The French Language in English and American Law

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For a lawyer of the United States to address members of the Canadian bar on the influence which the French language has had upon English and American law is indeed temerarious. Though such audacity can hardly be justified, some excuses may be offered. I therefore "cast *essoins*" in the sense hereinafter noted.

I had the rare privilege of taking courses in French and Roman law at the Sorbonne in Paris after the armistice of World War I. I was fortunate enough to acquire a French wife, bring her to the States and keep her. Our family is as bilingual as the courts of Quebec. For thirty-one years most of my arguments in the domestic forum have been conducted in French, a handicap which makes me peculiarly sensitive to the forensic power of that language. Finally, in London and at Nuremberg in 1945-1946 I was charged with *liaison* between the American and French delegations and enjoyed all the delights and suffered all the "slings and arrows" of that supreme language of diplomacy and law.

One of the oldest alliances in history is the ineradicable alliance under which Norman French, Anglo-Saxon and the Latin of the classicists united to form what we call the English language. That linguistic alliance is the core of the profound cultural relationship between the French people and the English-speaking peoples. It is preserved in Canada more strikingly than anywhere else in the world.

It is a curious kind of alliance, a unilateral or one-sided alliance. English did not absorb French. French did not absorb English. French is not an absorbing language. It is a warlike, a persistent, a self-defensive language. It took to boats, as Hitler did

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not do in 1940. It crossed the turbulent English Channel with William the Conqueror in 1066, won the Battle of Hastings, and simply imposed itself upon the English people and their language. There it is. There it remains. There is nothing anybody can do about it. When we speak English today we are, to the extent of a large part of what we say, speaking French.

Interestingly enough, when the Normans returned to France they did not take back with them any part of the English language, unless it be a few scattered names for things with which they had become familiar in England but which were unknown in France. But the French language as such, which they had carried over the Channel and with which they had conquered Anglo-Saxon England, they left in Britain, as a vital part of the language of the English.

Such words as *boulingrin,* bowling green, or *redingote,* riding coat, they did carry back to France, mispronouncing and misspelling them as Frenchmen would, and there they have stayed as linguistic curiosities. Subsequently a few other English words, largely words of *mêtier* or terms of sport, have been imported, such as: *knockout,* knock-out; *biftek,* beefsteak; *blackbouler,* to black-ball; *five o'clock thé,* five o'clock tea; *hiking*; *footing*; *steeplechase*; and so on. But these are distinctly foreign words, borrowed into the language by a kind of cosmopolitan generosity or snobbishness.

By and large, French is a pure language, in the sense that it comes from one source, Latin. It is true that the classical Latin words suffered strange, usually softening, and often beautifying, corruptions as they descended through the folkways of the Dark and Middle Ages. "P's" became "v's". "S's" were dropped out or elided, or jumped up above the line and turned into a *circonflex* over the preceding vowel. But the words themselves still remain distinctly Romance or Latin words, with no other source or derivation than Latin.

One of the most curious examples of this corruption is to be seen in the French word *évêque,* bishop. It is the direct descendant of the Latin *episcopus,* which came from the Greek, *episkopos.* Coming down in the popular tongue through the Dark Ages, the first "p" softened to a "v"; the "is" softened to a circumflex "*ê*"; and "copus" dropped the Latin ending and shortened into a simple "que". Thus *episcopus* became *évêque* through no outside or foreign influence of corruption but merely from the *usure* of the musical tongues of the people. But in English "episcopal" is exactly the same as *episcopus,* without change by the popular

tongue, and for the very reason that it was not a popular word but a learned word, brought over intact as a Latin word by the clerics who spoke and wrote Latin. Of course, we do have in English the popular word "bishop". This also is a direct descendant of *episcopus*. However, the "e" was dropped, the "p" changed to a "b", and the "sc" changed to an "sh". So, interestingly enough, the French "*évêque*" and the English "bishop", although they look quite unlike, are blood cousins.

This example could be followed by thousands like it. Almost always, where the English language contains a distinctly Latin word, it is direct from the Latin unchanged, or at least much more direct and unchanged than the corresponding French word, which has suffered, or enjoyed, much more change and corruption in coming down the folkways.

From all this it results that French is a unitary language. It comes from one *souche*. This is one reason for its great clarity and precision. It is also one reason for its formalism, its rigidity, its inflexibility. It is one reason why, if we try to be original, or to turn a quaint phrase or a curious play on words, in French, the French listener will look at us with a slightly pained astonishment and say "Mais, ça ne se dit pas en français". The formalism of the language is such that things "say themselves" in French, and that is the only way in which they can be said. It is not within the rigid formalism of a unitary language to invent unusual or outlandish turns of phrase.

