find that de Bienville, when made Commandant of the Louisiana region in 1701, went so far as to persuade the Chiefs of any nation a member of which had murdered a member of another to deliver up the offender to him, that he might send his severed head to the nation whose member he had killed.

### *A Tragedy of the Back-Country of Ontario*

I premise this story by the statement that I undertake for the literal truth of it, as an honorable man—I mean, the recent facts: the earlier are matters of tradition, and there seems no reason to doubt their accuracy.

When the French Republic trembled to its fall, when Napoleon, defeated on the field of Waterloo, entrusted himself to his sworn foes,

the British, but to find that the days of Chivalry were past and the world was governed on utilitarian principles, when the end of all things seemed to have come for the believers in the new Republic, one of the Marshals of Napoleon made his way out to Canada, in the confident hope that the old French Colony retained its love for France, and that Frenchmen would be welcomed. He counted without his host—Quebec, French Canada, was indeed fervently French, but it was French in the old Bourbon French fashion—it revered the Monarchy of France, the feudal France, and had no love for the new, the Napoleonic France, which had destroyed the historic monarchy, had flouted the Church, and had set at naught everything their ancestors and they revered: he found no sympathetic spirit, no warm recognition of kindred feeling: and, in disgust, made his way to the wilds further west. In the northern parts of what is now Hastings County in the Province of Ontario, then Upper Canada, there were many Indians, chiefly, if not altogether Mississaugas: to one of these tribes, the Frenchman made his way: he fraternized with the Mississaugas, and, at length, married the daughter of one of their Chiefs. He lived and died amongst them—and passes out of our story. His son, too, by the Indian Princess lived and died amongst his people: and it is of his son, that I am to tell the fate.

There was a woman, a white woman, of no great personal charm, married to a prosaic spouse with no charm of manner: with her, living in the rear of the County of Hastings, the young Indian fell madly in love: his passion was reciprocated; but the husband was in the way. One evening, the husband who had been mowing hay in his meadow was found dead, shot dead, his own gun being found thrust, muzzle down in the ground near him. There could be no possible doubt that he had been murdered: and when it was known that he feared the Indian and had taken his gun to the meadow with him for protection, suspicion became strong that the young Indian lover was the miscreant.

The Indian was arrested charged with the crime, though he strenuously denied all knowledge of it. I was retained by the Attorney General of Ontario to prosecute for the Crown: and Crown detectives were instructed to consult me about the prosecution. I instructed them to make strict enquiry into the movements of the young man for some time before the murder: this was done, and with great success; he was traced in his movements for a week before the murder gradually withdrawing from the north country toward the place of residence of the murdered man: he had been heard, too, to utter threats against the husband.

The wife, who was strongly suspected of adultery with the Indian, was placed on trial with him, a joint indictment having been found against them for murder, before the late Chief Justice Armour.

The movements and threats of the accused man were abundantly proved, but nothing was made to appear against the woman and she was discharged, the man being convicted.

One dramatic incident occurred during the trial: the Indian had lounged back in the dock, apparently paying no attention to the proceedings which did not seem to interest him in the least: he sat with mouth open, glancing from time to time around the Court Room. One elderly Irishwoman giving evidence of having seen him at her door, shortly before the murder, was on cross-examination, asked whether she was sure of the identity, as she had never seen him before—"Know him?" cried she, pointing a long and toil-worn finger at the man in the dock: "Know him? How could I not know him, with the tooth out of the mout' of him." The gap in the open mouth was apparent to all, jurymen and spectators: but the accused, on hearing the evidence, snapped his mouth shut, and never opened it again during the remainder of the trial.

Sentenced to be hanged, he was taken off to the Gaol, and shortly thereafter, suffered the penalty of his crime.

After Court was over, the Chief Justice and I were taking a constitutional walk, when we were hailed by a young man, who was sitting on the railing of a bridge over which we were passing. "Say, I guess I fixed that son of a gun, today!" On enquiry, we found that the young chap was a brother of the convicted man, who had most callously given damning evidence against him: and he was glorying over the result.

The woman hung around the Prison during the short remainder of the unfortunate man's life: but, the Indian out of the way, she almost immediately consoled herself with another spouse.

