

## Correspondence

### More on French and English

#### TO THE EDITOR:

Without doubt the excellent article on "The French Language in English and American Law" by Mr. Sidney S. Alderman, which you published in the December 1950 issue of the Canadian Bar Review, has been read by lawyers in all the provinces with pleasure, appreciation and admiration. Not only is it well seasoned with wit and learning but it helps power fully to show that cultural fusion can and does take place.

The alphabetically arranged glossary in the article is illuminating, but, in regard to Mr. Alderman's observations on pages 1120 and 1121 that no French words in the law have been found beginning in "u", I wonder whether the term *uncore prist*, appearing at pages 424 and 438 of 27 Can. Bar Rev. (1949), would fill the gap.

R. B. MACINNES\*

\* \* \*

#### TO THE EDITOR:

I have your letter enclosing a copy of a letter from R. B. MacInnes, K.C., of Winnipeg, in which he makes complimentary reference to my article in your December 1950 issue and only a modest and indirect reference to his own article, which I have had an opportunity to read, published in the April 1949 issue of your journal under the unusual title "9 Yerg. (Tenn.)".

I was greatly interested in Mr. MacInnes's "9 Yerg. (Tenn.)". It shows his great ingenuity in picking up an old volume of reports in a second-hand bookshop, for 75 cents, and then in going through it and making out of it a perfectly delightful and informative law review article, giving a clear picture of manners and customs and of the state of agriculture, slavery, industry and the law in Tennessee in 1836.

Mr. MacInnes in his letter touches me off neatly for having said in my article that no French law term beginning in "u" had been found. He found in Yerger's index the expression *uncore prist* and wonders if that would not fill the gap. I did not mean to assert that no French law term beginning in "u" exists in our law. I only meant that I had not found one to use as an illustration in my article, which made no pretence of being encyclopedic.

Mr. MacInnes's article ended with this plea, which I shall try to answer:

"But, for the benefit of a lame duck as regards other languages, will somebody please translate into good plain English that strange expression 'Uncore Prist' appearing in the index?"

\*R. B. MacInnes, K.C., of the firm of Laird, MacInnes, Burbidge, Hetherington, Allison & Campbell, Winnipeg, Man.

Until I read his article, I had never run across *uncore prist*, though it is perfectly comprehensible. Like so much of law French, it is a corruption as to both words. The modern French equivalent would be *encore prêt*, meaning "still ready". I should have expected some corruption in it, but should have thought it had been used by the old lawyers in the form *encore prist*, hence I should have considered it a law French expression beginning in "e" instead of "u".

It is related to and means almost, but not quite, the same thing as *tout temps prist*, which I did list in my December article. The distinction is well illustrated in 9 Yerg. (Tenn.), so interestingly reviewed in Mr. MacInnes's article.

When I read his article, I sent for 9 Yerg. in our library. It is 17 Tenn. (9 Yerg.), but in an edition of 1878, described as a new edition, with notes and references, by William Frierson Cooper, Chancellor of the Seventh Chancery District, published by G. I. Jones and Company, at St. Louis. Mr. MacInnes's old 75-cent purchase, printed in 1836 by S. Nye & Co., State Printers, evidently was the original edition as edited and indexed by George S. Yerger himself.

In my edition I looked in vain in the index and throughout the volume for any use of the French expression *uncore prist*. By a somewhat careful piece of research, my office found in one of the law encyclopedias a reference to *uncore prist*, with a citation of *Nixon v. Bullock*, 9 Yerg. (Tenn.) 414. Undoubtedly it was this case to which Reporter Yerger referred by his use of *uncore prist* in his index.

It seems obvious to me that when Chancellor Cooper prepared his new edition, with notes and references (1878), he found *uncore prist* in Yerger's index with the reference to *Nixon v. Bullock*, and, upon a careful reading of the opinion in that case, was unable to find that French term used and so he eliminated it from his index. It seems equally obvious to me that Yerger, who must have had much Year-Book learning, when he read the short but careful opinion in that case, immediately realized that the decision involved the question of the necessity, in a plea of tender, of pleading what the old law French called *uncore prist*, so he used that rubric as a catchword in his index.

The case involved a plea of tender to an action of covenant on an obligation to pay so many dollars in good baled cotton. The defendants pleaded that they had been ready and willing to deliver on the day named in the contract, but failed to plead that they had ever since been ready and willing, and still were ready and willing. The court held that it was not sufficient to plead that they were ready and willing on the day named in the contract, but that they had to go further and plead that they ever since had been and still were ready and willing to deliver. The pertinent part of the opinion is as follows:

"The first question is as to the correctness of the decision sustaining the demurrer to the two first pleas. We have no doubt but that the law was correctly adjudged. To make these pleas good, there should have been an averment that they, the defendants, or their intestate, were ready on the day specified in the contract to deliver the cotton; that neither the plaintiffs nor any person for them were present during the day to receive the same, and that they have always since been ready to deliver the same. This point has been determined in the case of *Waters and Mc-*

Allister 4 Hay., and Tiernan v. Napier, Peck, 189, which leaves the question no longer debatable."