As an illustration of how distinctly Latin the French language is, we may note that the letter "k" is an Anglo-Saxon or a Teutonic letter, rather than a Latin letter. There are only a handful of words in French beginning in "k"; and of them, save for a few scientific or measuring terms coming from the Greek, such as *kilogramme, kilolitre, kilometre*, practically all are obvious foreign importations, names of foreign things, such as *kangourou, keepsake, képi, khédive, kinkajou, kiosque, kirschwasser, knout, kopeck.*

But whereas French is a unitary language, English is one of the strangest of languages, a trinitary or three-part language; first, the Anglo-Saxon, with its "thegnes" and "thorns" and "wergelt" and "wolves"; second, the direct classical Latin used by the learned people or clerks before the Norman Conquest; and, third, the Norman-French, brought over and superimposed on the other two by the Conqueror.

The first, the Anglo-Saxon English, was the language of the common people, who could neither read nor write. The second, the Latin, was the language of the churchmen or clerks, who were

the only ones who could read and write. The third, the Norman-French, was the language of the knights, the courtiers, the lawyers and the politicians, who came over with the Conqueror and who held their parliaments and courts in the French language.

From this trinitary character comes the richness of English, its variety, its infinite choice of forms of expression, and also its sometimes foggy confusion and lack of formal clarity.

Things do not "say themselves" in English as they do in French. No matter how unusual or how curiously turned an expression is, as used in English, no matter how much one sentence or paragraph may jumble together Anglo-Saxon English, Latin and Norman-French, we do not say, "But that does not say itself in English". Indeed we hardly ever even say, "That is not English". So many, many things are English. Or English is so many, many things. Even "Mares eat oats and does eat oats and little lambs eat ivy", is good English. In fact, every word in that jingle is an old Anglo-Saxon word. They are, as the recently popular song says, "a little bit jumbled and jivey", but not more so than much of the French in English and American law.[1]

Almost always, in English, we can choose between an Anglo-Saxon English word, a classical Latin word or a Norman-French word, and whichever we choose we are still speaking English.

From this comes the tendency in English to use the common or Anglo-Saxon words for common or ordinary things or occasions, and the Latin or French words for more learned, technical, formal or stately things or occasions. No such choice exists in French, because there is only one word for one particular concept — the Latin-root French word. That word has to be used because there is no other. That word "says itself". The French do not have three different languages from which to choose.

It is for this reason that, when an American or an Englishman first hears a French child speak French, he has the strange impression that it is some kind of infant prodigy speaking, using only learned words. Actually the French child is using the only words his language gives him to use. They sound to us like learned words because they would be the learned Latin or French words, as distinguished from the common Anglo-Saxon words, if the child were speaking English. But in French they are not learned words. They are the only words the French have. It is the same thing when we hear very humble, unlettered people speak French.

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[1] The last two quotations in this paragraph are taken from the copyrighted composition, Mairzy Doats (copyright 1943, Miller Music Corporation) and are used by special permission of the copyright owner.

My wife and I were on the coast of Brittany one summer and we saw a most picturesque, weather-beaten, old Breton leaning against a boat. He looked like an old *loup de mer*. My wife went over to question him and asked if he was a *matelot*. With considerable dignity he drew himself erect and replied, "Non, Madame; je vis de la mendicité". Now we have the word *mendicité* in English, "mendicity" or "mendicancy". But hardly anybody but a college professor would ever use it. Who can imagine a beggar in England or America saying, "I make a living by mendicity"? He would inevitably use the Anglo-Saxon "beg" or say "I am a beggar". To me, the French mendicant sounded like a professor of the Sorbonne making a joke at our expense. But he was using the only French expression available. The French "said itself" that way.

There is an insoluble philosophical problem about the relationship between thought and language, between spirit and letter, between *l'esprit* or *la pensée* and *le mot*. We think of words as mere phonetic symbols, symbols for ideas or thoughts. But try to think without words. Can you do it? Hardly. You can feel sensations without feeling in terms of words. You may not be able even to find words to describe the sensations. But sensations are not thoughts. I doubt, however, that you can think, reason or analyze other than in terms of words.

Wordsworth said of human beings, "Trailing clouds of glory do we come from God, who is our home". However much of poetic exaggeration there may be in that statement, certain it is that words come trailing clouds of associations of ideas. And much of what we fondly call our thinking is really nothing more than the stirring up of associations of ideas by words which come into our minds.

If we cannot think without using words, then words must be something more important with relation to thoughts than mere symbols. They must be more intimately a part of the process of thinking than merely signs. If the word is not actually a part of the thought, then which comes first — do thoughts come before words or do words come before thoughts? Which is the causative element? Do words produce thoughts or do thoughts produce words? Or is something else the engendering cause of both thoughts and words, pushing them forth into life, to go tied together like Siamese twins? Our great Mr. Justice Holmes once presented the Siamese twin idea in much prettier form when he said,[2] "A word is

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[2] In *Towne* v. *Eisner* (1918), 245 U.S. 418, at p. 425.

not a crystal, transparent and unchanged, it is the skin of a living thought . . .".