### *The Night Club in Montreal: Two and a Half Centuries Ago*

The people of many of the Cities of this Continent are exercised over the Night-Clubs; New York seems to have an acute attack of them; Chicago is not wholly ignorant of their existence, and even Toronto the Good has heard of them. Perhaps, it was the passage of legislation like the Volstead Act and the Ontario Temperance Act, that brought these institutions into notoriety or, at least, into disrepute with the authorities.

But the Preacher has said, "There is no new thing under the Sun"; and the Night-Club illustrates this maxim to the full.

Away back in 1678 and 1680, when New York had but just graduated from Dutch rule and became English—no, my Scottish friend, I do not mean *British*, for Great Britain was not yet—when Chicago was quite unknown; and Toronto, if it existed at all, was only a place of fur-trading, the authorities of Montreal had their troubles with the speak-easy. See the modernity of what took place!

We are told that in the month of May, 1678, the authorities were informed that in a certain Cabaret, young people were accustomed to meet and play cards—but, worse, they were accustomed to drink to all hours—the original French reads "jusqu'à des heures indecises"—and so, they decided to make a tour of inspection.

Remember there was in full force the Curfew Bell, that instrument of Norman tyranny, which the Saxon complained of so bitterly, but which the Frenchman adopted of his own freewill; and that rang at 9 o'clock, and all Cabarets were expected to bid good-bye to their patrons on the sound of the bell.

The irregularity spoken of having to be investigated, the authorities charged with the duty of superintendence, then being the Seigniorial Court, set out on the tour of inspection. With a regard for human frailty and procrastination not to be found in all officers of the law, although the hour for closing was 9, they waited till half past 9, so as to give everybody a chance to put his house in order, watching the passage of the time by an hour glass. The French author from whom I take my information, seems rather to be amused by the spectacle of these grave officers of justice, sitting around an hour glass watching the time go by by the light of a candle; to me the picture is illuminating, indicating the humanity of these seventeenth century Montrealers, a humanity which has been inherited to the full by their descendants of the nineteenth and twentieth centuries. Well, the half hour elapsed, and everybody should have his house in order: the guardians of public morals set out on their mission. At the Auberge Bouat, their first place to be inspected, all was quiet; but going on, they heard, all of a sudden, two women crying that they were killing each other in the place of Martinet de Fonblanche, a surgeon. To that place they went, separated the combatants and calmed them down: then they went to the house of Charles Testard de Folleville—whatever else a Frenchman may lack, he generally has a fine name—well, a "good name is better than great riches": it was his wife who managed the Cabaret and it was of her

place that the complaint had been made, which occasioned the visit. At her Cabaret, they found in the second room, seated at the table and playing cards, a whole group of gentlemen of high degree, among them Sieur Dulhut, whose name has been tortured into Duluth. This group showed no disposition to break up: on the contrary, there were manifestations which induced the visitors to withdraw so as not to expose justice to the insults which were plainly about to be offered.

They could not depart, however, without making the significant remark to Madame de Folleville that it was past 9 o'clock. To this she impertinently and superciliously replied that she had not heard the bell. Nothing came of that domiciliary visit except an official report from which the author has taken his facts.

One of that group of insouciant players was the famous Duluth, who, on the following first of September, left for the west and became the prototype of the "Coureurs de bois": his discoveries in the western—now become almost, the eastern—part of North America, are well known.

Another domiciliary visit, about two years afterwards, did not pass off so peacefully. July 27, 1680, two police officers, charged with the duty of seeing that everything was orderly, heard a racket going on in the Cabaraet of the same Madame de Folleville, and determined to enter to investigate. They found people sitting round the table, drinking and quarreling—it was after 10 o'clock—the appearance of the officers of the law did not put an end to the disturbance, but, on the contrary, it excited the ire of the disorderly lot, and they drew their swords, made a break at the officers and chased them out into the street. One of the officers, Denis Marsaut, a gaoler, was wounded in the hands and arms, but succeeded, with his mate, one André Hachin, in getting away and finding refuge in the establishment of M. Bouat, which seems to have been an orderly hotel, and had been found law abiding two years before. The precaution was necessary, for when shortly afterwards, the officers took their departure, accompanied by two of the staff of Bouat's establishment for their protection, they were attacked by some of the gang, and one of the men accompanying them from Bouat's was wounded by a stone thrown.

All this delectable story is given in the *Bulletin des Recherches Historiques*, the official organ of the Department of Archives of the Province of Quebec, in an Article written by a thoroughly reliable author, from whom I have borrowed without limit—but I know he will pardon me.