It will be observed that Judge Turley, who wrote the opinion, did not use the French term *uncore prist*. He cited *Waters and McAllister*, 4 Hay., and *Tiernan v. Napier*, Peck, 188, which cases, he said, left the question no longer debatable. I have gone back and read these cases, and while they both bear directly on the point, neither of them uses the French term *uncore prist*. So, the use of that term by Yerger in his index must have been an invention of his own fertile learning.

The distinction between that term and the term I used is perfectly clear. It was necessary for the plea not only to allege that the defendants had been ready and willing to deliver on the date named in the contract, but also that they had ever since been ready and willing (*tout temps prist*), and further, that they were still ready and willing (*uncore prist*).

Bouvier's Law Dictionary deals with Yerger's term as follows:

"*Uncore prist* (L. Fr. 'still ready). A plea or replication that the party pleading is still ready to do what is required. Used in connection with the words *tout temps prist*, the whole denotes that the party always has been and still is ready to do what is required, thus saving costs where the whole cause is admitted, or preventing delay where it is a replication, if the allegation is made out. 3 Bla. Com. 303."

Thus, Blackstone and Bouvier agree substantively with the old Tennessee court of 1836 that the necessary complete plea, if in French, would be *tout temps prist et uncore prist*. It is quite interesting how one thing leads into another in these ancient researches.

There is another interesting thing about the reference in *Nixon v. Bullock*, 9 Yerg. 414, to the case of *Waters and McAllister*, 4 Hay. We looked for 4 Hay. in our library and could not find it in the early Tennessee Reports. There are only 1, 2 and 3 Hay. The explanation is interesting. Haywood was a North Carolinian and for a short time court reporter for the Supreme Court of North Carolina, where he reported two volumes which he entitled 1 and 2 Hay. (N.C.). Then he emigrated to Tennessee and became court reporter for the Supreme Court of that State, where he reported three volumes. Personalizing the volumes to himself instead of distinguishing between the two courts, he entitled his three Tennessee volumes in sequence after his two North Carolina volumes, and called them 3, 4 and 5 Hay. (Tenn.). This did not fit into the Tennessee numerology, so when a later edition of the early Tennessee Reports was produced, Cooper's Edition, 1870, the editor quite properly renumbered 3, 4 and 5 Hay. (Tenn.) as 1, 2 and 3 Hay. (Tenn.). It results that 4 Hay. (Tenn.), cited as the volume for *Waters and McAllister*, is now 2 Hay. (Tenn.). It would be very difficult to find under the old designation given in 9 Yerg. (Tenn.).

If I were forced to do so, I could find several other French law terms beginning with the letter "u".

*Unques* (L. Fr., still, yet, or ever), a word frequently used in pleas; as *ne unques executor*, not still the executor; *ne unques guardian*, not still guardian; *ne unques accouplé*, never married, which you will find that I did use on page 1118 of my article. Since this word *unques* is practically always used after the negative *ne*, my thinking would have considered it a French law term beginning with the letter "n" instead of beginning with the letter "u".

Another word sometimes considered as a French law term is *usher*. How-

ever, this word is a definite corruption of the French *huissier*, a bailiff or inferior officer of a court. The office of Usher of the Court of Chancery was abolished in England in 1852. Bouvier's Law Dictionary (Unabridged), (Rawles' 3d Revision, 1914).

Thinking in French, I would have considered *usher* a pure anglicization of *huissier* and hence would have considered the French law term to begin with the letter "h" instead of with the letter "u".

Of course, another word with which Mr. MacInnes could have confounded me is *usury*, which the Oxford English Dictionary shows to be the French law term *usurie*, from Medieval Latin *usuria*, Lat. *usus*, pa. pple. of *uti*, to use. It is directly related to *usure*, to wear away, which I did use on page 1105 of my article, though only as a French word and not as law French.

What a piece of special pleading this letter has become! However, I am *uncore prist* to file further special pleas if necessary.

SIDNEY S. ALDERMAN

---

### Recent Judicial Appointments

Honourable Percival John Montague, a judge of the Court of King's Bench for Manitoba, to be a judge of the Court of Appeal for Manitoba and ex officio a judge of the Court of King's Bench for Manitoba.

P. G. DuVal, Esquire, K.C., of the City of Winnipeg, to be a judge of His Majesty's Court of King's Bench for Manitoba.

Arthur George McCulloch, Esquire, of the City of Port Alberni in the Province of British Columbia Barrister-at-law, to be junior judge of the County Court for the County of Nanaimo and also a local judge of the Supreme Court of British Columbia.

Edward Milton Culliton, K.C., of Gravelbourg in the Province of Saskatchewan, to be a judge of the Court of Appeal for Saskatchewan and ex officio a judge of His Majesty's Court of King's Bench for Saskatchewan.