In his *Faust,* Goethe brings his hero through youth and middle age to old age. Faust has studied all that human learning can offer, medicine, law, philosophy and, as he says, "unfortunately also theology". And then he sits down to translate the Scriptures from Greek into German. He thinks a good place to start will be the first chapter of St. John. So he translates and writes in German, "In the beginning was the Word". But he instantly runs up against the puzzle involved in his translation of the Greek word *logos.* How could the "word" be the beginning? Thought must come before word. So he changes his translation and writes, "in the beginning was the Thought". But still he is not satisfied. Thought cannot exist by itself. It cannot exist without something being in existence before it, to do the thinking. Thought is the result of something, not the cause of everything. Thought cannot be the First Cause. After puzzling over the problem all night, he finally changes to a third translation and writes, "In the beginning was the Deed. And the Deed was with God. And the Deed was God."

Faust's solution is somewhat in line with the modern science of general semantics, but it is hardly satisfying to those uninitiated in that science.

But why consider such a metaphysical problem? It is because there is some very intimate, if unexplainable, inter-relationship between thought and word, between spirit and language. If the French language has come over and imposed itself upon English, so that what is now English is in large part really French, then there must have come along with it a considerable part of the French spirit, of the French *esprit,* of the French mind. And the English-speaking peoples can never shake it off.

Let us come down, however, to the narrower subject of this paper, The French Language in English and American Law.

When the Supreme Court of the United States is about to convene, the crier (and incidentally "crier" is a French word) is on the alert (which also is French). As the justices come through the heavy draperies (and draperies are French), he raps for the audience (also French) to rise and announces in solemn tones:

> The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

When the justices have taken their places standing behind the bench, the crier intones:

> Oyez, oyez, oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near

and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!

Out of this whole formula, and you may not have thought of it, the following are French words, brought over to England with the Norman Conquest: "honorable", "chief", "justice", "associate", "supreme", "court", "united", "states", "oyez", "persons", "admonished", "attention", and "save".

Many people, some lawyers, some judges even, have no idea what "oyez" means or whence it comes. It is the imperative of the Norman-French verb "*oyer*" and means "hear ye". "*Oyer*" is from the older French verb "*oir*", the modern French form of which is "*ouir*". All of these descend directly from the Latin "*audire*", to hear, from which comes also "audience".

The same French verb had familiar use in old English law in the Courts of Oyer and Terminer, meaning "to hear and determine". Those Courts of Oyer and Terminer trace back at least to long before the reign of Edward III, since such abuses had already grown up in the jurisdiction of those courts that a statute of 2 Edward III confined their jurisdiction to "great and horrible trespasses". The State of Delaware still has a Court of Oyer and Terminer.

Blackstone, the great commentator on the English law, has an interesting footnote dealing with this cry "oyez". He is speaking of the "ignorance of succeeding clerks" in misunderstanding the meaning of certain Latin and French terms in pleadings, and in the footnote he says: "Of this ignorance we may see daily instances in the abuse of two legal terms of ancient French; one, the prologue to all proclamations, 'oyez', or hear ye, which is generally pronounced most unmeaningly, 'O yes'; the other a more pardonable mistake, viz. when the jury are all sworn, the officer bids the crier number them, for which the word in law-French is 'countez'; but we hear it pronounced in very good English, 'count these'."

It is interesting to compare with Blackstone's statement the statement by the French encyclopedia *Nouveau Larousse Illustré*, which, speaking of "oyez", says (my translation): "a French word which English criers still pronounce to command silence of the audience and which they pronounce 'O yes'; French criers also formerly said 'oyez', a word which, however, they have replaced by another less polite one: 'silence!'."

I have spoken of the profound effect of the Norman Conquest on the English language and on the language of the English law. Two of the greatest historians of the English law, Pollock and

Maitland, call the Norman Conquest "a catastrophe which determines the whole future history of English law". Speaking of the effect of the Conquest on our legal language, they say: "One indelible mark it has stamped forever on the whole body of our law. It would hardly be too much to say that at the present day almost all our words that have a definite legal import are in a certain sense French words."

They point out that a few English terms, such as earl, sheriff, king, queen, lords, knights of the shire, were preserved. Aldermen are English, but mayors are French. Parliament, statutes, privy council, ordinances, peers, barons, commons, the sovereign, the state, the nation, the people, all are French.

True a man may still give, sell, buy, let, hire, borrow, bequeath, make a deed, a will, a bond, and even commit manslaughter or murder in English. But contract, agreement, covenant, obligation, debt, condition, bill, note, master, servant, partner, guarantee, tort, trespass, assault, battery, slander, damage, crime, treason, felony, misdemeanour, arson, robbery, burglary, larceny, property, possession, pledge, lien, payment, money, grant, purchase, devise, descent, heir, easement, marriage, guardian, infant, ward, all are French.

When we enter a court of justice: courts, justices, judges, jurors, counsel, attorneys, clerks, parties, plaintiff, defendant, action, suit, claim, demand, indictment, count, declaration, pleadings, evidence, verdict, conviction, judgment, sentence, appeal, reprieve, pardon, execution, every one and every thing, save the witnesses, writs and oaths, have French names.

All these French names came over to England with and following the Norman Conquest. Indeed Pollock and Maitland further say: "If we must choose one moment of time as fatal, we ought to choose 1166 rather than 1066, the year of the assize of novel disseisin rather than the year of the battle of Hastings. Then it was that the decree went forth which gave every man dispossessed of his freehold a remedy to be sought in a royal court, a French-speaking court. Thenceforward the ultimate triumph of French law terms was secure." [3]

The reference to the assize of novel disseisin brings to mind one of the most interesting features of the Norman Conquest,

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[3] The substance of, and the quotations contained in this paragraph and the preceeding four paragraphs are taken from History of English Law by Pollock and Maitland (2nd ed.), vol. 1, pp. 80-81 and p. 84, and are used by special permission of the English publishers and copyright owners, Methuen and Company, Ltd., London, England, and of the American publishers and copyright owners, Little, Brown & Company, Boston.

from the viewpoint of the history of English law, and that is that the Conquest brought over to England, as a fully developed *fait accompli,* the feudal system, which had had a long evolution in France from the rudiments of the late classical period. The long history of the slow evolution of the feudal system in France, which is such a fascinating chapter of the History of French Law, is a chapter wholly missing from the History of English Law, because the Norman Conquest brought the feudal system over to England as a fully developed and perfected system. I have no intention of making this paper a study of the feudal system, enticing as that subject is. But the essence of the feudal system lay in the conditions on which land was held, that is, the conditions of land tenure.

Briefly, the King held or owned (the law said he was seized of) all the land in the realm. He let out his lands in large parcels or provinces to his highest liege lords, called the tenants in capite, to be held by them on condition that they should perform services — mainly military services — in time of need or when called on. These tenants in capite, in turn, let their lands out in lesser parcels to lesser lords or knights, on a like condition of military service. They let theirs to still lesser knights on like condition, and they to their subordinates, and so on down, until the simplest peasant held his small farm or house, not in absolute or fee simple ownership but as a tenant, on the condition that he should render military or other services.

It was a wonderfully efficient system. If an enemy invaded the realm, or if the King declared war, he did not have to call for volunteers or urge a draft act. He simply called on his tenants in capite to furnish his army. If they should fail, they lost all their lands. They in turn called on their sub-tenants and they on their sub-tenants on down to the *simple soldat.* Everyone had to do what was required or else lose all his lands.

But the interesting thing from the viewpoint of our subject is that this fully developed feudal system, brought over to England by William the Conqueror, brought with it all its technical terms in French and they have stayed in English law. We have seizin, livery of seizin, feud, fief, lease, liege lord, tenant, tenant in capite, tenure, condition, homage, and a host of other French, feudal, technical terms.

Homage is one of the most interesting of these terms. When the King made a man one of his tenants in capite and invested him with this feudal tenure of lands on condition of performing military service, or when a sub-tenant so invested a sub-sub-tenant,

he made a ceremony of it, struck him on the shoulder with a sword and said, "I make you my man", "Je vous fais mon homme". When this man performed the service upon condition of which he held his lands, he was said to render his homage, that is, render his man-service. So, when a Frenchman kisses the hand of a lady and says, "Madame, je vous présente mes hommages", he is using the feudal formula. He is saying that he is her man, to perform for her military service or any other service she may demand or desire of him. It need hardly be suggested that the formula is often a gross exaggeration.

Not only in the technical terms of the feudal system do we have French terms, but English and American law are full of French words, recognized as French words and not merely English words derived from French, many of which come right down to date and are in current use. I may cite some of the more interesting of them.

Appuye, in old English law, was the point to lean on; the defence.

Au bout de compte — at the end of the account — is found in old English law books.

Today we still hold property *pur autre vie* — for the life of another — or *pur autre droit* — in the right of another.

The pleas *autrefois acquit* — already acquitted — or *autrefois convict* — already convicted — both pleas of double jeopardy, still exist.

Battel or *bataille* meant single combat.

Beaupleader was a fair pleader.

Bésayel was a great-grandfather.

Biens were goods and chattels ("chattels" itself is French).

Biens meubles et immeubles were goods movable and immovable.

Boscage was that food which trees yield for cattle.

Celui, or slightly corrupted forms of it, is still common, especially in the law of trusts. One for whose benefit a trust is held is *celui qui trust* or *cestui qui trust* or sometimes *cettui qui trust*.

A curious old English law term was *chafewax* — an officer who melts or fits the wax used in sealing writs.

Chargé d'affaires — one who is charged with the affair or the responsibility — not only was an old English law term but is now in everyday diplomatic use all over the world.

Cheaunce was a chance mishap or accident. *Chance medley* meant the same thing.

Cheveres meant goats.

Chose in action — a thing in action — is used today in both

English and American law, meaning a right which may be enforced by a cause of action at law or in equity.

Congé d'élire — leave to elect — was the King's permission to a dean and chapter to elect a bishop.

Cornage — hornage — was a feudal tenure the service of which was to blow a horn upon approach of the enemy.

Corsepresent — corpse present — is one of the most curious of old English law terms. It was the present or fee given to the minister of a parish upon the death and burial of a parishioner, so-called because it was brought to the church at the time of the burial along with the corpse.

The terms of heraldry in English are all French. We have *lion rampant* or *couchant, unicorn regardant,* and a host of other terms.

Crier la peez — cry the peace — meant the same thing as "to read the riot act".

Cy — here — occurs often in our law even today. *Cy après* is "hereinafter". *Cy près* — near this — is a doctrine of the law of trusts whereby, if the intention of a donor of a charitable trust cannot be carried out to the letter, the courts of equity will fashion a trust as nearly like that intended by the donor as possible.

De bien et de mal was in the wedding ceremony, "for better or for worse".

Commonly used in the older English law was the phrase *de common droit,* of common right.

A quaint French term was *de cy en avant,* "from now henceforth". *De ques en ça* meant "from which time until now". *De sormes* (*désormais*) meant "from henceforth".

Dehors is constantly used in English and American law. In writing a brief for the United States Supreme Court, or any other court, we constantly speak of evidence *dehors* the record (meaning outside of the record), of evidence *dehors* the contract. Or we frequently say simply evidence *dehors* and all lawyers know what is meant, though not all of them know that the word is French.

When any person intermeddles with the assets of the estate of a deceased person, or makes the unfortunate mistake of mixing the funds of the deceased with his own funds, he automatically becomes an official of the law in spite of himself, like Molière's *médecin malgré lui.* He is called executor *de son tort,* that is, "executor by reason of his own wrong". And he is held accountable in law just as if he had been appointed executor by the probate court. And, by the way, "executor", "probate" and "court" are all French words.

Demens, in old English law, was one who had been sane but who had lost his mind.

Demesne meant lands which a man held of himself, and had immediate and exclusive control of, as distinguished from those held of a superior lord. When you have this technical law meaning of the word in mind, the line from Keats' sonnet, "On First Looking into Chapman's Homer", has much more meaning to you, the line which runs, "That deep-brow'd Homer ruled as his demesne".

Dieu son acte was the term of the old English law for the act of God, which excuses a common carrier from a contract of carriage.

Doigne meant "I give". It is the modern French *je donne*.

Droit d'aubaine was the King's right of escheat of an alien's property, which reverted by this right to the King upon the death of the alien.

Droit de bris is a very interesting French term of old English law meaning the right which in ancient times the lords living on the coast of France claimed to persons and property shipwrecked and which were confiscated to their benefit.

The *droit du seigneur* existed in the old law of England, in word if not in fact. It is not preserved in modern law, though it seems to exist after a fashion in Hollywood.

Droit des gens is still used, meaning international law, the law of peoples, though the Latin form, *jus gentium*, is probably more generally used.

One of the funniest looking of the law French terms I have run across is *duskes à chou qe*. Can you imagine what that meant? It meant "until that". It was a corruption by lawyers and law writers ignorance of *jusque à ce que*.

Another strange one was *eane*, meaning "water". It was the French word *eau*, but, in crossing the Channel, the "u" was capsized and turned into an "n".

En affrayer de la pees meant to commit a breach of the peace.

En especes au cour de ce jour was the old law term for "in the coin or currency of the present day".

What do you suppose *enke* was? It meant "ink". It was the way the old English lawyers and court clerks spelled *encre*.

There were hosts of other French words beginning in "en". A few of them were: *en pleyn vie*, "in full life"; *en poign*, "in hand"; *en primes*, "in the first place"; *ensy*, or *ensi* (*ainsi*), "thus"; *entrelessé*, "omitted"; *entrelignure*, "interlining"; *envéer*, "to send"; *en ventre sa mere*, referring to an unborn child. Even today, in

bringing suit on behalf of an unborn child, it is always alleged to be an infant *en ventre sa mere*.

Whether the old lawyers used *en sac* for "it's in the bag", I do not know, but they well might have. At any rate, it's a very good place to have a lawsuit.

When "our Nell" had not been done right by, and had to bring a bastardy proceeding against what the law calls the "putative father", to charge him with the support of the child, she alleged that she was *enceinte per* A, naming the putative father.

A *fait enrollé* was a registered deed.

In the statute 7 Richard II, c. 5, the word *faitours* was used to refer to "evildoers".

Fausenerie meant forgery.

Even today our statutes refer to a married woman as *feme covert* and to an unmarried woman as *feme sole*. *Feme covert* does not mean exactly what one might think. *Covert* is used in the ancient sense of "sheltered" or "protected". The *sole* in *feme sole* is a reversion to the Latin form *solus*, "alone". It is a stronger, harsher word than *seule*. *Une femme seule*, in modern French, has a flavour of only moderate loneliness. In fact she may get around and have a pretty good time. But note how terribly and desolately abandoned it sounds when you say *feme sole*.

And then the law has a French term for still a different kind of woman and that is *feme sole sub modo*. That one is nice. It means "a single woman to a certain extent". It puts it in a suave, French, understanding manner. It is reminiscent of the Frenchman who said that he was *légèrement fiancé*, "slightly engaged".

Fief d'haubert was feudal tenure by knight's service, meaning literally "fief of the halberd". When his lord called on him for his homage, he had to come and bring his halberd with him.

As "boys will be boys", so lawyers will be lawyers. The old English lawyers had a practice called *fourcher*, literally "to divide" or "to fork". It consisted in casting *essoins* or excuses by two tenants alternately, in order to delay the proceedings. The law still knows its deliberate delays, and all of us know many lawyers today who are adept *fourcheurs*.

Fuer, flight, was an interesting word. It was used substantively, though in form a verb. There were two kinds of *fuer: fuer in fait*, which was actual flight; and *fuer in ley*, or flight in law, legal flight, which was when, being called to court, he appeareth not.

An old word, *gist*, or sometimes *git*, is still used every day. It means the very central point in the case or the *very* point in question. Most of us say *gist*, but I have known older lawyers

who always said *git*. This reminds me of the great difficulty which I had as a freshman in college the first time I ran across the expression *ici gît*, "here lies". I looked in the French dictionary for *gitir, giter*, and everything I could imagine. It was a long time before I found *gésir*. *Git* also recalls the famous passage from *La Rôtisserie de la Reine Pédauque* of Anatole France, when *le père Jérome Coignard* died and his forlorn drinking companions were trying to decide on an epitaph for him. One of them went off and worked for a long time to produce an epitaph in verse. After hours of labour, he proudly returned to his companions and read them this single couplet:

> Ci-dessous gît monsieur Coignard.
> Il faut bien mourir, tot ou tard.[4]

He asked their judgment on the couplet. "That couplet", said a sententious member of the group, "has one virtue. It does not call for another."

Grosse bois meant such wood as, by the common law, or custom, was considered as timber.

Every day we still use *holograph*. A holographic will is a will written entirely in the handwriting of the testator. It does not need to have witnesses, but it must be found among the testator's important papers and effects, else it is invalid. If any part of it is not in his handwriting, it is invalid.

The French *je* somehow often acquired a final "o" and became *jeo*. Thus we had *jeofailé*, "I have failed or erred". And one of the famous, historic statutes of England was the Statute of Jeofailes, a statute for the correction of errors, but it didn't correct the French error in its title.

Les usages et coutumes de la mer were the usages and customs of the sea, or the basis of maritime law.

The old English law distinguished between *le tien et le mien*, your property and my property. The Latin form also was used, *tuum et meum*. Mixing up *le mien* and *le tien* brought, and still brings, serious consequences.

A quaint term was *lettereure*, "learning", which was directly related to both "letters" and "literature".

Livérer was "to deliver". *Lower* was a bribe.

I have found a curious old note on *litera*. It says: "From the Fr. *'litière'*, litter. This word was anciently used for *straw* for a bed; even the King's bed. In our law books this word is often used for the article called litter, now used in stables among

[4] "Beneath here lies Monsieur Coignard.
Everybody has to die, sooner or later."

horses, etc. Rushes and straw generally composed the material for the sleeping places of our martial ancestors and occupied the place where feathers and down are now substituted; and many allusions to the flag and rush are to be found scattered in the ancient writings. It appears that the practice of sleeping on rushes was customary so late as the time of Henry IV, as Shakespeare, speaking of a husband sung to sleep by his wife, says:

> " 'She bids you
> Upon the wanton rushes lay you down,
> And rest your gentle head upon her lap.
> And she will sing the song that pleaseth you.
> King Henry IV.' "

Mainprize, "taking in hand", was the taking or receiving into friendly custody or bail of a person who otherwise might be committed to prison, giving security that he should be forthcoming at a time and place assigned.

The popular, recent American book *Boners*, which gives prize howlers pulled by school children, tells of the boy who was asked to define "maneuver", and who answered, "Maneuver is what they put on grass. We have maneuver on our lawn."[5]

Well, the interesting thing is that historically he was not wrong. *Manovre* in English law meant "hand labour". One of the principal hand labours on the farm was the scattering of manure. The word for "hand" had several forms, *man*, *main*, *meyn*. *Meynoverer* (which is exactly the French word *manoeuvrer*) actually meant to scatter manure. Sometimes the boners of children are wiser than their teachers.

Mortgage is, of course, French. Everybody knows what an unpleasant thing it is. It is a "dead pledge". If you don't pay the debt when due, you lose the pledge.

A famous statute in English history was the Statute of Mortmain, of "dead hand". When property was left to God or the church, it was permanently removed from commerce. The church held it in perpetuity. It was said to be in *mortmain*, in the dead hand. The purpose of the statute was to break up this dead-hand holding of property. Out of it has grown the modern "rule against perpetuities".

Ne unques accouplé was the plea "never married".

Nient cul' was "not guilty".

Nient de dire meant "to stand mute" or "to default".

Nosaunce was a nuisance.

[5] Quotation from The Pocket Book of Boners, used by special permission of the copyright owner, The Viking Press, Inc.

We still plead *nul tiel corporation*, "no such corporation"; and *nul tiel record*, "no such record".

Overt is still used every day. In order validly to charge a conspiracy, an indictment must charge an overt act, an open act.

Pannage was that food in England that swine feed upon in the forests, such as acorns.

Parage was equality of blood or position. From it came the peerage.

Parle-hill, or *parlinge-hill*, anciently was a hill on which courts were held, *là où on parlait*. By the same token, Parliament means a place where talking is done. The phenomenon may be observed in the Senate of the United States any day.

La peine forte et dure, "the punishment strong and harsh", was something really ferocious. When a culprit refused to plead to an indictment, he was placed under heavy weights and fed with bread and water until he died of bursting.

Peisible was peaceable.

Per tout et non per mi, "by the whole and not by the moities", was the estate by the entireties. It still exists in many of the states of my country. If a deed is given to a man and his wife, they hold *per tout et non per mi*. If one dies, the other keeps the whole estate and it does not have to go through the administration of the estate of the deceased.

We have still the grand jury and the petty jury, and they are both French terms. So is petty larceny. A neighbour of mine in North Carolina had a coloured cook named Petty Larceny. Her parents had seen the name in the newspaper and thought it was pretty. It is pretty.

The *Pie Poudré Court*, the "powdered foot court", which the English lawyers undoubtedly called the "Pie Powder Court", was a court held at some fairs in England, where justice was administered instantly, whilst the dust was fresh upon the feet of the suitors.

Pilleur was a plunderer. *Pontage* was a bridge toll. *Povers* were paupers.

Profit à prendre was and still is an easement to take something from the lands of another, such as firewood, timber, minerals.

Prochein ami, the next, or nearest friend, is still used today. When an infant brings a suit he sues by his *prochein ami*.

We still find in the books references to a plea *puis darrien continuance*, a corruption of *depuis la dernière continuance*. It is a plea setting up something which has happened since the last continuance of the case.

An amusing one is *pur ceo que*. It means "because", "forasmuch", and was common in old law books. It, of course, is the French *par ce que*.

Reconquis is to obtain again. *Reconustre* is to recognize. *Répréhensailles* are seizures. *Rescous* is a rescue. *Réséaunt* is "residing". *Ribaud* is a vagabond.

Rôle d'équipage was a bill of lading for a vessel or a list of the crew.

Ryvire was river. *Rivière* got all twisted as rivers are in the habit of doing.

Sa et la was "here and there"; *sans ceo*, "without this"; *sans issue*, "without offspring".

Semble is used constantly in court opinions today, meaning "it seems".

When the King sent a message to the House of Commons, he wrote on it *soit bailé aux commons*, "let it be delivered to the commons". When he sent a message to the House of Lords, he endorsed on it *soit bailé aux seigneurs*, "let it be delivered to the Lords".

Tout temps prist meant "ready at all times".

Trébuchet was a tumbril or a place of castigation. *Trébucher* in French means to trip or stumble and fall. It was quite a downfall to ride in the tumbril to the guillotine. Another meaning of *trébuchet* is "a bird trap or gin". The law term is related to both meanings.

Véage was "voyage", *Véel* meant "old".

Of course, we still use *venire* and *venue* daily.

Vert, "greenhue", signified everything that beareth a green leaf within a forest.

Speaking of *vert*, there is a most interesting confusion which completely changed the famous story of Cinderella. In French, *Cendrillon* wore a *soulier de vair* to the ball. That was a slipper of gray fur. Some translator, translating the story into English, confused *vair*, "fur", with *verre*, "glass", so that poor Cinderella, in English, has to wear that most uncomfortable of all things imaginable, a glass slipper.

We still use *voir dire*, literally "to see him speak". When we examine jurors to see if they are qualified to serve, they are put on their *voir dire*. That is, we see them speak. It would not be enough merely to hear them speak. We must watch their faces to see if they are lying.

This brings us to the end of the alphabet. We have dealt with only twenty of the twenty-six letters. No French words in the law

have been found beginning in "k", "u", "w", "x", "y", or "z".

The time spent on the alphabet recalls a story which I must tell. At a banquet attended by alumni of various colleges and universities, the principal speaker was an alumnus of Yale. He thought it a happy conceit to frame his talk around the name "Yale", attributing a meaning to each letter. So he discoursed for about twenty minutes on the letter "y", standing for "youth"; about twenty minutes on "a", standing for "ambition"; another twenty minutes on "l", for "liberalism"; and he was just launching into his final twenty minutes on "e", for "emulation", when someone in the audience was heard to say, "Thank God he is not an alumnus of The Massachusetts Institute of Technology".

The last name of Edouard Herriot is an interesting law term. *Herriot* was a form of tenure in England under which, when the tenant dies, the lord is by custom entitled to the best beast on the farm, or the second best beast, according to the custom of different places.

The ancient address of the British Parliament to the King was in this quaint French:

> Les prélats seigneurs, et commons en ce present parliament essemblées, au nom de touts vos autres sujets, remercient très humblement votre Majesté, et prient à Dieu vous donner en santé bonne vie et longue.

The King was equally polite to the Parliament. When he approved a bill, he wrote upon it *le roy le veult,* "the King wishes it". But when he disapproved a bill he refrained from using the peremptory Latin form *veto,* "I deny". Instead, he politely wrote upon it *le roy s'avisera,* "the King will take it under advisement". That killed it just as effectually as *veto,* but more pleasantly.

One can hardly speak of the French language in English and American law without making a brief reference to Louisiana law. The source of the law of every one of the States of the United States, except Louisiana, is the common law of England as brought to that country by the colonizers. But Louisiana is unique. The source of her law is the *Code Napoléon.* Her law has no filial relationship to the common law of England. It is purely French law. The *Code Napoléon* took effect when France acquired Louisiana from Spain. And when Jefferson purchased the great western territories from Napoleon the people in that part of the territory which became the State of Louisiana kept their French law. The courts in Louisiana follow the French *jurisprudence,* the decisions of the French courts, rather than the decisions of English and American courts, as precedents, on all matters of State law. Of course, as to all *federal* questions they must, under our Con-

stitution, follow the decisions of the Supreme Court of the United States, not always an easy task.

I once had the privilege of appearing in a will contest case down on the Bayou Têche, in southwestern Louisiana. It involved the validity of a *testament holographique*. I had to study the Louisiana Code, which is really the *Code Napoléon*, for the statutory provisions. And for the jurisprudence, I spent two weeks in the French section of the Library of Congress, reading and abstracting the decisions of the courts of France on holographic wills. My brief in that case was the only French law brief I have ever written, though it was actually written in the English language.

A friend of mine, a very witty lawyer of Atlanta, tells a story of his appearance in a law court in Louisiana. In his argument to the judge he said, "Your Honor, being a Georgia lawyer, I thought I would have great difficulty with your Louisiana Code. But I find that there is not so much difference between it and the Georgia Code, except that your Louisiana Code reads as if it were written by a Negro preacher."

The Louisianians are a proud people, and very proud of their French law, so the judge was somewhat nettled. "What do you mean, sir, by that remark?" he demanded.

"Well, Your Honor", said my friend, "a section of the Code of Georgia reads, 'Courts of equity shall always be open to settle the accounts of guardians'. Now I find you have a similar section in your Louisiana Code, but it reads, 'Courts of chancery shall always be open to homologate the accounts of tutors'. I submit that that sounds as if it had been written by a Negro preacher."

Of course, the Louisiana law is chock-full of French words and expressions. But, more than that, the Louisiana law substantively and actually *is* French law.

It is not always realized, even among lawyers, what an important part the French language plays in our language and in our law. I have suggested the intimate relationship between the word and the spirit. We English-speaking peoples could not have taken and used as much of the French language as we have without also, in like measure, having taken over a part of the French mind and spirit. Here lies a spiritual unity between our peoples which must ever be important in world affairs. It is, as I have said, the oldest and most indestructible alliance in world history. It is often said that France is indispensable to the world. At any rate, France and the French language are certainly indispensable

to the English-speaking peoples, and especially to English-speaking lawyers.

Guns, Butter or Justice?

When one reads on [in Al-Gabarti's history], one finds that these latter-day *gesta Dei per Francos* stimulated the receptive doctor of the University of Al-Azhar to begin his own personal re-education immediately. One of the first acts of the French after occupying Cairo was to stage there a scientific exhibition, with practical demonstrations, and our historian was among the visitors. After remarking that the French evidently mistook the Muslims for children who could be impressed by monkey-tricks, and that this was really rather childish of the French themselves, Al-Gabarti frankly records his admiration for the demonstrated achievements of Frankish science. He notices that, among the damage suffered by the French in a revolt which they had provoked by their high-handed behaviour at the outset, the loss which they appeared to mind the most was that of some scientific instruments that had been destroyed in the house of the savant Cafarelli. But Al-Gabarti's interest in French science is surpassed by his sensitiveness to French justice. French soldiers are convicted of house-breaking with violence, and, on Napoleon's personal orders, they pay for their crime with their lives. Napoleon's successor in command of the French army of occupation, General Kléber, is assassinated by a Muslim fanatic, and the murderer is given a genuine fair trial. This trial wins Al-Gabarti's enthusiastic admiration, and, frank as always, he records his opinion that the Muslims would not, in corresponding circumstances, have risen to that moral level. He is so intensely interested in the proceedings and so eager to preserve a record of them, that he incorporates the *dossier* of the trial in his narrative, reproducing the documents verbatim in the French military chancery's defective arabic. . . . [The] 'utility' pattern of Western civilization was, of course, comparatively easy to take; Peter the Great revealed his genius by instantly pouncing on it as soon as it was displayed in the West's shop window. A hundred years later, the subtler and more spiritual Al-Gabarti showed a nicer discrimination. French technology hit him in the eye, but he persisted in waiting for a sign. For him, the touchstone of Western civilization, as of his own, was not technology but justice. This Cairene scholar had apprehended the heart of the matter, the issue which the West has still to fight out within itself. (Arnold J. Toynbee: Civilization on Trial. 1948)